

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **Mr. Brett Allen** )  
 **Civic Recycling** )  
 **3300 Brown Station Road** ) **Order No. 2016-WPCB-1411**  
 **Columbia, MO 65202** )  
 )  
 **Serve:** )  
 **Brett Allen** )  
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**ABATEMENT ORDER ON CONSENT**

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**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT**

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1411, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Mr. Brett Allen (Respondent) violated 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 Respondent 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. The Respondent owns and operates Civic Recycling (facility), a recyclable materials collection and processing facility, located at 3300 Brown Station Road in Columbia, Missouri. The legal description for the business is SW ¼, NW ¼, SE ¼, Section 32, Township 49 North, Range 12 West, in Boone County, Missouri. The Respondent currently operates the business pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-R80H089.

2. MSOP No. MO-R80H089 was issued to the Respondent on April 3, 2015, and expires August 31, 2019. The MSOP authorizes the discharge of stormwater from the facility in accordance with the effluent limitations and monitoring requirements set forth in the MSOP. Stormwater from the business runs off to a Class C tributary to Bear Creek.

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

4. Section 644.051.1(1), RSMo makes it unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.

5. On March 26, 2015, department staff met with the facility's office manager to conduct a routine compliance inspection of the facility. The office manager granted department staff permission to the facility grounds and accompanied staff for part of the inspection. Prior to inspecting the facility grounds, staff discussed with the office manager the renewal of the facility's MSOP which had not yet been received by the department. Staff provided the office manager with a renewal application and began the inspection of the grounds. Staff also

requested the facility's self-inspection and proof of training documents, but the office manager was unable to produce the documents at that time of the inspection. During the inspection, staff observed the facility's outfall noting that the outfall was marked but covered in brush with miscellaneous debris along the tributary and oil staining directly above the outfall near the main office. Staff also observed a strong petroleum odor and ground staining to the southwest of the shop on the facility grounds and on both sides of a semi-truck parked in front of the shop which seeped into the ground over an inch in soil depth. On the grounds near the bailer, staff observed loose, uncontained paper, plastic and cardboard material scattered throughout the facility grounds accumulating outside along building perimeters and along perimeter fencing. Staff also observed that materials stored in dumpsters were not covered and the entrance doors to the warehouse building were left open leaving loose debris free to blow out of the building and onto the grounds. Staff continued north past the bailer to a storage shed which housed empty recycling bins and observed a grouping of approximately 60 drums, some with lids and some containing liquids. Staff noted that most of the drums were not labeled and the majority of drums were rusted with staining on the ground around the drums and a petroleum odor. Staff also observed two additional individual drums fitting the same description as the previous drums around the storage shed along with tires, an empty tank, and a pile of co-mingled trash waste and soil as well as accumulated loose debris along the train tracks on the east side of the facility grounds. As staff continued toward the loading dock on the grounds, a brown/grayish material with a strong odor was observed on the ground which had a different texture/consistency than soil or mud and was mixed with decomposing paper and plastic debris. Staff observed recyclable debris along the edges of the tributary near the outfall. After observing the loading

dock area, staff returned to the office to discuss the observations with the office manager. Staff inquired about the documents requested at the beginning of the inspection and the office manager informed staff that she was unable to find the documents and asked if she could submit them to the department at a later date. Staff informed the office manager that she had 48 hours after inspection to produce the documents. The office manager had completed the application for a general permit which she submitted to staff at the time of inspection. The facility was found to be in non-compliance with the MCWL due to the violations observed by department staff during the inspection.

6. On April 15, 2015, the department's Hazardous Waste Section conducted a Focused Compliance Inspection (FCI) at the facility after department staff observed the accumulation of drums during the March 26, 2015, inspection. Staff met with the facility's manager to conduct the inspection who granted staff permission to the facility grounds and accompanied staff during the inspection. During the inspection, staff observed the drums around the storage building and determined that the drums were not being managed properly, were damaged and some were potentially leaking/seeping. Staff provided the facility manager with a Used Oil Cleanup Fact Sheet and advised that the drums, even the empty drums that once held oil, had to be properly managed and labelled and oil from drums which are leaking or in poor condition, must be removed.

7. On April 20, 2015, the department issued Notice of Violation (NOV) No. NER2015040810053630 to the Respondent based on the violations of the MCWL and it implementing regulations observed during the March 26, 2015, inspection. The NOV required

the Respondent to address all of the Required Actions and Unsatisfactory Features by submitting a written explanation to the department by May 11, 2015.

8. On May 1, 2015, the department's Hazardous Waste Section issued a Letter of Warning (LOW) to the facility's facility manager for the violations observed during the April 15, 2015, inspection. The LOW required a written response from the facility explaining the cause for the non-compliance and the actions taken to correct the violations as well as submit documentation to the department for the removal and recycling of all used oil within 30 days (May 31, 2015).

