

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 The Boeing Company) **Order No. 2018-WPCB-1536**
)
 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-1536, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the Department alleges that The Boeing Company (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 the MCWL Section 644.076.1, RSMo. Additional enforcement action may occur without further administrative 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 penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

The Department makes the following findings of fact:

1. The Respondent is a for profit corporation registered and in good standing with the Missouri Secretary of State.
2. The Respondent owns and operates a manufacturing facility (facility) located at 6200 James McDonnell Boulevard, St. Louis, MO. The Respondent is authorized to discharge stormwater from the facility pursuant to the conditions and requirements of Missouri State Operating Permit No. MO-0004782 (Permit), which was last issued on February 1, 2016, and expires on January 31, 2021. Stormwater discharges from the facility to a tributary to Coldwater Creek.
3. Coldwater Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
4. On November 22, 2016, the Department's Environmental Emergency Response spill line received a call from Mr. Elmer Dwyer, Environmental Engineer for the Respondent, to report a release of Aqueous Film Forming Foam (AFFF), a fire suppression agent, from the facility, to Cold Water Creek. Mr. Dwyer informed Department staff that the AFFF was released from the fire suppression system in their main hangar to a storm drain.
5. On November 23, 2016, Department staff investigated the spill, and observed large white sections of foam on vegetated banks and forming foam in the riffles of Coldwater Creek. Department staff observed foam present in a two mile stretch of Coldwater Creek, downstream of the outfall.
6. Boeing engaged Environmental Management Alternatives (EMA), an environmental cleanup company, to respond to the release and utilized sprayers throughout the

day and night of November 23, 2016, in an effort to break up the foam. EMA returned November 24, 2016, and physically removed foam from the brush and vegetation in the channel.

7. On November 25, 2016, the Department received email correspondence from a representative of the Respondent stating that the fire suppressant system was activated on November 22, 2016 in response to a small fire, and remained active for less than one hour. The correspondence stated that AFFF was captured in a stormwater detention basin and that the contents of the stormwater detention basin discharged into Coldwater Creek due to a valve failure.

8. On November 28, 2016, Department staff returned to Coldwater Creek and observed minimal foam in the creek in the upper section. Foam was also observed in an area from approximately 8 miles downstream from the airport to approximately 13.5 miles downstream from the airport to the confluence with the Missouri River.

9. On December 22, 2016, the Department received email correspondence from a representative of the Respondent, stating an estimated 1,800 gallons of three percent concentrate AFFF had been released by the fire suppression system. The email further stated that replacement valve seals for the stormwater detention basin were scheduled for delivery on January 3, 2017.

10. On July 20, 2017, the Department issued Referral Notice of Violation (RNOV) No. SL170060 to Mr. Gary Buford, Environmental Engineer and Scientist, as an agent for the Respondent, for alleged violations found during the investigations on November 23 and November 28, 2016.

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 November 22, 2016, spill report. 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 \$2,625.34.

STATEMENT OF VIOLATIONS

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

13. On November 22, 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. On November 22, 2016, discharged a water contaminant, AFFF, into waters of the state, which reduce the quality of such waters below the General Criteria in 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 the Statement of Violations, without the Respondent admitting to the validity or accuracy of such claims.

16. The Department acknowledges that the Respondent's execution of this AOC does not constitute an admission of any finding of fact, conclusion of law, or statement of violation contained herein.

17. 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.

18. 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 a civil penalty in the amount of \$6,750. The civil penalty is due and payable upon execution of this AOC by the Respondent. The payment shall be in the form of a certified check or cashier's check made payable to "St. Louis County Treasurer, as custodian of the St. Louis County School Fund." 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

19. The Respondent is ordered and agrees to pay the state's investigative costs and damages in the amount of \$2,625.34 in the form of a separate check made payable to the "State of Missouri." The check in the amount of \$2,625.34 is due and payable upon execution of this AOC by the Respondent. The check shall be delivered as provided in Paragraph 17 of this AOC.

SUBMISSIONS

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

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

OTHER PROVISIONS

21. 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: 1) identifying the deadline that will not be completed; 2) identifying the reason for failing to meet the deadline; and 3) 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 1, 2, and 3 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.

22. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification or 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.

23. 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.

24. 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.

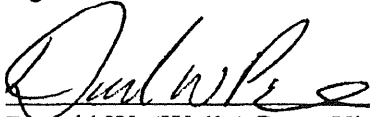
25. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for its records.

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.

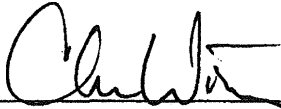
SIGNATORY AUTHORITY

Agreed to and are Ordered on this 29 day of MAY, 2018



Donald W. (Wally) Page, Vice President Quality & Manufacturing & St. Louis Site Leader
The Boeing Company

Agreed to and so Ordered on this 29 day of MAY, 2018



7/19/18

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