

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Pavement Solutions, LLC) **Order No. 2018-WPCB-1497**
)
 Proceeding under the)
 Missouri Clean Water Law)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2018-WPCB-1497, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Pavement Solutions, LLC (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 civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo. This AOC supersedes Abatement Order No. 2016-WPCB-1460 issued on October 4, 2016.

FINDINGS OF FACT

1. On September 30, 2016, the Respondent reported to the Department's Emergency Response hotline a release of a water contaminant, approximately 2,000 gallons of a liquid concrete additive, as a result of a motor vehicle incident that occurred near the intersection of Airport Cargo Road and James S. McDonnell Boulevard.

2. Initial information provided to the Department indicated that the released material was contained in a nearby stormwater basin, a cleanup of the released material had been completed, and no further actions were warranted.

3. In the following days, the Department received multiple reports of a milky-white discoloration in Coldwater Creek, which Department staff confirmed.

4. Additional reports indicated some portion of the released material may have been inappropriately power-washed into the local stormwater system.

5. The discoloration appeared to be the result of a release of a concrete additive product called "Modifier A/NA," which was not recovered during the initial cleanup effort, flowed through the local storm sewer system, and discharged into Coldwater Creek.

6. The Respondent took responsibility for the incident and completed efforts to recover the water contaminants from Coldwater Creek on October 10, 2016. Such efforts included pumping the water contaminants from Coldwater Creek into the nearby sanitary sewer system.

7. On October 4, 2016, the Department issued Abatement Order (Order) No. 2016-WPCB-1460 to the Respondent. The Order required the Respondent to continue and expedite the ongoing cleanup and recovery efforts, provide daily updates to the Department regarding the progress of the cleanup and recovery efforts, and conduct post-cleanup sampling

and monitoring as required by the Department. The Order also required the Respondent to pay the Department's oversight costs and expenses within 60 days of receiving an invoice. Following issuance of the Order, the Respondent monitored the creek cleanup and reported to the Department on a daily basis. The Respondent was not required to conduct post-cleanup sampling due to the frequency of the Department's sampling events.

8. On November 30, 2016, the Department issued Referral Notice of Violation No. SL160248 to the Respondent for the violations documented during the investigation.

9. The released product is a "water contaminant" as the term is defined in Section 644.016, RSMo.

10. Coldwater Creek is "waters of the state" as defined in Section 644.016, RSMo.

11. 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.

12. 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 \$9,810.38.

STATEMENT OF VIOLATIONS

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

13. From September 30 to October 10, 2016, caused pollution of Coldwater Creek, 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

14. Discharged a water contaminant, liquid concrete additive, into waters of the state, 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(4)(C).

AGREEMENT

15. 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.

16. 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 Respondent under this AOC.

17. 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 \$8,000. The Department and Respondent further agree that \$4,000 of the civil penalty shall be suspended as described in Paragraph 18 below. The payment of the penalty in the amount of \$4,000 shall be in the form of a check made payable to the "St. Louis County Treasurer, as custodian of the St. Louis 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 65102-0477

18. The suspended penalty described in Paragraph 17 in the amount of \$4,000 shall be suspended for a period of two years from the execution of this AOC upon the condition that the Respondent does not violate the terms of the AOC. Upon determination that the respondent has failed to meet the terms of this AOC, including the requirements of Paragraphs 16 through 20, 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 in Paragraph 17.

19. The Respondent is ordered and agrees to pay the state's investigative costs in the amount of \$9,810.38 in the form of a separate check made payable to the "State of Missouri." The check in the amount of \$9,810.38 is due and payable upon execution of this AOC by the Respondent. The check shall be delivered to the address provided in Paragraph 17 of this AOC.

20. 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

21. 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.

22. 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. Upon execution, this AOC will supersede Abatement Order No. 2016-WPCB-1460. This AOC may not be modified orally.

23. 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.

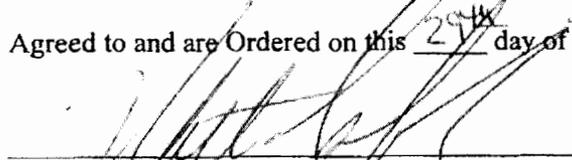
24. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for its records.

NOTICE OF APPEAL RIGHTS

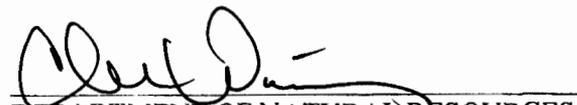
By signing this AOC, the Respondent consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATURE AUTHORITY

Agreed to and are Ordered on this 29~~th~~ day of March, 2018


Mr. Matthew E. St. John, Registered Agent
Pavement Solutions, LLC

Agreed to and so Ordered on this 6th day of April, 2018


DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

- c: Ms. Diane Huffman, U.S. Environmental Protection Agency, Region 7
- Ms. Dorothy Franklin, Director, St. Louis Regional Office
- General Counsel's Office
- Accounting Program