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Water Protection Program

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Cape Girardeau County Reorganized)
 Common Sewer District, Saxony)
 Lutheran High School)
)
Serve:)
 Cape Girardeau County Reorganized)
 Common Sewer District)

Order No. 2016-WPCB-1377

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1377, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because the department believes that the wastewater treatment facility (WWTF) serving the Saxony Lutheran High School in Cape Girardeau County, Missouri is in violation of the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Cape Girardeau County Reorganized Common Sewer District (CGCRCSD) of liability for, or preclude the department from, initiating an

administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. Saxony Lutheran High School previously owned and operated the WWTF serving the school located in Cape Girardeau County, Missouri. The legal description for the WWTF is Land Grant No. 2192. The WWTF consists of a three-cell lagoon with sludge retained in the lagoon. The WWTF has a design population equivalent of 105, a design flow of 10,500 gallons per day, and a design sludge production of 1.6 dry tons per year. The WWTF currently operates pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-0129739. Treated effluent from the WWTF discharges from Outfall No. 001 to a tributary to Hubble Creek.

2. Hubble Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.

3. Domestic wastewater is a water contaminant as the term is defined in Section 644.016 (24), RSMo.

4. On February 11, 2010, the department issued MSOP No. MO-0129739 to Saxony Lutheran High School. Part "D", Schedule of Compliance (SOC), of MSOP No. MO-0129739 required the school to: 1) submit a preliminary engineering report to the department with a list of alternatives for wastewater treatment or show that the existing system will meet the new effluent limits for Fecal Coliform and for chlorine by February 11, 2011; 2) submit a construction permit application by February 11, 2012, following approval of the preliminary engineering report; and

3) complete any improvements necessary to comply with the new effluent limitations by February 11, 2013.

5. On August 23, 2012, department staff conducted a compliance inspection at the WWTF. Staff observed that the first cell of the lagoon did not have enough water to cover the bottom of the cell and that the second and third lagoon cells were completely dry. Staff found that the department had not received an engineering report as required by the SOC.

6. On September 6, 2012, the department issued a Letter of Warning to Saxony Lutheran High School for the violations documented during the August 23, 2012, inspection.

7. On September 28, 2012, the department received a Preliminary Engineering Report (PER) prepared by Koehler Engineering & Land Surveying, Inc. The PER concluded that there was a failure in the liner of the second lagoon cell and that it needed to be corrected immediately.

8. On January 9, 2015, the department received an application from the CGCRCSD to transfer and renew the MSOP.

9. In February 2015, Saxony Lutheran High School sold the WWTF to the CGCRCSD.

10. To date, the failure in the liner of the second lagoon cell has not been repaired and the WWTF has not been upgraded to disinfect the effluent during the recreation season.

11. The sewer district will be constructing an area-wide wastewater collection and treatment system near the current WWTF. The sewer district will connect the current WWTF to the area-wide system following its construction.

12. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,000.00 per day per violation.

STATEMENT OF VIOLATIONS

The violations of the MCWL and its implementing regulations alleged herein and observed at the WWTF are as follows:

13. Failed to upgrade the WWTF as required in Part "D", SOC, of MSOP No. MO-0129739, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).

14. Operating, using or maintaining a water contaminant source wastewater lagoon which discharges to subsurface waters, through leakage, without an MSOP in violation of Sections 644.051.2, 644.076.1, and 578.215.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

AGREEMENT

15. The department and the CGCRCSD desire to amicably resolve all claims that may be brought against the CGCRCSD for violations alleged above in Statement of Violations.

16. 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 as the CGCRCSD under this AOC.

17. In the period of time from the effective date of this AOC until the liner of the second lagoon cell is repaired, the sewer district agrees and is ordered to cease all discharges

from the lagoon cells and pump and haul wastewater from the WWTF to a permitted WWTF with the capacity to treat the wastewater. The sewer district agrees and is ordered to continue pumping and hauling wastewater, as necessary, to prevent any overflows, discharges, or bypasses of sewage to waters of the state until a new MSOP has been issued by the department. Additionally, the sewer district agrees and is ordered to maintain pumping and hauling receipts and make these receipts available to the department by the tenth day of the month following the month that the receipts are written. The records shall include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the permitted WWTF accepting the wastewater.

18. Once a new MSOP has been issued by the department, the sewer district agrees and is ordered to cease all discharges from the lagoon cells during the recreation season (April-October) and in the event the discharge of wastewater from the WWTF does not comply with the permitted effluent limitations. The sewer district shall pump and haul wastewater to a permitted WWTF with the capacity to treat the wastewater, as necessary, to prevent any discharge of effluent that is not in compliance with the permitted effluent limitations. Additionally, the sewer district agrees and is ordered to maintain pumping and hauling receipts and make these receipts available to the department by the tenth day of the month following the month that the receipts are written. The records shall include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the permitted WWTF accepting the wastewater.

