





## II. FINDINGS OF FACT

The Department issues the following findings of fact. The University does not admit these findings, but in compromise and satisfaction of the Department's claims relating to the violations alleged herein the University agrees, without admitting liability or fault, to abide by these terms of Section IV of this AOC without contesting these findings.

- A. The University of Missouri – Columbia, which is a public corporation located in Boone County, is Missouri's largest public research university and offers more than 280 degree programs.
- B. On January 28, 2011, the Department issued Missouri State Operating Permit (MSOP) No. MO-0136557 to the University, the city of Columbia, and Boone County, for discharges from Small (Phase II) Regulated Municipal Separate Storm Sewer Systems (MS4s). The operating permit authorizes the discharges of stormwater and some specific non-storm water discharges to 25 receiving streams, including Hinkson Creek.
- C. Flat Branch Creek flows to Hinkson Creek, and Flat Branch Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- D. On September 21, 2012, the Department's Environmental Emergency Response (EER) 24-Hour Spill Line received a call from Mr. Todd Houts, Associate Director for Environmental Health & Safety (EHS), regarding a release of sulfuric acid. Department staff instructed University personnel to locate the leading edge of the acid and isolate, pump, or re-direct the material. Department staff investigated the incident on this same day and observed impacts to a tributary to Flat Branch Creek. During this investigation, Department staff collected water samples in the tributary near East Branch Road and South Providence Road. These samples indicated pH was approximately three (3) Standard Units. Department staff further observed dead fish and crayfish in the tributary and notified Missouri Department of Conservation (MDC) of the fish kill.
- E. During MDC's investigation on September 21, 2012, MDC staff observed evidence that the sulfuric acid entered the tributary from a drain pipe running underneath South Providence Road and flowed downstream approximately 0.25 miles before it was contained by a sand bag dam across the creek. MDC counted 32 dead fish, 57 dead crayfish and other aquatic worms and invertebrates. Based on MDC's investigation, it was determined that the release of sulfuric acid resulted in a 0.25 mile stretch kill of approximately 450 fish worth an estimated \$130.75.
- F. The University reported that the University's Energy Management Group was removing sulfuric acid from a tank containing approximately 100 gallons of sulfuric acid, located in the lower level of the Memorial Union and the sulfuric acid had been used in a water treatment process to prevent scale in the system. The University reported that 25 gallons of sulfuric acid diluted with 3,600 gallons of water was poured into a floor drain in the building. University staff ceased the



disposal and determined that the drain led to the storm sewer and not the sanitary sewer system.

- G. On September 25, 2012, Department staff conducted a follow-up inspection with Mr. Houts and Mr. Paul Coleman, Manager of Engineering present. Staff observed that the floor drains in the concrete floor of the basement of the Memorial Union were marked with "No Dumping" stickers next to each drain. The University reports that the stickers were placed by the drains following the events of September 21, 2012 and were not present at the time the sulfuric acid was placed in the sump pump. Mr. Houts informed staff that approximately 25 gallons of sulfuric acid was placed in the sump pump on September 21, 2012, as personnel thought it would be safer to dispose of the sulfuric acid in the sanitary sewer instead of transferring the acid into other containers and hauling up the stairs.
- H. Sulfuric acid is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- I. On October 4, 2012, the Department issued Notice of Violation (NOV) Nos. NER2012092712564656 and NER2012092811464236 to the University for violations of the MCWL and the MHWML observed during the September 21, 2012, investigation. The inspection report for the NOV informed the University that the operating permit does not authorize discharges that are mixed with sources of non-storm water that are determined to be a substantial contributor of pollutants to waters of the state or discharges that cause or contribute to a violation of in-stream water quality standards. The inspection report also required the University to submit a response explaining the actions they have taken to prevent a reoccurrence in the future and to ensure that the sump and floor drains in the Memorial Union building are properly connected to the city's sanitary sewer with permission of the city.
- J. On October 29, 2012, the Department received correspondence from Ms. Maureen Kotlas, Director of EHS. In this letter, Ms. Kotlas stated the following: Following the events of September 21, 2012, EHS has identified all floor inlets in the basement of Memorial Union and labeled them with "No Dumping"; University Campus Facilities has finalized a formal process for requiring written approval by EHS prior to introduction of any material into a storm or sanitary sewer; the University has initiated a Project Request Form to connect the sump in the basement of Memorial Union to a sanitary sewer line; and the University requires all users of chemical materials to become a registered user or a chemical worker.
- K. As a result of the above investigation, the Department incurred costs and expenses for staff time in the amount of \$2,303.00. In addition, MDC incurred similar costs and expenses in the amount of \$669.18, which includes the value of aquatic life killed in the amount of \$130.75.
- L. Section 644.096, RSMo, authorizes the state, or any political subdivision or agency, to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Section 644.006 to 644.141, RSMo, and the



costs and expenses of restoring any waters of the state to their condition as they existed before the violation, sustained by the state because of the violation.