9. On May 11, 2015, the department received an electronic correspondence from the facility's office manager requesting an extension to the response deadline from the April 20, 2015, NOV. The request stated that most of the required actions had been resolved, but a couple required intense clean-up efforts that would require an additional 2-3 weeks to complete. On May 12, 2015, the department responded to the facility's office manager granting a three week extension with a new response deadline of June 1, 2015.

10. On June 1, 2015, the department received an electronic correspondence from the facility's office manager stating that all required actions had been finished and that the required documents and correction photos would be sent by June 5, 2015.

11. On June 5, 2015, the facility submitted a letter to the department in response to the March 26, 2015, inspection and April 20, 2015, NOV addressing all required actions and unsatisfactory features and all required documents. On June 15, 2015, the department received the correction photos via email.

12. On July 13, 2015, department staff met with the facility's office manager to conduct a routine compliance inspection of the facility. The facility's office manager granted department staff permission to the facility grounds and accompanied staff for part of the inspection. During the inspection, staff observed that good housekeeping of most of the grounds was being maintained except near the loading dock, bailer, warehouse and compactor where miscellaneous debris was accumulating. Staff observed a strong odor and stained ground with reddish-brown pooled water near some bales of recyclable material by the storage shed. Staff also observed oil staining on the ground around the shop originating from several (approximately 40) of the accumulated drums from possible leaking/seeping. The drums were not labeled to identify their contents, some were uncovered and at least one drum was punctured in its side. Staff also noted the presence of a second stormwater outfall not seen in prior inspections, which was not included in the permit, or on the Stormwater Pollution Prevention Plan (SWPPP), east of the loader near the old grain elevator on the grounds. Staff informed the facility's office manager of the unpermitted outfall and provided a Form E to be submitted to the department for a permit modification. Staff also requested the facility's monthly site self-inspections to review of which April, May and July 2015 were available; however, June 2015 was not. The facility was found to be in non-compliance with the MCWL due to the violations observed by department staff during the inspection.

13. On July 30, 2015, the department issued NOV No. 2015072709223372 to the Respondent based on the violations observed during the July 13, 2015, inspection. The NOV notified the Respondent that the violations were being referred to the department's Water Protection Program, Compliance and Enforcement Section and required the Respondent to

address all of the Required Actions and Unsatisfactory Features by submitting a written explanation to the department by August 20, 2015.

14. On July 31, 2015, the department received an electronic correspondence from the facility's office manager stating that she had mailed a copy of the June 2015 site self-inspection report that day. The department sent a response correspondence inquiring if the facility's office manager had contacted the department's Hazardous Waste Section yet in regard to the April 15, 2015, inspection. The facility's office manager sent a response correspondence on the same day, informing the department that the liquid in the drums was to be tested, pumped and removed by Universal Lubricants, LLC some time the week of August 3, 2015, and that the department's Hazardous Waste Section would be contacted. The response also inquired about sampling the stormwater outfall. The department responded on the same day explaining DMRs and when they need to be submitted.

15. On August 17, 2015, the department's Water Protection Program, Compliance and Enforcement Section sent an electronic correspondence to the department's Hazardous Waste Section inquiring if the Section had been contacted by facility's office manager or someone from the facility. The department's Hazardous Waste Section responded via phone on the same day explaining that the section had not been contacted yet.

16. On August 24, 2015, the department's Water Protection Program, Compliance and Enforcement Section received a telephone call from the Respondent who explained that he had been out of the state for several months dealing with family matters and had just been made aware of the violations. Department staff informed the Respondent that he would need to complete the following: i) contact the department's Hazardous Waste Section to address the

drums on the facility grounds; ii) make arrangements to clean and secure the loose recyclable debris on the facility grounds as well as properly dispose of the oil stained soils by the shop on the grounds; and iii) address the permit modification to add the second outfall staff discovered on the grounds. Later on the same day, the department's Hazardous Waste Section contacted the department's Water Protection Program, Compliance and Enforcement Section via electronic correspondence to inform that the responded had contacted the department about the actions he needed to take to address the deficiencies with the drums.

17. On October 1, 2015, staff from the department's Hazardous Waste Section conducted a follow up inspection of the facility and observed that little progress had been made toward correcting the violations observed during the prior inspections.

18. On October 24, 2015, the Respondent contacted the department's Northeast Regional Office (NERO) to notify staff that Safety Kleen (out of Columbia, MO) had been on site to take samples from the drums on the facility grounds for analysis in order to transport the drum contents offsite for disposal.

