

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)	
)	
City of Columbia)	Order No. 2022-WPCB-1638
)	
Proceeding under the)	
Missouri Clean Water Law)	

ABATEMENT ORDER ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2022-WPCB-1638, 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 owns and operates a water treatment plant (WTP) which treats and distributes potable water (SIC #4941) for the City of Columbia in Boone County, Missouri. The WTP is located at 6851 West Route K, Columbia, MO 65203. The Respondent owns and

maintains the WTP's city-wide drinking water distribution system. The WTP operates as a no-discharge system subject to the conditions and requirements of Missouri State Operating Permit No. MO-0136034 (Permit). The Permit was issued on February 1, 2017, and expired on September 30, 2019. An application for renewal was received by the Department.

2. As part of the drinking water treatment process, the WTP disinfects drinking water with a mixture of chlorine and ammonia which is referred to as chloramines.

3. On September 1, 2017, Department staff responded to a report of a fish kill in Mill Creek near Glen Eagle Drive due to a water main break. Department staff observed dead aquatic life downstream from the discharge point of entry in Mill Creek. Missouri Department of Conservation (MDC) staff conducted an investigation of the fish kill and determined that the discharge impacted approximately 0.5 miles of stream and killed 1,934 aquatic organisms with a total value of \$584.30.

4. On September 5, 2017, Department staff contacted the Water Distribution Manager for the WTP who confirmed that the discharge was result of a water main break at 4308 Glen Eagle Drive that has since been repaired. The WTP was unable to estimate the volume of chlorinated drinking water discharged.

5. On January 9, 2018, the Respondent reported an unpermitted discharge at the pump station due to a mechanical failure of a control valve. The control valve was replaced which corrected the issue, but approximately 38,000 gallons of chlorinated drinking water discharged into Mill Creek.

6. MDC conducted an investigation of the fish kill. MDC staff determined that the discharge impacted approximately 0.7 miles of stream and killed 5,320 aquatic organisms with a total value of \$2,362.62.

7. In responding to these two events, the Department and MDC incurred a combined \$3,671.09 in investigative costs.

8. On July 17, 2018, the Department and MDC received and responded to independent reports of discolored water in Hominy Branch. Department and MDC staff contacted City of Columbia staff who confirmed that a water line break occurred at Keene Street and was repaired the morning of July 17, 2018. Department and MDC staff observed that the discharge resulted in a fish kill. MDC conducted an investigation of the fish kill and determined that the discharge impacted 1.2 miles of stream and killed 2,595 aquatic organisms with a total value of \$693.43.

9. On July 18, 2018, Department staff contacted the City's Water Distribution Manager who confirmed that the water line break occurred on July 16, 2018, and repairs were completed July 17, 2018. The City was unable to estimate the volume of water discharged from the line break.

10. In responding to this event, the Department and MDC incurred a combined \$1,696.95 in investigative costs.

11. On April 26, 2019, the Respondent reported a water main break at 301 North Providence Road that discharged chlorinated drinking water to Flat Branch between 05:00 and 06:30. Department and MDC staff responding to the report observed that the discharge resulted in a fish kill. MDC conducted an investigation of the fish kill and determined that the discharge impacted 900 meters of stream and killed 1,552 aquatic organisms with a total value of \$257.89.

12. In responding to this event, the Department and MDC incurred a combined \$1,397.44 in investigative costs.

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

14. Hominy Branch and its tributaries are waters of the State as the term is defined by Section 644.016(27), RSMo.

15. Flat Branch and its tributaries are waters of the State as the term is defined by Section 644.016(27), RSMo.

16. Chloramines, chlorine, and their associated derivates are water contaminants as the term is defined by Section 644.016(24), RSMo.

17. Section 644.051.1(1), RSMo states that it is unlawful to cause pollution of any waters of the State or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the State.

18. Section 644.051.1(2), RSMo states that it is unlawful to discharge any water contaminants into any waters of the State which reduce the quality of such waters below the water quality standards established by the Clean Water Commission.

19. General Criteria of the Water Quality Standards established by the Clean Water Commission in 10 CSR 20-7.031(4)(D) state that waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal, or aquatic life.

20. 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.

21. The total cost recovery for all these events is \$10,663.64. See Appendix A for a breakdown of cost recovery by each fish kill event.

STATEMENT OF VIOLATIONS

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

22. Discharged water contaminants into waters of the State, which reduced the quality of water 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)(D); and

23. Caused pollution of Mill Creek, Hominy Branch, and Flat Branch, waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

AGREEMENT

24. 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.

25. 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.

26. The Respondent is ordered and agrees to pay the State's investigative costs and damages in the amount of \$10,663.72 in the form of a check made payable to the "State of Missouri." The check in the amount of \$10,663.72 is due and payable upon the Respondent's execution of this AOC. 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

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

SUBMISSIONS

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

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

OTHER PROVISIONS

29. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Respondent shall submit to the Department, for review and approval, a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Respondent's right to request an extension and may be grounds for the Department to deny the Respondent an extension.

30. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in this AOC, 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

31. 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.

32. 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.

33. 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.

34. 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.

COST ANALYSIS FOR COMPLIANCE

35. Pursuant to Section 644.145.2(1)(c), the Respondent hereby waives the requirement for the Department to develop a Cost Analysis for Compliance (CAFCom) or other finding of affordability with respect to the requirements of this AOC. The Respondent acknowledges that this waiver was not required by the Department as a condition to enter this AOC.

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, including the CAFCom 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

CITY OF COLUMBIA, MISSOURI

By: _____
De'Carlton Seewood
City Manager

Date: _____

ATTESTED BY:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 07010923-504960, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Director of Finance

Agreed to and Ordered on this _____ day of _____, 2022

DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

- c: Irene Crawford, Director, Northeast Regional Office
- Fiscal Management Section
- Operating Permits Section
- General Counsel's Office
- Accounting Program

Appendix A: Cost Recovery/Investigative Costs Breakdown

Cost Recovery by Event				
Event	Receiving Stream	Fish Kill Valuation	Investigative Costs	Total Cost Recovery
Sept 1, 2017	Mill Creek	\$584.30	\$3,671.09*	\$6,618.01*
Jan 10, 2018	Mill Creek	\$2,362.62		
July 17, 2018	Hominy Branch	\$693.43	\$1,696.95	\$2,390.38
Apr 26, 2019	Flat Branch	\$257.89	\$1,397.44	\$1,655.33

*costs for these two events were calculated together