

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

RECEIVED
MAY 09 2018
Water Protection Program

In the Matter of:)
)
 Anthony Young)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2018-WPCB-1506

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2018-WPCB-1506, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Mr. Anthony Young (Respondent) 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. Additional enforcement action 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 Respondent of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover 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 a pump truck and operates a business hauling septage to the New Madrid Wastewater Treatment Facility, a three cell aerated lagoon owned by the City of New Madrid which operates pursuant to Missouri State Operating Permit No. MO-0022845 (Permit).

2. On June 20, 2016, the New Madrid County Sheriff's Office received a complaint of illegal dumping. Sargent Troy Shelley, of the New Madrid County Sheriff's Office, investigated a location south of County Road 639 and observed a bare spot in a soy bean field with a strong odor of sewage. Sargent Shelley also investigated a location east of County Road 639 near a parking area where it appeared raw sewage was dumped.

3. On June 21, 2016, the Missouri State Highway Patrol, Troop E, received a request to investigate the Respondent from New Madrid County Prosecutor Mr. Andrew Lawson. Also on June 21, 2016, Corporal C.D. Hamlett and Trooper J.D. Patton interviewed the Respondent at his home. During the interview the Respondent said that he had purchased his father-in-law's septic truck approximately two months ago and started cleaning septic tanks almost immediately. He also said that he has an agreement with City of New Madrid to dump the sewage in the city lagoon. During the interview, the Respondent admitted to illegally dumping raw sewage onto private property twice and also stated that his father had dumped once. He said that he did so because the tank on his truck had malfunctioned.

4. On June 22, 2016, the Department's Southeast Regional Office (SERO) was made aware of the illegal dumping of septage on private property in New Madrid County. Department staff investigated and photographed septage at the two sites near County Road 639 the same day. The dump sites are located at approximately 36°37'37.926" North, 89°34'26.628" West and

36°37'39.462" North, 89°34'56.508" West. Both sites are located in the Town of North Lilbourn. The nearest classified waterbody to both sites is an unnamed class L3 lake with designated beneficial uses of Protection of Warm Water Aquatic Life, Human Health-Fish Consumption, Irrigation, Livestock and Wildlife Watering, and Secondary Contact Recreation.

5. On July 22, 2016, the SERO staff issued Referral Notice of Violation (RNOV) No. SE16127 to the Respondent for causing pollution to waters of the state, or placing or permitting to be placed water contaminates in locations where they are reasonably certain to cause pollution and for land applying septage without a Permit. The RNOV also informed the Respondent that the matter had been referred to the Department's Water Protection Program's Compliance and Enforcement Section for further action and included an offer to meet. Additionally, the RNOV stated that the land application of septage must cease immediately until proper permits are obtained.

6. Classified lakes and their tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

7. Septage is a water contaminant as the term is defined in Section 644.016(24), RSMo.

8. Section 644.051.2 makes it unlawful for any person to operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of Sections 644.006 to 644.141 unless such person holds a Permit from the Missouri Clean Water Commission.

9. A septage land application site is a "point source" as the term is defined by Section 644.016(16), RSMo.

STATEMENT OF VIOLATIONS

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

10. Caused pollution of 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 waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo; and

11. Operated, used, or maintained a point source, which intermittently discharges to waters of the state, without a Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

AGREEMENT

12. 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.

13. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. The Respondent, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay an administrative penalty in the amount of \$1,700, with \$1,200 suspended for a period of two years on the condition the Respondent abides by the conditions of the AOC. The payment in the amount of \$500 shall be made in two installments. The first installment is due and payable upon execution of this AOC by the Respondent. The second installment shall be made within 60 days of the effective date of this AOC. The payments shall be in the form of checks made payable to the "New Madrid County Treasurer, as custodian of the New Madrid County School Fund" and the first 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 65102-0477

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

OTHER PROVISIONS

15. Compliance with this AOC resolves only the specific violations described herein, and this AOC 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 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.

16. 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 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.

17. 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.

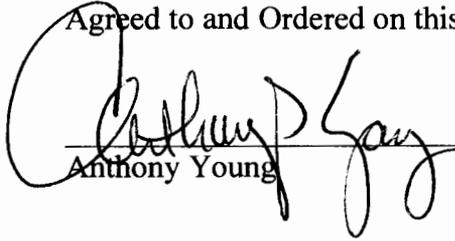
18. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for its records.

NOTICE OF APPEAL RIGHTS

19. By signing this AOC, the Respondent 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.

SIGNATURE AUTHORITY

Agreed to and Ordered on this 4th day of May, 2018



Anthony Young

Agreed to and Ordered on this 11th day of May, 2018



DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

- c: Ms. Diane Huffman, U.S. Environmental Protection Agency, Region 7
- Mr. Jackson Bostic, Director, Southeast Regional Office
- General Counsel's Office
- Accounting Program