

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of: )  
 )  
 City of Malden d/b/a )  
 Malden Municipal Power and Light ) No. APCP-2025-001  
 )  
 )  
 Proceeding Under the )  
 Missouri Air Conservation Law )

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ADMINISTRATIVE ORDER ON CONSENT

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**NOTICE TO THE RESPONDENT**

The issuance of this Administrative Order on Consent No. APCP-2025-001 (Order) by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because City of Malden d/b/a Malden Municipal Power and Light (Respondent) is in violation of Missouri Air Conservation Law, Chapter 643, of the Revised Statutes of Missouri (RSMo), and its implementing regulations. This Order is issued under Sections 643.060(4), 643.080, and 643.085, RSMo. Failure to comply with this Order is, by itself, a violation of the Missouri Air Conservation Law under Section 643.151.3, RSMo.

**FINDINGS OF FACT**

1. City of Malden owns and operates a power station, Malden Municipal Power and Light, located at 405 South Beckwith, Malden, Dunklin County, Missouri.
2. The Respondent operates subject to Missouri Air Conservation Regulation 10 CSR 10-6.065(5)(E)3.B. "Operating Permits," and Part 70 Operating Permit No.

OP2018-012, which states: "An installation's right to operate shall terminate upon the expiration of the permit, unless a complete permit renewal application is submitted at least six (6) months before the date of expiration, or unless the permitting authority takes final action approving an application for a permit renewal by the expiration date."

3. The Respondent's Part 70 Operating Permit No. OP2018-012 expired on January 29, 2023. The Respondent was required to submit a complete renewal application by July 29, 2022. The Department did not receive a complete renewal application for Part 70 Operating Permit No. OP2018-012 until September 22, 2022. As of January 29, 2023, the Respondent has been operating without a valid permit.

4. The amount of the administrative penalty is assessed according to the criteria of 10 CSR 10-6.230, "Administrative Penalties." From a gravity-based analysis, it has been determined the violation of 10 CSR 10-6.065(5)(E)3.B. is a moderate potential for harm and a moderate extent of deviation from the requirement. The violation of 10 CSR 10-6.065(5)(E)3.B. that occurred on January 29, 2023, was a moderate potential for harm because unpermitted operation causes the breakdown of the regulatory framework and the Department's ability to hold permit holders accountable. The violation was a moderate extent of deviation because the Respondent failed to submit a complete operating permit renewal application 6-18 months prior to expiration of the permit and did not receive a permit renewal prior to the expiration of the permit, resulting in the Respondent operating without a valid permit. Using the gravity-based matrix and finding the potential for harm as moderate and the extent of deviation as moderate, and considering adjustment factors including fairness and equity, the assessed penalty is \$3,750.

### **STATEMENT OF VIOLATIONS**

The Department finds that the following violations of the Missouri Air Conservation Law, Chapter 643, RSMo, and its implementing regulations have occurred, thereby subjecting the Respondent to penalties as described in Sections 643.151 and 643.085, RSMo.

5. On January 29, 2023, the Respondent's Part 70 Operating Permit No. OP2018-012 expired. The Respondent failed to submit a complete operating permit renewal application at least six months prior to the expiration of OP2018-012. Consequently, the Respondent's right to operate terminated and the Respondent is now operating without a valid operating permit, in violation of 10 CSR 10-6.065 "Operating Permits."

### **AGREEMENT**

6. The Department and the Respondent desire to amicably resolve all claims that the Department might bring against the Respondent for violation of the Missouri Air Conservation Law and regulations described above and within RNOV No. AP24015. The Department and the Respondent agree that this Order resolves only the specific violations described herein, that this Order shall not be construed as a waiver or a modification of any requirements of the Missouri Air Conservation Law and regulations or any other source of law, and that this Order does not resolve any claims based on any failure by the Respondent to meet the requirements of this Order, or claims for past, present, or future violations of any statutes or regulations other than those specifically referenced herein.

7. The provisions of this Order apply to and bind the parties executing this Order, their agents, subsidiaries, successors, assigns, affiliates, and lessees, including the

officers, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, do not affect the responsibilities of the Respondent under this Order. If the Respondent sells or otherwise transfers its business or the real estate that is the situs of the violation referenced in this Order, then the Respondent shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Respondent under this Order in writing. In such event, the Respondent shall provide 30 days prior written notice of such assumption to the Department.

8. The Respondent agrees to comply with the Missouri Air Conservation Law and regulations and, in particular, to refrain from further violations of 10 CSR 10-6.065(5)(E)3.B., for all future operations.

