BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:	)	
	)	
City of Joplin	)	
	)	**Order No. 2019-WPCB-1565**
	)	
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. 2019-WPCB-1565, 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 Joplin (City) 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 City 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 City is a home rule municipality with a population of approximately 51,231 residents. The City owns and operates two wastewater treatment facilities (WWTFs), the Turkey Creek WWTF and the Shoal Creek WWTF. Treated effluent discharges through Outfall No. 004 of the WWTF to Turkey Creek, pursuant to the conditions and requirements of Missouri State Operating Permit (Permit) No. MO-0103349. Treated effluent discharges through Outfall No. 001 of the WWTF to Shoal Creek, pursuant to the conditions and requirements of Permit No. MO-0023256.

2. Turkey Creek and Shoal Creek are waters of the state as the term is defined by Section 644.016(27), RSMo.

3. Domestic wastewater is a water contaminant as the term is defined by Section 644.016(24), RSMo.

4. On January 26, 2007, the Department issued Permit No. MO-0103349 to the City for the Turkey Creek WWTF, and on March 9, 2007, the Department re-issued a revised Permit No. MO-0103349 to the City to include a pretreatment condition for the City.

5. On January 25, 2012, Permit No. MO-0103349 expired by its own terms and on April 11, 2012, the Department received an application from the City for the renewal of the Permit. The Permit is currently in draft form pending re-issuance.

6. On February 3, 2012, the Department issued Permit No. MO-0023256 to the City for the Shoal Creek WWTF and on February 2, 2017, Permit No. MO-0023256 expired by its own terms. On August 9, 2016, the Department received an application from the City to renew Permit No. MO0023256 and the Permit is pending re-issuance.

7. Standard Conditions, of Permit Nos. MO-0103349 and MO-0023256 require the City to report to the Department any non-compliance which may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances.

8. Special Conditions of Permit No. MO-010349 and Permit No. MO-0023256 require the City to submit periodic Inflow and Infiltration (I&I) reports to the Department, which address measures taken to locate and eliminate sources of excessive I&I into the City's collection system.

9. Sanitary sewer overflows (SSOs) and bypasses of the full treatment process from lift stations and peak flow outfalls periodically occur in the City's wastewater collection and treatment systems during heavy wet weather and rain events. These SSOs and bypasses have the potential to endanger health or the environment and frequently reach waters of the state.

10. On December 11, 2011, the City entered into a Voluntary Compliance Agreement (VCA) with the Department to address the City's peak flow discharges from both WWTFs. As required by the VCA, a Bypass Elimination Plan (BEP) was submitted and the schedule contained therein was approved by the Department on July 23, 2013, and became enforceable as a part of the VCA. On May 16, 2017, the VCA was extended to December 11, 2021.

11. From April 2016 to the effective date of this AOC, the City reported to the Department at least 30 SSOs or bypass events from the Turkey Creek WWTF and collection system. The total estimated volume of untreated or partially treated wastewater released during the 30 events was approximately 91,075,333 gallons. The majority of the volume released during these events was in correlation with wet weather events.

12. From April 2016 to the effective date of this AOC, the City reported to the Department at least 58 SSOs or bypass events from the Shoal Creek WWTF and collection

system. The total estimated volume of untreated or partially treated wastewater released during the 58 events was approximately 49,466,495 gallons. The majority of the volume released during these events was in correlation with wet weather events.

13. The City has engaged in significant efforts to reduce the frequency of SSO and bypass events including: collecting flow data from the sanitary sewer system that will be used to develop a hydraulic model with results expected in the Fall of 2018; reconstruction of small-diameter concrete pipes and relining of manholes; replacement of both screw pumps at the Turkey Creek WWTF; replacement of the Tin Cup pump station pumps; and a construction of a parallel force main from the Filmore Bridge pump station to its discharge point into the gravity.

14. The City is voluntarily entering into this AOC before the end of the compliance period of the VCA in order to implement additional sewer overflow reduction control measures.

15. 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.

STATEMENT OF VIOLATIONS

The Department and the City acknowledge and anticipate that SSO and bypass events will continue to occur while the City completes all upgrades to the City's wastewater collection system as defined in the City's improvements schedule. The City has violated the MCWL and its implementing regulations as follows:

16. Through the effective date of this AOC, and until all upgrades to the City's wastewater collection system are completed, the City has failed to prevent SSOs of the City's wastewater collection system and bypasses of the WWTFs through the City's peak flow outfalls, as required by the Standard Conditions in Permit Nos. MO-0103349 and MO-0023256, in violation of Section 644.076.1, RSMo; and

17. Caused pollution of Turkey Creek and Shoal 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.

AGREEMENT

18. The Department and the City desire to amicably resolve all claims that may be brought against the City for violations alleged above in Statement of Violations.

19. 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 City under this AOC.

20. The City, 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 $16,000, of which, $16,000 shall be suspended as described in the paragraph below.