19. By July 1, 2016, the CGCRCSD is ordered and agrees to seal the liner of the second lagoon cell and submit a Statement of Work Complete signed, sealed, and dated by a professional engineer licensed to practice in the state of Missouri.

20. The sewer district agrees and is ordered to upgrade the WWTF or connect the wastewater flow to a centralized wastewater treatment and collection system within five years of the date of issuance of a new MSOP by the department.

21. The sewer district is agrees and is ordered to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

SUBMISSIONS

22. All other documentation submitted to the department for compliance with this order shall be submitted within the timeframes specified to:

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

OTHER PROVISIONS

23. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the sewer district shall notify the department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the department, the sewer district shall submit to the department, for review and approval, a written request containing the same information. 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 sewer district's right to request an extension and may be grounds for the department to deny the extension.

24. Should the sewer district fail to meet the terms of this AOC, the CGCRCSD shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$50.00 per day
31 to 90 days	\$100.00 per day
91 days and above	\$250.00 per day

Stipulated penalties will be paid in the form of a check made payable to "Cape Girardeau County Treasurer, as custodian of the Cape Girardeau County School Fund". Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

25. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification or any other requirements of the MCWL and regulations, or any other source of law. Nor does this order resolve any future violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

26. Nothing in this AOC forgives the sewer district 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 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 or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

27. 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.

28. 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 sewer district for their records.

COST ANALYSIS FOR COMPLIANCE

Pursuant to Section 644.145, the Cost Analysis for Compliance (CAFCom) is attached hereto as Exhibit 1. This CAFCom does not address future improvements that may be necessary to comply with the MCWL or its implementing regulations. This AOC requires the sewer district to repair the liner of the second cell of the lagoon.

NOTICE OF APPEAL RIGHTS

By signing this AOC No. 2016-WPCB-1377, the sewer district 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.

Missouri Department of Natural Resources
Water Protection Program
Cost Analysis for Compliance
(In accordance with RSMo 644.145)

CGCRCSD, Saxony Lutheran High School
Cape Girardeau County Reorganized Common Sewer District
Missouri State Operating Permit #MO-0129739

Section 644.145 RSMo requires the Department of Natural Resources (department) to make a “finding of affordability” when “issuing permits under” or “enforcing provisions of” state or federal clean water laws “pertaining to any portion of a combined or separate sanitary sewer system for publicly-owned treatment works.”

This cost analysis is based on data available to the department as provided by the permittee and data obtained from readily available sources. For the most accurate analysis, it is essential that the permittee provides the department with current information about the sewer district’s financial and socioeconomic situation.

Facility Description: Three cell lagoon / sludge is retained in lagoonⁱ.

Flow evaluated: 10,500 gallons per day design flowⁱ.

Total Connections to this Facility:	<u>1ⁱⁱ</u>
Total Connections for the Sewer District:	<u>355</u>

Requirements Now Being Enforced:

Missouri State Operating Permit (MSOP) No. MO-0129739 was issued to Saxony Lutheran High School on February 11, 2010. MSOP No. MO-0129739 included a Schedule of Compliance for the school to complete upgrades to the wastewater treatment facility (WWTF) to meet final effluent limits for Fecal Coliform by February 11, 2013. On September 28, 2012, the department received a Preliminary Engineering Report (PER) prepared by Koehler Engineering & Land Surveying, Inc. The PER concluded that there was a failure in the liner of the second lagoon cell and that it needed to be corrected immediately. To date, upgrades to the WWTF have not been completed nor has the failure in the liner of the second lagoon cell been repaired. It is the department’s understanding that the WWTF will be connected to the Cape Girardeau County Reorganized Common Sewer District’s (CGCRCSD) area-wide wastewater collection and treatment system upon completion of its construction. Until such time that the WWTF can be connected to the area-wide system, the sewer district must operate and maintain the existing WWTF at all times in compliance with the Missouri Clean Water Law, and must repair the liner of the second cell of the lagoon to prevent any discharge of wastewater to the groundwater.

Anticipated Costs Associated with Complying with the Requirements:

The total cost estimated for repairing the liner of the second cell of the lagoon is \$10,000.00ⁱⁱⁱ. The CGCRCSD has an agreement with Saxony Lutheran High School that states that the school is responsible for the entire cost of any improvements required by the departmentⁱⁱ.

(1) A community’s financial capability and ability to raise or secure necessary funding;

Due to the fact that Saxony Lutheran High School is a privately-owned school, the department is not required to make a finding of affordability for the school. The agreement between the CGCRCSD and the school states that the school is responsible for the entire cost of any improvements, so the requirement to repair the liner of the second cell of the lagoon will have no financial impact on the CGCRCSD.