- M. Section 644.076.1, RSMo, makes it unlawful to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of sections 644.006 to 644.141, or to violate any standard, rule or regulation promulgated by the Clean Water Commission. It also establishes civil penalties of up to \$10,000.00 per day per violation.
- N. Section 260.425, RSMO, makes its unlawful for any person to cause or permit any acts or hazardous waste management practices which violate Sections 260.350 to 260.430 or any standard, rule or regulation thereunder, and establishes civil penalties of up to \$10,000.00 per day for each day, or part thereof, the violation occurred and continues to occur, or both.

### III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and the MHWML and their implementing regulations alleged herein and found by the Department to have been committed by the University are as follows. The University does not admit these conclusions, but in compromise and satisfaction of the Department's claims relating to the violations alleged herein the University agrees, without admitting liability or fault, to abide by the terms of Section IV of this AOC without contesting these conclusions:

- A. On September 21, 2012, operated, used, or maintained a water contaminant source, sulfuric acid, which discharged to an unnamed tributary of Flat Branch Creek, waters of the state, without a Missouri State Operating Permit (MSOP), in violation of Sections 644.051.2, and 644.076.1, RSMo, and 10 CSR 20-6.010 (1)(A) and (5)(A);
- B. Caused pollution of an unnamed tributary of Flat Branch Creek, waters of the state, or placed, or caused, or permitted to be placed, a water contaminant in a location where it is reasonably certain to cause pollution of water of the state, in violation of Sections 644.051.1 (1) and 644.076.1, RSMo;
- C. Discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards for General Criteria established by the Missouri Clean Water Commission, in violation of Sections 644.051.1 (2) and 644.076.1, RSMo and 10 CSR 20.7.031;
- D. Failed to manage substances in accordance with the provisions of the Resource Conservation and Recovery Act or the Comprehensive Environmental Response, Compensation, and Liability Act, as required by Requirement 4.1.7 of the conditions of MSOP No. MO-0136557, in violation of Section 644.076.1, RSMo;
- E. Failed to determine if waste was hazardous waste by methods in 40 Code of Federal Regulations (CFR) 262.11, in violation of 10 Code of State Regulations (CSR) 25-5.262(1), incorporating 40 CFR 262.11;
- F. Failed to provide safe storage and handling, including spill protection, for all hazardous wastes from the time of generation to the time of their removal from the site of generation, in violation of 260.380.1(4) RSMo;



- G. Failed to operate and maintain the facility to minimize the possibility of an emergency, in violation of 10 CSR 25-2.262(1), incorporating 40 CFR 262.34(a)(4), referencing 40 CFR 265.31;
- H.. Failed to train employees to perform their duties in a manner to ensure compliance with the requirements in accordance with 10 CSR 25-5.262(1), incorporating 40 CFR 262.34(a)(4), referencing 40 CFR 265.16(a)(1); and
- I. Failed to meet land disposal restriction for the disposal of characteristic hazardous waste, in violation of 10 CSR 25-7.268, referencing 40 CFR 268.7.

IV. AGREEMENT

- A. The Department and the University desire to amicably resolve all claims that may be brought against the University for violations alleged above in Section III, Citations and Conclusions of Law, without the University admitting to the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, 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 University under this AOC.
- C. The University 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 \$5,500. The payment shall be in the form of a certified check or cashier's check made payable to "Boone County Treasurer, as custodian of the Boone County School Fund." The check in the amount of \$5,500.00 is due and payable upon execution of this AOC by the university. The check and signed copies of the AOC shall be delivered to:

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

- D. The University agrees to pay the state's investigative costs; damages, and the value of the aquatic life killed, in the amount of \$2,972.18 in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of \$2,972.18 is due and payable upon execution of this AOC by the University. The check shall be delivered to:

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

- E. In addition to the civil penalty, the University, in compromise and satisfaction of the Department claims relating to the above-referenced violations agrees, without



admitting liability or fault, to complete the Missouri Supplemental Environmental Performance Project (SEPP) attached to this AOC as "Attachment A", which is hereby incorporated by reference, and which further describes the University's efforts to provide a research project on investigating environmental flows of mixed use watersheds in Missouri. The Department and the University agree that the SEPP is intended to secure significant environmental protection and improvements, which are not otherwise required by the MCWL or the MHWML. The University estimates this research project will cost at least \$200,000.00. The following terms and conditions apply to the SEPP described in "Attachment A":

