



## II. FINDINGS OF FACT

- A. The city is a fourth class municipality with a population of approximately 1,767 residents located in Dunklin County. As part of the services it provides to its citizens, the city owns and operates a wastewater treatment facility located in the NW¼, SW¼, Section 12, Township 17 North, Range 8 East of the Senath Quadrangle of Dunklin County. The facility consists of a three (3)-cell aerated wastewater treatment lagoon with baffling. The lagoon has a design population equivalent of 2,330 and a design flow of 0.256 million gallons per day. Effluent from the lagoon discharges to Pole Cat Slough, a class P stream, pursuant to the requirements and conditions of Missouri State Operating MSOP number MO-0048666.
- B. Pole Cat Slough is waters of the state as defined in Section 644.016(27).
- C. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. MSOP number MO-0048666 was issued to the city on September 1, 2006, and expired by its own terms on August 31, 2011. The MSOP requires the city to sample the effluent discharging from outfall #001 of each lagoon and chemically analyze the effluent sample for the water contaminants listed in Part "A" once a quarter. The MSOP also requires the effluent to comply with the effluent limitations contained in Part "A" of the MSOP and requires the results of analysis to be submitted to the Department on monthly discharge monitoring reports (DMRs) by the 28<sup>th</sup> day of the month following the reporting period.
- E. The MSOP also included a schedule of compliance (SOC) that required the city to complete improvements to the facility that would enable the effluent to comply with final effluent limitations for Fecal Coliform and if applicable, Total Residual Chlorine by August 30, 2011.
- F. Monthly DMRs submitted to the Department document that the effluent discharged from the city's facility failed to comply with the applicable permitted limitations for Biochemical Oxygen Demand during the months of: February, March, April, and October 2012.
- G. Monthly DMRs submitted to the Department document that the effluent discharged from the city's facility failed to comply with the applicable permitted limitations for Total Suspended Solids during the months of: February, May, June, and October 2011; and April, May, June, July, August, October, and November 2012.
- H. Monthly DMRs submitted to the Department document that the effluent discharged from the city's facility failed to comply with the applicable permitted limitations for

Fecal Coliform during the months of: October 2011; and April, May, June and July 2012.

- I. On February 19, 2008, the Department received a Preliminary Engineering Report from the city. On February 26, 2008, the Department returned the report to the city with a letter stating that technical comments could not be offered on the report until a finalized Water Quality Review Sheet was completed. To date, the Department has not received the report and/or finalized Water Quality Review Sheet.
- J. On December 14, 2011, Department staff conducted a compliance inspection of the city's lagoon. As part of the file review portion of this inspection, staff noted that the city's wastewater operators do not possess the "D" level certification required by 10 CSR 20-9.020 (2) (A, B, and D), the MSOP had expired, the SOC had not been addressed, and the lagoon had intermittent effluent limitation violations for Total Suspended Solids.
- K. Based upon the violations documented during the inspection, the Department issued Notice of Violation (NOV) number 19069SE to the city on January 13, 2012, for failure to submit an application for renewal of the MSOP at least 180 days prior to expiration, failure to upgrade the lagoon to meet final effluent limitations, and failure to retain a certified operator.
- L. On December 9, 2011, the Department received correspondence from the city explaining that the city does not use chlorine and thus, would not be reporting DMR values for Total Residual Chlorine.
- M. On February 29, 2012, the Department received an application from the city to renew MSOP number MO-0048666 which had expired on August 31, 2011.

### III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL, and its implementing regulations alleged herein and found to have been committed by the city at the facility are as follows:

- (1) Failed to apply for renewal of the MSOP at least 180 days before expiration of MSOP number MO-0048666, in violation of Sections 644.051.10 and 644.076.1, RSMo, and 10 CSR 20-6.010(5)(C);
- (2) Failed to upgrade facilities as required in Part "D" of MSOP number MO-0048666, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
- (3) Failed to retain a certified operator to supervise the operation and maintenance of the wastewater treatment facility, in violation of Section 644.076.1, RSMo, and 10 CSR 20-9.020(2)(B) and (D); and

- (4) Failure to comply with the effluent limits contained in Part "A" of MSOP number MO-0048666, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

IV. AGREEMENT

- A. The Department and the city desire to amicably resolve all claims that might be brought against the city for the violations alleged above in Section III, Citations and Conclusions of Law, without the city admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this Order, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including, but not limited to, any transfer of assets or real or personal property, shall not affect the responsibilities of the district under this AOC.
- C. The city, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of eight thousand dollars (\$8,000.00). The Department and the city agree eight thousand dollars (\$8,000.00) shall be suspended on the condition the city complies with all requirements and conditions contained in this AOC within the timeframe stipulated in the AOC.

Upon determination that the city failed to meet the terms of this AOC, including the schedules described in paragraphs F through L, the Department shall send a written demand for the suspended penalty in the amount of eight thousand dollars (\$8,000.00) to the city. The city shall have fifteen (15) days from receipt of the written demand to submit the suspended penalty which shall be delivered to:

Accounting Program  
Missouri Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0176

- D. In the period of time from the effective date of this AOC until recommended upgrades for the facility are completed, the city shall operate and maintain the existing facility at all times so as to produce the best effluent quality possible and comply with the terms and conditions of MSOP number MO-0048666. All units or components of the existing facility shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment and the repair of the facility.