(2) Affordability of pollution control options for the individuals or households at or below the median household income level of the community;

Due to the fact that the CGCRCSD will not incur any of the repair cost, the department anticipates that no rate increase will be necessary that could impact individuals or households of the community.

(3) An evaluation of the overall costs and environmental benefits of the control technologies;

Groundwater is defined as water occurring beneath the surface of the ground, including underground watercourses, artesian basins, underground reservoirs and lakes, aquifers, other bodies of water located below the surface of the ground, and water in the saturated zone. Groundwater is the source of drinking water for approximately 35% of the nation's urban population and 95% of the rural area population making it a vital resource for Missouri. When groundwater becomes contaminated it is both very costly and difficult to restore the quality of the water to be acceptable for consumption.

(4) Inclusion of ongoing costs of operating and maintaining the existing wastewater collection and treatment system, including payments on outstanding debts for wastewater collection and treatment systems when calculating projected rates:

The CGCRCSD has reported that they have no outstanding debts for the current wastewater collection and treatment system serving Saxony Lutheran High Schoolⁱⁱ.

(5) An inclusion of ways to reduce economic impacts on distressed populations in the community, including but not limited to low and fixed income populations. This requirement includes but is not limited to:

- (a) Allowing adequate time in implementation schedules to mitigate potential adverse impacts on distressed populations resulting from the costs of the improvements and taking into consideration local community economic considerations.
- (b) Allowing for reasonable accommodations for regulated entities when inflexible standards and fines would impose a disproportionate financial hardship in light of the environmental benefits to be gained.

Socioeconomic Data:

Potentially Distressed Populations – Cape Girardeau County Reorganized Common Sewer District (data used – City of Jackson)	
Unemployment	6.3% ^{iv}
Adjusted Median Household Income (MHI)*	\$49,078 ^v
Percent Change in MHI (2000-2013)	+25% ^{vi}
Percent Population Growth/Decline (2000-2013)	+17.1% ^{vii}
Change in Median Age in Years (2000-2013)	+1.5 ^{viii}
Percent of Households in Poverty	9.7% ^{ix}
Percent of Households Relying on Food Stamps	10.7% ^x

* The State's average MHI of \$49,078 is used in this analysis

(6) An assessment of other community investments and operating costs relating to environmental improvements and public health protection;

The sewer district reported that they hope the current WWTF will be eliminated within the next three years as an area-wide wastewater treatment system is being considered for financingⁱⁱ.

(7) An assessment of factors set forth in the United States Environmental Protection Agency's guidance, including but not limited to the "Combined Sewer Overflow Guidance for Financial Capability Assessment and Schedule Development" that may ease the cost burdens of implementing wet weather control plans, including but not limited to small system considerations, the attainability of water quality standards, and the development of wet weather standards;

The secondary indicators for consideration are not applicable for sewer districts as the indicators are structured for the financial capability of a municipality. The financial impact of the new requirements is determined using all available data for the CGCRCSD.

(8) An assessment of any other relevant local community economic condition.

The CGCRCSD reported the following: The CGCRCSD is currently operating on a tight budget and is currently doing no large capital improvements; rather, we are working on a regional systemⁱⁱ.

Conclusion and Finding

The department considered the eight criteria presented in subsection 644.145.3 when evaluating the cost associated with the lagoon liner repair. As a result of reviewing the above criteria, the department hereby finds that the actions described above could result in an insignificant burden with regard to the CGCRCSDs overall financial capability and an insignificant impact for most individual customers/households.

ⁱ Missouri State Operating Permit No. MO-0129739.

ⁱⁱ Information provided by the sewer district in the "Cost Analysis for Compliance (CACom) Questions for the Cape Girardeau County Reorganized Common Sewer District" returned to the department on September 22, 2015.

ⁱⁱⁱ Information provided by Strickland Engineering on September 30, 2015.

^{iv} Unemployment data was obtained from Missouri Department of Economic Development (June 2015) – <http://www.missourieconomy.org/indicators/unemp/index.stm>

^v The Median Household Income was found using the American Community Survey by the U.S. Census Bureau <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

^{vi} 2000 Median Household Income, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF3_DP3&prodType=table; and American Community Survey, U.S. Census Bureau, <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

^{vii} Total Population Universe: Total Population American Community Survey B01003, <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

^{viii} 2000 Median Age, Demographic Profile 1- Census 2000 – Summary File 1 <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>; Median Age by Sex – American Community Survey 5-year Estimates – B01002, <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=geo&refresh=t>

^{ix} Poverty data – American Community Survey- <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

^x Food Stamps/SNAP ACS Community Survey 5-year Estimates - S2201, <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>