21. The suspended penalty described in the paragraph above in the amount of $16,000 shall be suspended for a period of two years from the execution of this AOC upon the condition that the City does not violate the terms of this AOC. Upon determination by the Department that the City has failed to meet the terms of this AOC to the Department's satisfaction, including the requirements of Paragraphs 21 through 29, the Department may send a written demand for the suspended penalty to the City. The City shall have 30 days from receipt of the written demand to

submit the suspended penalty. The penalty shall be divided into four consecutive payments of $4,000 each with each payment being submitted 30 days apart. The payment shall be in the form of a check made payable to the "Jasper County Treasurer, as custodian of the Jasper County School Fund." The check shall be delivered to:

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

22. In the period of time from the effective date of this AOC until all upgrades to the City's wastewater collection system are completed as defined in the City's improvements schedule, the City agrees to operate and maintain the existing collection system and the WWTFs peak flow outfalls at all times so as to comply with the conditions and requirements of Permit Nos. MO-0103349 and MO-0023256. All units or components of the existing collection system shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the collection system that occur outside of the City's proposed improvements schedule.

23. When collection system releases occur that affect public areas and pose risks to public health, the City agrees to post warning signs of the risk to public health to deter public exposure. The City agrees to post such warning signs spaced in frequency to encompass the entire affected area, visible from the public's likely approach, and keep the warning signs posted until the risk to public health from the collection system release has ended. An example of the City's warning sign is attached hereto as Appendix B.

24. The City agrees to implement The City of Joplin's 2026 Activities Plan of its System Renewal and SSO Prevention Program (Plan) attached hereto as Appendix A, which is hereby approved by the Department as an enforceable condition of this AOC.

25. The City agrees to submit to the Department annual reports of all progress during the previous year. The reports are due June 30, of each year and the information provided shall include, but not be limited to, the status of implementation of all requirements of this AOC, including a statement as to whether specific milestone dates in the schedule included in the Plan were met and a summary of project expenditures. For work performed by a private contractor, the City shall submit certification by its engineer that the specified work has been completed, and for work performed by City personnel, a copy of the work order, or similar documentation, and cover letter certifying the work is complete, signed by the design engineer. The reports shall also include any modifications to the Plan with supporting documentation for the changes.

26. The City agrees to maintain copies of all written submissions prepared pursuant to this AOC for at least 36 months after termination of this AOC.

27. If bypasses from the City's peak flow outfalls continue to occur after the City's Plan is implemented, the City may choose to submit a "no feasible alternatives analysis" along with any other relevant information in support of approval for future bypasses within its reissued Permits. Nothing in this AOC authorizes use of the City's peak flow outfall(s).

28. Twelve months following completion of all the requirements of the Plan, the City shall submit to the Department a report that identifies whether additional control measures are necessary for the City's collection system and WWTFs to comply with sewer overflow and peak wet weather flow management requirements. If such control measures are necessary, the report shall identify the necessary controls along with an expeditious implementation schedule for the Department's approval. Upon approval, the supplemental measures plan shall become an enforceable part of this AOC.

29. The City agrees to consult with the Department's Engineering Section staff and comply with all applicable application, permit, and fee requirements related to the projects approved by the Department as a part of the Plan.

SUBMISSIONS

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

Ms. Erin Meyer Heidolph
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

31. As soon as reasonable, but not later than 7 business days upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline and not after the deadline has passed, the City shall notify the Department by 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 City 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 to the deadlines above if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the City's right to request an extension and may be grounds for the Department to deny the City an extension.

32. Should the City fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 21 through 29, the City shall be subject to pay stipulated penalties in the following amount:

Days of Violation	Amount of Penalty
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 "Jasper County Treasurer, as custodian of the Jasper County School Fund." Any such stipulated penalty shall be paid within 30 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

33. 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. Except as specified herein, this AOC does not resolve any future violations of this AOC or any law, regulation, or permit. 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.

34. Nothing in this AOC forgives the City 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 (including the VCA dated December 11, 2011, between the City and the Department), express or implied. This AOC may not be modified orally.

35. 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.

36. 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 City for its records.

DISPUTE RESOLUTION

37. If the City disagrees with any decision or determination made by the Department relative to any part or requirement of this AOC, the City will have 30 days from receipt of the decision or determination in question to seek review of the Department's decision or determination which gave rise to the dispute. This 30 day deadline may be extended if necessary by mutual written agreement. The City shall notify the Department in writing in the form of a Notice of Dispute, the basis of its objection(s) including a specific reference to the subject of dispute and factual data to support the City's objection(s). The City and the Department shall have 30 days from the Department's receipt of the City's Notice of Dispute to attempt to resolve the dispute. Dispute resolution may be extended by mutual written agreement. If the City and the Department are unable to resolve the dispute within 60 days of initiation of the dispute resolution process, within 30 days the City shall submit to the Department a written Statement of Position detailing the matter of dispute including factual data and/or documentation supporting the City's position. Within 30 days receipt of the City's Statement of Position, the Department shall submit its Statement of Position in response. The Department's Statement of Position shall be its final decision, which shall be binding on the City unless the City files a petition for further administrative or judicial review in accordance with applicable law.

COST ANALYSIS FOR COMPLIANCE

38. Pursuant to Section 644.145.2(1)(c), the City 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 City acknowledges that this waiver was not required by the Department as a condition to enter this AOC.

NOTICE OF APPEAL RIGHTS

39. By signing this AOC, the City 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.

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SIGNATORY AUTHORITY

Agreed to and Ordered on this _____ day of _____, 2019

_____
The Honorable Mayor Gary Shaw

Agreed to and Ordered on this _____ day of _____, 2019

_____
DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg
Water Protection Program

c: Ms. Cindy Davies, Director, Southwest Regional Office
Operating Permits Section
General Counsel's Office
Accounting Program