

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **Earl Haller** )  
 ) **Order No. 2018-WPCB-1496**  
 )  
 **Proceeding under the** )  
 **Missouri Clean Water Law** )

---

**NOTICE AND ORDER TO PAY ADMINISTRATIVE PENALTIES**

---

**SERVE BY CERTIFIED MAIL # 7099 3220 0009 3706 9503**  
**RETURN RECEIPT REQUESTED**

**TO: Mr. Earl Haller**  
**10935 Martinsville Road**  
**Boonville, MO 65233**

You are hereby notified that on this date the Missouri Department of Natural Resources (Department) has issued this Notice and Order to Pay Administrative Penalties (Order) to Mr. Earl Haller (Respondent) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically sections 644.056 and 644.079 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, additional penalties of up to \$10,000 per day for each day or part thereof of non-compliance, a surcharge of 15 percent of the penalty described herein, 10 percent interest on any amounts owed, attorney fees and costs, 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 owns property located in the SW ¼, SE ¼, NE ¼, Section 23, Township 48 North, Range 18 West, in Cooper County. Surface water flows from the property to a tributary to the Lamine River.
2. The Lamine River and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.
3. Decomposing corn seed is a water contaminant as the term is defined by Section 644.016(24), RSMo.
4. Oil, scum and floating debris violate general criteria for water quality standards as defined by 10 CSR 20 7.031 (4) (B).
5. Water contaminants that cause pH to be outside the range of 6.5 to 9.0 standard pH units are a violation of specific criteria for water quality standards as defined by 10 CSR 20 7.031 (5) (E).
6. Water contaminants that cause Dissolved Oxygen to be below 5 mg/L are a violation of specific criteria for water quality standards as defined by 10 CSR 20 7.031 (5) (J).
7. On March 14, 2016, Department staff conducted a site investigation in response to Environmental Concern No. 7901 and observed approximately 30 cubic yards of construction and demolition debris in the stream bed and several piles of corn seed in various states of decomposition. Staff observed an oily sheen on the water downstream of the corn seed dump site, a thick brown and orange scum on top of the water and a strong odor near the piles of corn seed. The oily sheen and scum generated by the rotting corn represent violations of water quality general criteria. Three water quality samples were collected: i) upstream of the property; ii) near the corn seed dump site; iii) and downstream of the corn dump site. Samples were analyzed for

pH, Temperature, Dissolved Oxygen, conductivity and Ammonia as Nitrogen. Results from the three water quality samples taken during the March 14, 2016, investigation are listed in Table 1 below. The pH value of 5.43 for the stream sample collected near the corn dump site represents a violation of specific criteria for water quality. The Dissolved Oxygen value of 0.24 mg/L for the stream sample collected near the corn dump site and value of 1.09 mg/L for the stream sample collected downstream represent violations of specific criteria for water quality.

Table 1:

Parameter	Upstream	Near Corn Dump Site	Downstream
pH	8.6 s.u.	5.43 s.u.	6.93 s.u.
Temperature	18.5 °C	16.3 °C	20.2 °C
Dissolved Oxygen	11.66 mg/L	0.24 mg/L	1.09 mg/L
Conductivity	314 Microsiemens	720 Microsiemens	720 Microsiemens
Ammonia as Nitrogen	0.11 mg/L	13.4 mg/L	2.82 mg/L

8. On April 7, 2016, the Department issued Notice of Violation No. NE160132 to the Respondent for violations of the MCWL observed during the March 14, 2016, investigation. The transmittal letter required the Respondent to remove and properly dispose of all solid waste, provide disposal receipts and a written statement to the Department explaining actions that have been taken to address the violations and prevent future occurrences. On April 11, 2016, the Department received correspondence from the Respondent in response to the April 7, 2016, transmittal letter stating the removal of solid waste was completed on March 30 and 31, 2016. Disposal receipts were provided along with the correspondence.

9. On April 20, 2016, Department staff conducted a follow up inspection and observed that the corn seed piles had not been removed.

10. On April 21, 2016, the Department contacted the Respondent by telephone to ask about the status of the corn seed piles remaining on the property. The Respondent stated the landfill would not accept the decomposing corn seed and indicated he would find a way to dispose of the corn seed and provide photographs to the Department to document the removal and disposal of the corn seed.

11. On June 1, 2016, the Department sent correspondence to the Respondent requiring removal and proper disposal of approximately 15 cubic yards of corn seed from the stream on or before June 22, 2016.

12. On June 30, 2016, the Department received correspondence from the Respondent in response to the Department's June 1, 2016, correspondence, which, stated that removal of the decomposing corn seed had not been completed. Respondent also indicated the landfill in Booneville, Missouri would not accept the corn seed and that he believed removing the corn seed would cause further problems. Lastly, the Respondent indicated that any future decomposing corn seed would be spread on pastures.

