BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of: City of Kirksville
Wastewater Collection and Treatment Plant
Proceeding under the Missouri Clean Water Law

Order No. 2017-WPCB-1471

ABATEMENT ORDER ON CONSENT

SERVED BY CERTIFIED MAIL # 7016 0600 0000 2592 8161
RETURN RECEIPT REQUESTED

TO: The Honorable Jerry Mills, Mayor
City of Kirksville
201 South Franklin Street
Kirksville, MO 63501

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2017-WPCB-1471, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the City of Kirksville (City) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 644.056 and 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo. Litigation may occur without further 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 City of liability for, or preclude the department from, initiating an administrative or judicial
enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief as may be authorized by the MCWL.

**FINDINGS OF FACT**

1. The City is a third class municipality with a population of approximately 17,505 residents. The City owns and operates a wastewater treatment plant (WWTP) that consists of primary clarifiers, a trickling filter, rotating biological contactors, secondary clarifiers, sludge digestion, and a sludge storage basin. The WWTP is located in the SW ¼, SW ¼, SE ½, Section 22, Township 62 North, Range 15 West, of Adair County. The design flow of the WWTP is 3.16 million gallons per day with a design population equivalent of 34,000. The actual flow is approximately 2.50 million gallons per day. The WWTP currently operates pursuant to the terms and conditions of Missouri State Operating Permit No. MO-0049506 (Permit). Treated effluent from the WWTP discharges to Bear Creek.

2. Bear 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. The Permit was issued to the City on February 10, 2006. The Department received an application to renew the Permit on July 29, 2010, and the Permit expired on February 9, 2011.

5. The Permit requires the City to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water contaminants listed in Table A every month.
6. Prior to its revision, 10 CSR 20-7.015 established a basis for limiting the discharge from the flow equalization basin through Outfall No. 002 to 45mg/L of Biochemical Oxygen Demand (BOD) and 45 mg/L of Total Suspended Solids (TSS), providing that the wastewater being discharged from this outfall receives primary treatment and that the discharge is not continuous but occurs during wet-weather events.

7. A revision to 10 CSR 20-7.015 Effluent Regulations became effective on June 30, 2010. This rule revision eliminated the provision that provided a mechanism to place 45 mg/L of BOD and 45 mg/L of TSS limitations in National Pollutant Discharge Elimination System permits for discharges from Outfall No. 002 because these discharges bypass secondary treatment, a requirement of the Clean Water Act. 10 CSR 20-7.015(9)(G) and 40 CFR 122.41(m)(i) define bypass as the “intentional diversion of waste streams from any portion of a treatment facility”.

8. The City entered into a Peak Flow Voluntary Compliance Agreement (VCA) with the Department on April 19, 2012, and has met the terms of the VCA that require the City to submit a Bypass Elimination Plan and annual reports. The VCA allows for a maximum of ten years eliminating discharges from Outfall No. 002.

9. The VCA requires the City to meet reporting requirements for bypasses for any discharges from Outfall No. 002.

10. In 2012, the City reported bypass events from Outfall No. 002 beginning on March 21, March 22, April 13, May 02 and September 01. In 2013, the City reported bypass events from Outfall No. 002 beginning on January 29, March 09, April 10, April 17, May 25 and May 31. In 2014, the City reported bypass events from Outfall No. 002 beginning on February 20, April 28, June 04, June 07, August 16, September 10 and October 13. In 2015, the City
reported bypass events from Outfall No. 002 beginning on February 07, April 19, May 24, June 11, June 15, June 21, June 22, July 19, July 27, November 18, November 26 and December 14. In 2016, the City reported bypass events from Outfall No. 002 beginning on May 27 and September 08.

11. The City has submitted a Request for Variance from Bear Creek Total Maximum Daily Load (TMDL) dated September 13, 2016, stating the cost to comply with the TMDL would result in a substantial and widespread social and economic impact. The City’s variance application requests a deadline of December 31, 2023, through an Adaptive Management Plan to complete and implement Wet Weather Management due to financial constraints.

STATEMENT OF VIOLATIONS

The City has violated the MCWL and its implementing regulations as follows:


AGREEMENT

13. The Department and the City desire to amicably resolve all claims that may be brought against the City for violations alleged above in Statement of Violations.

14. 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 City under this AOC.
15. The City is ordered and agrees to report any bypasses, including bypasses through Outfall No. 002 to the Department within 24 hours of discovery. The City must report the incident through the electronic reporting system or by calling the Southwest Regional Office at 417-891-4300 between 8:00 a.m. and 5:00 p.m. Monday through Friday or the Department's 24-hour spill line at 573-634-2436 after hours, weekends, and holidays. A written submission shall also be provided within five business days of the time the City became aware of the circumstances.

16. The City is ordered and agrees to construct all necessary capital improvements to eliminate discharges from the flow equalization basin through Outfall No. 002 by December 31, 2023.

17. The City is ordered and agrees to operate the collection system and treatment facility in such a manner as to ensure that that the volume of effluent discharged through the main outfall is maximized, thereby minimizing bypass events through Outfall No. 002. When the Outfall No. 002 is activated, the City is required to achieve the maximum practicable treatment such that the bypassed effluent is of the highest quality achievable utilizing the City's existing WWTPs.