- E. Within ninety (90) days of the effective date of AOC number 2013-WPCB-1211, the city shall submit to the Department for review and approval, a facility plan prepared by a professional engineer licensed to practice in the State of Missouri pursuant to 10 CSR 20-8.110. The facility plan shall include, but not be limited to:
  - 1. An evaluation of the removal efficiencies for Biochemical Oxygen Demand and Total Suspended Solids based on data collected during the most recent twelve (12) month period; and
  - 2. A recommendation for upgrades to the lagoon necessary to produce effluent that will comply with all final effluent limitations in the applicable MSOP.
- F. Within thirty (30) days receipt of comments from the Department on the facility plan, the city shall respond to and address, to the Department's satisfaction, all of the Department's comments on the engineering report.
- G. Within sixty (60) days of the date the Department approves the facility plan, the city agrees to submit to the Department a complete application for a construction permit including the applicable fee, design summary, plans and specifications signed and sealed by a professional engineer licensed to practice in the State of Missouri.
- H. If the Department comments on and/or requests modification of the construction permit application, the city shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application and resubmit the construction permit application within fifteen (15) days of receipt of the Department's comments.
- I. Within twelve (12) months of the Department's issuance of the construction permit, the city shall complete construction of the upgrades pursuant to the plans and specifications included with the construction permit application.
- J. Within fifteen (15) days of completing construction, the city shall submit to the Department a Statement of Work Completed Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project was completed in accordance with Department approved plans and specifications and a complete application for the modified MSOP number MO-0048666 with applicable fee.
- K. Within thirty (30) days of completion of construction, the city shall achieve compliance with all effluent limitations contained in MSOP number MO-0048666.
- L. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed on time, the city shall notify the Department by telephone or electronic mail, identifying: i) the deadline that will not be completed; ii) the

reason for failing to meet the deadline; and iii) a proposed extension to the deadline. Within five (5) days of notifying the Department, the city shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the city's right to request an extension and may be grounds for the Department to deny the city an extension.

- M. Should the city fail to meet the terms of this AOC, including any of the deadlines set out in paragraphs D through L above, the Department may impose stipulated penalties and the city agrees to pay such stipulated penalties, in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "State of Missouri (Dunklin County School Fund)." Any such stipulated penalty shall be paid within ten (10) days of demand by the Missouri Department of Natural Resources and shall be delivered to:

Accounting Program  
Missouri Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0176

- N. Nothing in this AOC forgives the city from future noncompliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forgo pursuing by any legal means for any noncompliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda or understandings, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- O. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC and that they have the authority to sign this AOC on behalf of their respective parties.

- P. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the city for its records.
- Q. The city agrees to comply with the terms and conditions of its MSOP, the MCWL, Chapter 644, RSMo, and the implementing regulations at all times in the future.

V. AFFORDABILITY FINDING

Pursuant to Section 644.145, the Department's Affordability Finding, which addresses the obligations included within this AOC based upon the cost estimate of \$1,232,155.00 is attached hereto as Exhibit 1. This Affordability Finding does not address future improvements that may be necessary to comply with the MCWL or its implementing regulations.

VI. RIGHT OF APPEAL

By signing this AOC, the city consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, or the affordability finding referenced herein, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, 644.145 RSMo, Chapter 536 RSMo, 10 CSR 20-1.020, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VII. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions pertinent to wastewater operations outlined in this AOC shall be directed to:

Ms. Kristi Savage-Clarke  
Compliance and Enforcement Section  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

Agreed to and Ordered this 7<sup>th</sup> day of May, 2013. <sup>4<sup>pm</sup></sup>

John Madras  
John Madras, Director  
Water Protection Program  
Missouri Department of Natural Resources

Agreed to and Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Joseph H. Lane  
The Honorable Joseph Lane, Mayor  
City of Senath

c. Ms. Diane Huffman  
Chief, NPDES and Facilities Management Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region VII  
11201 Renner Blvd.  
Lenexa, KS 66219

Mr. Chris Wieberg, Chief  
Operating Permits Section  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

Mr. Jackson Bostic, Director  
Southeast Regional Office  
Missouri Department of Natural Resources  
2155 N. Westwood Blvd.  
Poplar Bluff, MO 63901

Dr. Samuel M. Hunter, Chair  
Missouri Clean Water Commission  
P O Box 984  
216 Tanner Street  
Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice Chair  
Missouri Clean Water Commission  
Drury University  
900 N. Benton  
Springfield, MO 65802

Mr. John Cowherd, Commissioner  
Missouri Clean Water Commission  
1303 Deer Lane  
Mount Vernon, MO 65712

Mr. Samuel D. Leake, Commissioner  
Missouri Clean Water Commission  
41690 Harrison Trail  
Perry, MO 63462

Ms. Wallis Warren, Commissioner  
Missouri Clean Water Commission  
2671 Jefferiesburg Road  
Beaufort, MO 63013

Mr. Dennis Wood, Commissioner  
Missouri Clean Water Commission  
P.O. Box 112  
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Kimberling City, MO 65686

Mr. Buddy Bennett, Commissioner  
Missouri Clean Water Commission  
1922 N Main Street  
Higginsville, MO 64037-1527