- i. The University shall complete the SEPP pursuant to the plan and time schedule set forth in the SEPP Plan in Attachment A.
  - ii. The University shall spend at least \$200,000.00 implementing the SEPP identified in the SEPP Plan. No part of this expenditure shall include federal or state funds, including federal or state low interest loans, contracts, or grants. The University shall include documentation of expenditures made in connection with the SEPP as part of the SEPP Completion Report required below.
  - iii. The University hereby certifies that it is not required to perform or develop this SEPP by any federal, state, or local law or regulation; nor is the University required to perform or develop this SEPP by agreement, grant, or injunctive relief in any other case.
  - iv. The University shall submit to the Department a SEPP Completion Report for the information described in the Attachment A no later than 90 days from the date from completion. The SEPP Completion Report shall contain the following information: (1) a detailed description of the SEPP as implemented; (2) itemized costs and certification that the University spent at least \$200,000.00 on the project; (3) an acknowledgement that the SEPP has been fully implemented in accordance with the SEPP Plan and the provisions of this AOC; and (4) a summary of the environmental and public health benefits and achievements resulting from implementation of the SEPP.
  - v. In the event that the Department rejects a SEPP Completion Report as required above, the University shall submit a revised completion report within 30 days, the University shall be subject to pay a stipulated penalty of \$500.00 per day, until an acceptable SEPP Completion Report is submitted to the Department.
  - vi. If the total amount expended on implementing the SEPP is less than \$200,000.00, then the University shall submit an additional SEPP Proposal to the Department for review and approval that makes up the amount of the cost difference of the SEPP referenced in this AOC.
- F. The University agrees to comply with all conditions and requirements of MSOP No. MO-0136557 for all future activities in the state of Missouri.



- G. Within 180 days of the effective date of this AOC, the University agrees to verify the discharge of all floor drains and sumps in mechanical spaces, janitor closets, elevator pits, and any additional interior locations where the potential for dumping and/or spills exist in all buildings owned by the University on its contiguous Columbia campus to identify their destination, confirming whether all potential discharges from the drains or sumps would flow into the city's sanitary sewer, or to the storm drain; and to document and label with "no dumping" disks all floor drains and sumps for which potential discharges flow to the storm sewer. In addition, for each floor drain or sump that connects to the storm sewer, the University agrees to determine if it should not be connected to the storm sewer and to take corrective action to address that connection, such as changing the connection to sanitary sewer, removal or permanent sealing, or other appropriate action to address the risk of discharge to storm sewer. If the University is unsure whether if any floor drain or sump should not be connected to the storm sewer, it will consult with the Department on making that determination. The University further agrees to submit to the Department within 210 days of the effective date of this AOC, a map of the identified drains that require corrective action, documentation certifying the labeling has been completed within the timeframe stated in this paragraph, and documentation of the status of corrective action addressed in this paragraph. The University thereafter will submit annual reports to the Department by the anniversary date of its first report documenting the status of corrective action addressed in this paragraph until such corrective action is completed.
- H. Nothing in this AOC forgives the University from future non-compliance with the laws of the state of Missouri, nor requires the Department or state of Missouri to forego pursuing by any legal means for any non-compliance 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 of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- I. 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 party.
- J. The effective date of this AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of the AOC to the University for its records.
- K. The University shall comply with the MCWL and MHWML, their implementing regulations, and Chapters 260 and 644, RSMo, and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, the University consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC



pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VI. CORRESPONDENCE AND DOCUMENTATION

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

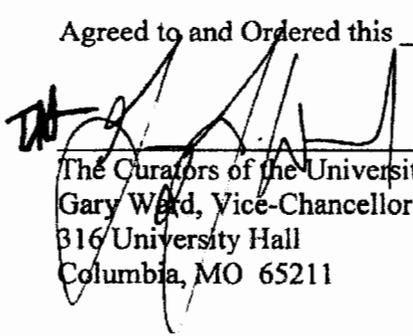
For the Department:  
Ms. Joan Doerhoff  
Department of Natural Resources  
Water Protection Program  
Compliance and Enforcement Section  
P.O. Box 176  
Jefferson City, MO 65102-0176

For the Company:  
Mr. Todd Houts  
Director, Environmental Health & Safety  
University of Missouri  
8 Research Park Development Building  
Columbia, MO 65211-3050

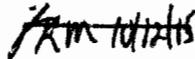
Agreed to and Ordered this 20<sup>th</sup> day of October, 2015

  
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Leanne Tippett Mosby, Director  
Division of Environmental Quality  
Missouri Department of Natural Resources

Agreed to and Ordered this 12<sup>th</sup> day of October, 2015

  
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The Curators of the University of Missouri  
Gary Ward, Vice-Chancellor  
316 University Hall  
Columbia, MO 65211

APPROVED  
AS TO  
LEGAL FORM





Copies of the foregoing served by certified mail to:

Mr. Paul Maguffee  
University of Missouri  
Office of General Counsel  
227 University Hall  
Columbia, MO 65211

CERTIFIED MAIL:

c: Ms. Diane Huffman, U.S. Environmental Protection Agency