13. On July 14, 2016, Department staff conducted a follow up inspection and observed: (1) several large piles of corn seed in various states of decomposition; (2) construction and demolition waste, including tires; (3) a portion of the stream bed covered with decomposing corn seed; and (4) several locations of the stream compromised with either an oily sheen, bubbles forming on the surface that gave off a putrid odor, orange scum, or white foam on the surface of the water. Water quality samples were collected at four locations and analyzed for pH, Temperature, Dissolved Oxygen, Conductivity and Ammonia as Nitrogen. The results are in the

following table. Results from the four water quality samples taken during the July 14, 2016, inspection are listed in Table 2 below. The Dissolved Oxygen values for the samples collected downstream of the corn dump, downstream of Katy Trail and downstream of the property all represent violations of specific criteria for water quality.

Table 2:

Parameter	Upstream	Downstream of Corn Dump Site	Downstream of Katy Trail	Downstream of Property
pH	7.14 s.u.	7.09 s.u.	6.91 s.u.	7.33 s.u.
Temperature	25.4° C	28.3 °C	30.7 °C	26.7 °C
Dissolved Oxygen	7.28 mg/L	2.37 mg/L	0.07 mg/L	2.03 mg/L
Conductivity	94.2	403	638	513
Ammonia as Nitrogen	0.14 mg/L	3.54 mg/L	1.95 mg/L	0.17 mg/L

14. On August 1, 2016, the Department issued Referral Notice of Violation No. NE160189 to the Respondent for violations observed during the July 14, 2016, site investigation. The transmittal letter informed the Respondent that the case had been referred to the Department's Water Protection Program's Compliance and Enforcement Section and offered a meeting to discuss compliance requirements.

15. The MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency, to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before the violation, sustained by it because of any violation.

16. The Department dispatched employees to investigate the release. In doing so, the Department incurred costs and expenses, including, but not limited to, water sampling and analysis and travel expenses, in the amount of \$1,502.98

### **STATEMENT OF VIOLATIONS**

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

17. Discharged water contaminants into waters of the state, a tributary to the Lamine River, which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031; and

18. Caused pollution of a tributary to the Lamine River, waters of the state, or placed 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 644.051.1(1) and 644.076.1, RSMo.

### **PENALTY**

Pursuant to Section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders the Respondent to pay to the Department, the state's investigative costs and damages in response to the above-referenced violations as follows:

19. Within 60 days from the date of issuance of this Order, the Respondent shall pay to the Department, the state's investigative costs and damages in the amount of \$1,502.98.

20. Such payment shall be made in the form of a check made payable to the "State of Missouri." The check shall be delivered to the address listed below.

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

21. 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. Since the Department documented two violations of the MCWL, and the Respondent failed to correct the non-compliance after being informed of the requirements by the Department, and administrative penalty in the amount of \$4,000 is justified. 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 moderate potential for harm based on the potential risk to human health, safety and the environment. The violations were also at least a minor 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 \$3,501 to \$4,500. The Department has elected that the administrative penalty of \$4,000 be suspended. The penalty shall be suspended for a period of two years from the execution of this Order upon the condition that the Respondent does not violate the terms of the Order, or the MCWL. Upon determination that the Respondent has failed to meet the terms of this Order, the Department shall send a written demand for the suspended penalty to the Respondent. The Respondent shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed below.

### **SUBMISSIONS**

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

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

**OTHER PROVISIONS**

23. 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 provides appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

24. Compliance with this Order resolves only the specific violations described herein, and this Order 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.

25. 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.

26. For any plan or submittal from the Respondent that is required by this Order and subject to Department approval under this Order, the Department may approve, disapprove,

require revisions, or otherwise modify any such plan or submittal. Any such Department decision shall be conveyed in writing to the Respondent. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the Respondent shall submit a revised version of the plan or submittal within ten business days after receiving notice of the Department's required revisions, or within such other timeframe as the Department may specify. If the Department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and the Respondent shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

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

27. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 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 65102-1557  
phone: 573-751-2422  
fax: 573-751-5018  
website: [www.oa.mo.gov/ahc](http://www.oa.mo.gov/ahc)

**SIGNATURE AUTHORITY**

SO ORDERED on this 10<sup>th</sup> day of July 2018 by:

DEPARTMENT OF NATURAL RESOURCES



Chris Wieberg, Director  
Water Protection Program

c: Ms. Irene Crawford, Director, Northeast Regional Office  
General Counsel's Office  
Accounting Program