

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **City of Republic** ) **Order No. 2021-WPCB-1664**  
 )  
 **Proceeding under the** )  
 **Missouri Clean Water Law** )

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**ABATEMENT ORDER ON CONSENT**

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The issuing of this Abatement Order on Consent (AOC) No. 2021-WPCB-1664, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because the City of Republic (Respondent) requested the AOC for anticipated violations of 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 16,247. The Respondent owns and operates a wastewater treatment plant (WWTP) that consists of a peak flow basin, oxidation ditches, UV disinfection, and aerobic digesters. The WWTP is

located in the Section 18, Township 28 North, Range 23 West, Greene County. The WWTP has a design population equivalent of 32,000, a design flow of 3.2 million gallons per day and an actual flow of 1.7 million gallons per day. Treated effluent discharges through Outfall No. 001 of the WWTP to a losing tributary to Dry Branch, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0022098 (Permit).

2. Dry Branch and its tributaries 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 October 4, 2011, the Department and the Respondent entered into a Voluntary Compliance Agreement (VCA) to address discharges of wastewater through a wet weather outfall, a constructed bypass of full treatment during wet weather events. The VCA required elimination of discharges from the wet weather outfall within five years, and allowed for only one extension of five years. On October 17, 2016, the Department extended the VCA deadline to October 4, 2021.

5. On February 11, 2020, the Department met with the Respondent to discuss the Respondent's progress with meeting the VCA deadline. The Respondent reported that it had completely mapped its collection system but had yet to perform a study to evaluate the most significant sources of inflow and infiltration, and therefore would not be able to eliminate discharges from the wet weather outfall by the extended VCA deadline.

6. On February 26, 2021, the Department's Water Protection Program received a request from the Respondent for voluntary referral to the Program's Compliance and

Enforcement Section to establish a new schedule for the elimination of discharges from the wet weather outfall.

7. On March 30, 2021, the Department received a project schedule from the Respondent, which estimated initiation of construction of a blending system during January of 2022 and completion of construction during October of 2024.

### **STATEMENT OF ANTICIPATED VIOLATIONS**

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

8. Caused pollution from Outfall No. 002 to a tributary to Dry Branch, waters of the State, or placed or caused or permitted to be placed a water contaminant, domestic wastewater, in a location where it was reasonably certain to cause pollution of waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

### **AGREEMENT**

9. 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.

10. 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.

11. In the period of time from the effective date of this AOC until the new or upgraded WWTP is completed, the Respondent is ordered and agrees to operate and maintain the existing WWTP at all times in compliance with the conditions and requirements of the Permit,

and shall minimize discharges from the wet weather outfall to the extent practicable and shall report all discharges from the wet weather outfall to the Department as bypasses. All units or components of the existing WWTP shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTP.

12. The Respondent is ordered and agrees to consult with the Department's Engineering Section staff and comply with all applicable application, permit, and permit fee requirements as set forth in 10 CSR 20-6 Permits and 10 CSR 20-8 Minimum Design Standards.

13. The Respondent is ordered and agrees to eliminate all discharges from the wet weather outfall as soon as practicable, but no later than October 31, 2024.

14. Within 60 days of completing construction of the improvements to eliminate all discharges from the wet weather outfall, the Respondent is ordered and agrees submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the State of Missouri certifying that the project is complete and operable in accordance with Department-approved plans and specifications.

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.

16. This AOC shall terminate 90 days after the improvements are completed, or by October 31, 2024, whichever occurs first. If discharges from the wet weather outfall are not eliminated by October 31, 2024, then any subsequent discharges from the wet weather outfall are violations subject to enforcement action.

### **SUBMISSIONS**

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

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

**OTHER PROVISIONS**

18. 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.

19. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 13 and 14, 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 "Greene County Treasurer, as custodian of the Greene 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

20. 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.

21. 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.

22. 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.

23. 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**

24. Pursuant to Section 644.145.2(1)(c), the Respondent hereby waives the requirement for the Department to develop a Cost Analysis for Compliance 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**

25. 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.

**SIGNATORY AUTHORITY**

Agreed to and Ordered on this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Matt Russell, Mayor  
City of Republic

Agreed to and Ordered on this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
DEPARTMENT OF NATURAL RESOURCES  
Chris Wieberg, Director  
Water Protection Program

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