**PENALTY**

9. To resolve in part the violation listed under Statement of Violations, the Respondent agrees to a penalty in the amount of \$3,750, payment of which shall remain suspended on the condition that there are no further violations of this Order, the Missouri Air Conservation Law or its regulations during the two-year period following the effective date of this Order. The Air Pollution Control Program is fully suspending the penalty based on the Respondent's voluntary assistance resolving wastewater violations by Dunklin County #1 and the Respondent's full cooperation with the Department. Failure to comply may result in the immediate imposition of the entire penalty amount. Upon signing this Order, the Respondent shall mail the signed Order to:

Compliance and Enforcement Section  
Air Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

10. If the \$3,750 suspended penalty ever becomes due then the Respondent shall pay \$3,750 within 15 business days of written demand by the Department, by certified check made payable to the "Dunklin County Treasurer, as trustee for the Dunklin County School Fund." The Respondent shall mail any future payments to:

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

#### **CORRECTIVE ACTIONS BY RESPONDENT**

To satisfy this Order, the Respondent agrees to the following:

11. The Respondent must cooperate with the Department's Air Pollution Control Program's Permitting Section for the timely issuance of the new operating permit.

12. The Respondent must continue to operate under Part 70 Operating Permit No. OP2018-012, subject to all permit conditions and requirements, until the new operating permit is issued. Failure to comply with all conditions in Part 70 Operating Permit No. OP2018-012 constitutes a violation of this Order and a violation of the Missouri Air Conservation Law and regulations.

#### **OTHER PROVISIONS**

13. This Order resolves the claims of the Department for the specific violations and concerns stated herein through the effective date of this Order.

14. The Department reserves all legal and equitable remedies available to enforce the provisions of this Order, except as stated in the previous paragraph. This Order shall not be construed to limit the rights of the Department to obtain penalties or injunctive relief under the Clean Air Act, the Missouri Air Conservation Law, or the implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the previous paragraph. The Department further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare of the environment arising at, or posed by the Respondent, whether related to the violations addressed in this Order or otherwise.

15. By signing this Order, all signatories assert that they have read and understand the terms of this Order, that they had the opportunity to consult with counsel, and that they have the authority to sign this Order on behalf of their respective parties.

16. This Order shall be construed and enforced according to the laws of the State of Missouri, and the terms stated herein shall constitute the entire and exclusive agreement of the parties hereto with respect to the matters addressed herein. This Order may not be modified orally.

17. If any provision of this Order is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. Penalty payments under this Order, including any stipulated penalties, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i). For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code,

26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), certain costs incurred by performance of this Order may qualify as restitution, remediation, or costs required to come into compliance with the law (Costs). **Malden d/b/a Malden Municipal Power and Light** is solely responsible for providing to the Department complete, accurate, and necessary information by the close of any applicable tax year to complete a Form 1098-F. 26 CFR § 1.6050X-1 requires the Department to file a Form 1098-F if it reasonably believes that the sum of the Costs and penalty is \$50,000 or more. The Department will not file a form 1098-F unless the Department is aware or has reason to believe the sum of the Costs and penalty is \$50,000 or more; it is the Respondent's responsibility to tell the Department if the sum of the Costs and penalty is \$50,000 or more. The Respondent is required by law to give its taxpayer identification number (TIN) to the Department for the Form 1098-F; the Respondent may be penalized by the U.S. Internal Revenue Service if it fails to furnish its TIN pursuant to sections 26 CFR §§ 301.6723, 301.6724(d)(3), and any other applicable law. However, failure to provide the TIN does not trigger penalties under the AOC or state law. The Department shall not be responsible for any incomplete or inaccurate information nor the results of any tax audit. No portion of any penalties paid pursuant to this Order may be used to reduce any federal or state tax obligations, except as authorized by the Internal Revenue Service.

19. Nothing in this Order excuses the Respondent for any future non-compliance with the laws of the State of Missouri, and the Department expressly reserves the right to address future noncompliance in any manner authorized by law.

20. This Order will become final, effective, and fully enforceable upon the date the Department signs it. The Department shall send a fully executed copy of this Order to the Respondent for their records.

**CORRESPONDENCE AND DOCUMENTATION**

Correspondence or documentation with regard to this Order shall be directed to the following persons, subject to change upon written notification from either party:

For the Department:

Denise Marcum  
Compliance and Enforcement Section  
Air Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

For the Respondent:

Drew Miller  
Power Plant Superintendent  
Malden Municipal Power and Light  
405 South Beckwith  
Malden, MO 63863

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Signature page follows.



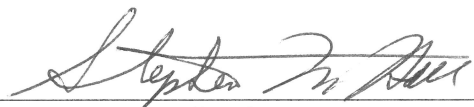
**RIGHT OF APPEAL**


By signing this Order, the Respondent waives any right to appeal, seek judicial review, or otherwise challenge this Order pursuant to Sections 643.130, 643.085, or 621.250, RSMo, Chapters 536, 643, or 640, RSMo, 10 CSR 10-1.030, or any other source of law.

AGREED TO AND ORDERED:

**MISSOURI DEPARTMENT OF  
NATURAL RESOURCES**

**City of Malden d/b/a  
Malden Municipal Power  
and Light**

  
\_\_\_\_\_  
Stephen M. Hall, Director  
Air Pollution Control Program

  
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Drew Miller  
Power Plant Superintendent

Date: 1-29-2025

Date: 01/15/2025