

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 MIDWEST FOREST CITY LLC)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2018-WPCB-1563

ORDER TO PAY ADMISTRATIVE PENALTIES AND ABATEMENT ORDER

**CERTIFIED MAIL # 7099 3220 0009 3706 9336
RETURN RECEIPT REQUESTED**

**TO: MIDWEST FOREST CITY LLC
2111 Orein Road
Toms River, NJ 08755**

You are hereby notified that on this date the Missouri Department of Natural Resources (Department) has issued Order to Pay Administrative Penalties and Abatement Order No. 2018-WPCB-1563 (Order) to MIDWEST FOREST CITY LLC (Respondent) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically section 644.056 RSMo.

Failure to comply with this Order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, penalties of up to \$10,000 per day for each day or part thereof of non-compliance, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. The Respondent is an active limited liability company registered with the Missouri Secretary of State.

2. On May 10, 2018, the Department issued Abatement Order No. 2018-WPCB-1554 to the Respondent for violations of the MCWL under Sections 644.056 and 644.079, RSMo. Abatement Order 2018-WPCB-1554 required the Respondent to submit a complete Form-B Application for operating permit to the Department within 30 days of issuance.

3. On May 18, 2018, the Respondent received Abatement Order No. 2018-WPCB-1554 from the United Parcel Service. Abatement Order No. 2018-WPCB-1554 contains the Notice of Appeal Rights provision entitling the Respondent the ability to pursue an appeal of the order before the Administrative Hearing Commission (AHC). The Respondent had 30 days from the date of issuance to file an appeal. The Respondent did not file an appeal of the Notice and Order to Abate Violations No. 2018-WPCB-1554.

4. On June 10, 2018, Abatement Order No. 2018-WPCB-1554 became final and fully enforceable.

5. As of the date of this Order the Respondent have failed to comply with the Corrective Actions contained in Abatement Order No. 2018-WPCB-1554.

6. The amount of the administrative penalty included herein was assessed according to the criteria of 10 CSR 20-3.010. From a gravity-based analysis, the violations posed at least a minor potential for harm based on the potential risk to human health, safety and the environment. The violations were also at least a moderate deviation from the standard required by the MCWL and its implementing regulations. Using the gravity-based matrix, and finding both the deviation from the standard and the potential for harm the base penalty falls within a range of \$1,501 to

\$2,500. Since the Department documented one violation of the MCWL, and the Respondent failed to correct the non-compliance after being informed of the requirements by the Department, an administrative penalty in the amount of \$5,313.22 is justified.

7. This Order is necessary to compel compliance and/or minimize threats to human health and the environment.

STATEMENT OF VIOLATIONS

The Respondent violated the MCWL and its implementing regulations as follows:

8. Since July 8, 2016, the Respondent failed to comply with the terms and conditions of Abatement Order No. 2018-WPCB-1554, in violation of Section 644.076, RSMo; and

9. Operated, used, or maintained a water contaminant or point source without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo and 10 CSR 20-6.010(1)(A) and (5)(A).

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the Department hereby orders the Respondent to complete each of the following corrective actions:

10. Within 30 days of issuance of this Order, submit a complete Form B-Application for operating permit to the Department.

PENALTY

Pursuant to Section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders the Respondent to pay administrative penalties for the above-referenced violations as follows:

11. Within 60 days from the date of issuance of this Order, the Respondent is ordered to pay to the Department an administrative penalty in the amount of \$5,313.22.

12. Such payment shall be made by check made payable to: Holt County Collector as Custodian of the Holt County School Fund.

13. Such payment must be delivered to the Department of Natural Resources, C/O Accounting Program, P.O. Box 477, Jefferson City, MO 65102-0477, for forwarding to the Holt County Collector.

SUBMISSIONS

14. All documentation submitted to the Department for compliance with this Order shall be submitted within the timeframes specified to:

Mr. Robert Besalke
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

15. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Respondent makes a written request to the Department within ten business days of this Order, and otherwise provide appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

16. Compliance with this Order resolves only the specific violations described herein, and this Order shall not be construed as a waiver or modification of 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.

17. This Order shall apply to and be binding upon the Respondent and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Respondent. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the Respondent of its obligation to comply with this Order.

NOTICE OF APPEAL RIGHTS

18. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the AHC pursuant to 10 CSR 20-1.020 and Sections 644.056, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
P.O. Box 1557
Jefferson City, MO 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 24th day of October, 2018 by:

DEPARTMENT OF NATURAL RESOURCES



Chris Wieberg, Director
Water Protection Program

c: Kansas City Regional Office
General Counsel's Office
Accounting Program
Northwest Registered Agent Services, Inc.