18. The City is ordered and agrees to continue implementation of the Bypass Elimination Plan submitted September 20, 2013, and approved by the Department on September 30, 2013. The Bypass Elimination Plan may be modified by the City, but may not include as an interim or final remedy any form of bypass other than blending.

19. The City is ordered and agrees to make annual reports to the Department of all progress during the previous year. The reports are due June 30 of each year and the information provided will be considered for purposes of Paragraph 20. The reports shall include:
a. The status of implementation of all plans required by this AOC, including a statement as to whether specific schedule milestone dates in the schedules included in each plan were met and a summary of project expenditures. The City shall also submit a certification that the specified work has been completed, including the following documentation:

i. For work performed by a private contractor, the City shall submit a certification by a professional engineer registered in the State of Missouri that the specified work has been completed.

ii. For work performed by the City’s personnel, a list of the work orders (or similar documentation) for the project. A cover letter certifying that the work is completed shall accompany the work orders compiled and submitted during the publication of each annual report. The cover letter may be signed by professional engineer registered in the State of Missouri.

b. Modifications to the Bypass Elimination Plan with supporting documentation for the changes.

20. The City is ordered and agrees to maintain copies of all written submissions prepared pursuant to this AOC for at least 36 months after termination of the AOC.

21. The City agrees and is ordered to make adequate progress towards eliminating bypasses beginning on the effective date of this AOC. The Department may use reports submitted as described in Paragraph 19 and its subparagraphs to determine if the City is making adequate progress in meeting the terms of this AOC. Adequate progress will be defined as
meeting interim dates established in the Bypass Elimination Plan, decreasing the frequency of bypasses, and decreasing the amount bypassed considering hydrogeologic factors.

22. Within 60 days of receipt, the City agrees and is ordered to address Department comments or modification requests regarding any documents submitted pursuant to this AOC to the Department’s satisfaction.

SUBMISSIONS

23. All other documentation submitted to the Department for compliance with this AOC shall be submitted within the timeframes specified to:

        Department of Natural Resources
        Water Protection Program - Engineering Section
        Attn: Wet Weather Coordinator
        P.O. Box 176
        Jefferson City, MO 65102

OTHER PROVISIONS

24. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the City 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 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.
25. Should the City fail to meet the terms of this AOC, including the activities set out in Paragraphs 15 through 22, the City shall be subject to pay stipulated penalties in the following amount:

<table>
<thead>
<tr>
<th>Days of Violation</th>
<th>Amount of Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 30 days</td>
<td>$50 per day</td>
</tr>
<tr>
<td>31 to 90 days</td>
<td>$100 per day</td>
</tr>
<tr>
<td>91 days and above</td>
<td>$250 per day</td>
</tr>
</tbody>
</table>

Stipulated penalties will be paid in the form of check made payable to “Adair County Treasurer, as custodian of the Adair 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

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

27. Nothing in this AOC forgives the City 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, including the VCA executed on April 19, 2012. This AOC may not be modified orally.

28. 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.

29. 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. This AOC terminates on December 31, 2023, and will not be extended. The City may request early termination of this AOC if the City conducts a “no-feasible alternatives” analysis in accordance with 40 CFR 122.41 (m)(4)(i)(B) that is approved by the Department.

30. The City is expected to be in full compliance with Permit conditions concerning bypasses by December 31, 2023. If bypasses through Outfall No. 002 must continue after December 31, 2023, the City may submit a “no feasible alternatives” analysis 90 days prior to the termination date of this AOC to seek approval of future bypasses within the Permit.

31. The City shall comply with the MCWL and its implementing regulations at all times in the future.

COST ANALYSIS FOR COMPLIANCE

Pursuant to Section 644.145(2)(c), the City hereby waives the requirement for the Department to develop a Cost Analysis for Compliance with respect to the activities required by AOC No. 2016-WPCB-1471.

NOTICE OF APPEAL RIGHTS

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 pursuant to Sections
By signing this AOC, the City waives its right to appeal or otherwise contest the provisions regarding the reporting of bypasses from Outfall No. 002 in any draft Permit and waives its right to petition for a variance of these provisions under 644.061 RSMo. However, nothing in this waiver or this AOC shall be interpreted as a waiver by the City of its right to participate as a party, or otherwise, in any appeal of the Permit by a third party or person.

**SIGNATORY AUTHORITY**

Agreed to and are Ordered on this 17th day of April, 2017

[Signature]

The Honorable Phillip Biston, Mayor
City of Kirksville

Agreed to and so Ordered on this 26th day of April, 2017

[Signature]

DEPARTMENT OF NATURAL RESOURCES
David J. Lamb, Acting Director
Water Protection Program

c: Ms. Diane Huffman, Environmental Protection Agency
Ms. Irene Crawford, Director, Northeast Regional Office
Ms. Hannah Humphrey, Community Services Coordinator
Mr. Chris Wieberg, Chief, Operating Permits Section
Missouri Clean Water Commission
General Counsel’s Office
Accounting Program