

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)	
)	
City of Columbia)	Order No. 2019-WPCB-1607
)	
Proceeding under the)	
Missouri Clean Water Law)	

ABATEMENT ORDER ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2019-WPCB-1607, 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 Columbia (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. 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 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.

FINDINGS OF FACT

1. The Respondent is a home rule municipality with a population of approximately 123,180 residents. The Respondent owns and operates the Albert Oakland Family Aquatic Center.

2. Bear Creek and its tributaries are waters of the State as the term is defined by Section 644.016(27), RSMo.

3. Chlorinated drinking water is a “water contaminant” as the term is defined in Section 644.016(24), RSMo.

4. The Respondent is required to obtain a permit prior to discharging any water contaminants to waters of the State. Section 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A), make it unlawful to operate, use, construct, or maintain a water contaminant source that discharges to waters of the State without an operating permit.

5. On July 15, 2019, Department staff conducted an investigation of a reported fish kill in Bear Creek. Chlorinated water was discharged from the Albert Oakland Family Aquatic Center into Bear Creek through a clay pipe that was found to be connected to the storm sewer system. This clay pipe had previously been capped and the chlorinated water had been directed to the sanitary sewer. The cap developed a crack and resulted in chlorinated water leaking through the cap. The discharge of chlorinated drinking water resulted in the death of 26 amphibians, 51 crustaceans, and 1,360 fish of various species. On July 16, 2019, the Respondent installed a temporary plug in the pipe. On July 30, 2019, a new cap was installed to repair the leak.

6. 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.

7. Missouri Department of Conservation staff determined the incident resulted in the deaths of 26 amphibians, 51 crustaceans, and 1,360 fish resulting in damages to the State of \$438.46. Staffing costs incurred by the State during the fish kill investigation are \$1,544.58. Equipment costs, incurred during investigation of the fish kill, are \$43.56. The total for costs and damages incurred by the State for this incident is \$2,026.59.

STATEMENT OF VIOLATIONS

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

8. On July 15, 2019, operated, used or maintained a water contaminant source, chlorinated water from a non-permitted outfall, which discharged to a tributary to Bear Creek, waters of the State, without a Missouri State Operating Permit (Permit), in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A);

9. Caused pollution of Bear Creek, 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 Sections 644.051.1(1) and 644.076.1 RSMo; and

10. Discharged water contaminants 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 violations of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031 or applicable subsections of 10 CSR 20-7.031.

AGREEMENT

11. 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.

12. The Respondent is ordered and agrees to connect flows at Albert Oakland Family Aquatic Center from the storm sewer to the sanitary sewer by May 1, 2020. Upon completion of the project the Respondent should notify the Department.

13. The Respondent, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, is ordered and agrees, without admitting liability or fault, to pay the State's investigative costs and damages of \$2,026.59. The check in the amount of \$2,026.59 is due and payable to "Missouri Department of Natural Resources" upon execution of this AOC by the Respondent. The check and signed copy of the 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 submit documentation to the Department demonstrating connection of the storm sewer to the sanitary sewer, within 30 days completion of the project.

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

SUBMISSIONS

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

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

OTHER PROVISIONS

17. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 11 through 13, the Respondent shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100 per day
31 to 90 days	\$250 per day
91 days and above	\$500 per day

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

18. 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.

19. 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 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. This AOC may not be modified orally.

20. 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.

21. 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 their records.

NOTICE OF APPEAL RIGHTS

22. 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, including the Cost Analysis for Compliance referenced herein, 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.

SIGNATORY AUTHORITY

Agreed to and Ordered on this ____ day of _____, 2020

Brian Treece, Mayor
City of Columbia

Agreed to and Ordered on this ____ day of _____, 2020

DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

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