19. On October 26, 2015, a facility employee signed a Schedule of Compliance on behalf of the Respondent to address the hazardous waste concerns only which stated that the following steps must be completed by February 2, 2016, and documentation must be submitted to the department's NERO by February 15, 2016: i) a complete and accurate hazardous waste determination of the contents of the drums must be conducted and documentation that the contents of the drums have been properly managed must be submitted; ii) documentation that the oil contaminated soil on the facility grounds has been properly excavated and disposed of must be submitted; and iii) documentation of the testing methods used to determine the contents

of the drums, documentation of the end disposition of all waste and all analytical information or other documentation used for the waste determinations along with any disposal, reuse or recycling records for materials removed from the property must also be included with the submitted documents.

20. On February 9, 2016, department staff from the Water Protection Program and the Hazardous Waste Program conducted a follow up inspection of the facility to determine compliance. Staff from both programs found the facility to be in compliance.

21. On February 11, 2016, department staff from the NERO sent an electronic correspondence to the department's Water Protection Program, Compliance and Enforcement Section with a summary of the results of the follow up inspection. The summary stated that the compliance schedule for the department's Hazardous Waste Section had been satisfied and all violations from the Water Protection Program's previous inspections had been satisfactorily addressed except for some minor loose debris in isolated areas still being cleaned up by facility staff and no permit modification had been requested yet for the second outfall identified during the July 13, 2015 inspection.

22. On April 27, 2016, department staff received a telephone call from the Respondent stating that he was permanently closing the facility and intended to terminate the MSOP for the facility. Department staff informed the Respondent a Form H is required to terminate MSOP No. MO-R80H089. Department staff determined that the MSOP modification to include the second outfall was no longer required due to the facility closure.

23. On May 5, 2016, the department received a letter from the Respondent stating the facility was now closed.

24. 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 Respondent has violated the MCWL and its implementing regulations as follows:

25. Caused pollution of a tributary to Bear Creek, waters of the state, or places or caused or permitted to be placed, water contaminants in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

### **AGREEMENT**

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

27. 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 Respondent under this AOC.

28. The Respondent in compromise and satisfaction of the department's claims relating to the above referenced violations agree without admitting liability or fault, to pay a penalty in the amount of \$ 4,000.00. The parties further agree that \$500.00 shall be paid upfront and the remaining \$3,500.00 will be suspended for a period of two years from the effective date of this AOC on the conditions the Respondent complies with the conditions and requirements of

this AOC and no further violations occur. The payment in the amount of \$500.00 shall be in the form of a check made payable to the “Boone County Treasurer, as custodian of the Boone County School Fund” and is due and payable upon execution of this AOC by the Respondent.

The check and the signed copy of this AOC shall be delivered to:

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

29. Within 15 days of the effective date of this Order, the Respondent agrees and is ordered to submit a completed Form H to the department’s Northeast Regional Office at 1709 Prospect Drive, Macon, MO 63552 to request a termination inspection of the facility.

30. Immediately upon the effective date of this Order, the Respondent agrees and is ordered to operate the facility in compliance with the requirements of MSOP No. MO-R80H089, the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future until such time that MSOP No. MO-R80H089 is officially terminated.

### **SUBMISSIONS**

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

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

**OTHER PROVISIONS**

32. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent 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 Respondent 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 Respondent’s right to request an extension and may be grounds for the department to deny the extension.

33. Should the Respondent fails to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs 33 and 35, the Respondent 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	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a check made payable to “Boone County Treasurer, as custodian of the Boone 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 65102-0176

34. 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.

35. Nothing in this AOC forgives the Respondent 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 within are 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.

36. 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.

37. 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 Respondent for his records.

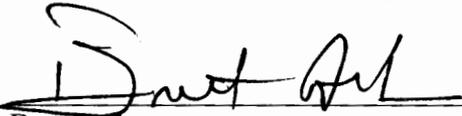
#### **NOTICE OF APPEAL RIGHTS**

40. By signing this AOC, the Respondent consents to its terms and waive 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.

**SIGNATURE AUTHORITY**

Agreed to and Ordered this 3<sup>rd</sup> day of JUNE, 2016

  
Brett Allen

Agreed to and Ordered this 14<sup>th</sup> day of June, 2016

  
DEPARTMENT OF NATURAL RESOURCES  
John Madras, Director  
Water Protection Program

Copies of the foregoing served by certified mail to:

Mr. Brett Allen                      CERTIFIED MAIL # 7012 2920 0002 0660 6009  
317 West Stewart Road  
Columbia, MO 65203

c:     Ms. Irene Crawford, Director, Northeast Regional Office  
       Ms. Diane Huffman, Environmental Protection Agency  
       Missouri Clean Water Commission  
       Accounting Program