

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **West Broadway Swim Club, Inc.** ) **Order No. 2017-WPCB-1480**  
 )  
 **Proceeding under the** )  
 **Missouri Clean Water Law** )

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**ABATEMENT ORDER ON CONSENT**

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**CERTIFIED MAIL # 7016 0600 0000 2593 0348**  
**RETURN RECEIPT REQUESTED**

**TO: Mindy Cherrington, President**  
**West Broadway Swim Club, Inc.**  
**P.O. Box 78**  
**Columbia, MO 65205**

**RECEIVED**  
**MAY 16 2017**  
Water Protection Program

**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT**

The issuing of this Abatement Order on Consent (AOC) No. 2017-WPCB-1480, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because West Broadway Swim Club, Inc. (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. Additional enforcement action 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 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 non-profit corporation registered and in good standing with the Missouri Secretary of State that owns a private community recreational aquatics club (swim club) located in the NE ¼, NW ¼, NW ¼, Section 16, Township 48 North, Range 13 West, in Boone County, Missouri. The swim club consists of two pools, one large, main pool and one small secondary pool.

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

3. On September 6, 2016, Department staff conducted an investigation of the swim club and its immediate surroundings in response to an Environmental Concern received by the Department on that same day. During the investigation, staff observed dead fish in the tributary to Harmony Creek from the swim club location to approximately 0.57 miles downstream at the Bellwood Estates Subdivision entrance on North Strawn Road.

4. Staff did not observe dead fish upstream of the swim club or further downstream of the intersection of Bellwood Estates Subdivision and North Strawn Road. During the investigation, staff contacted Mr. Charles Bever, Vice President with the Respondent's Board, who confirmed the swim club's pool had been drained into the tributary on September 5, 2016, the day prior to the investigation. Mr. Bever informed Department staff that the Respondent did not have authorization to drain the pool into the City of Columbia's sanitary sewer system and added that the pool water had been dechlorinated and the pH had been neutralized as much as possible, to 7.2, before the water had been drained. Also on September 6, 2016, Missouri

Department of Conservation (MDC) staff conducted an investigation of the fish kill and determined the cause of the fish kill was chlorine toxicity and identified the source as swimming pool drainage into the tributary to Harmony Creek. During the investigation, MDC staff observed dead fish, invertebrates and annelids in a 0.2-mile stretch of the tributary to Harmony Creek. MDC staff observed Darters, Minnows, Stonerollers, Sunfish, worms and crayfish, totaling 273 killed, as a result of the discharge. MDC staff calculated damages of \$48.17 for the value of the fish kill.

5. On September 7, 2016, Department staff contacted Mr. Bever by telephone. Mr. Bever stated that he estimated over 100,000 gallons of water has been drained into the tributary starting at approximately 4:00 p.m. on Monday, September 5, 2016, and finishing at approximately 10:00 a.m. on Tuesday, September 6, 2016. Mr. Bever also stated that the pool manager had checked the pH and chlorine level the day the pool was drained and had results of 7.4 for pH and 1.5 parts per million combined chlorine (total chlorine minus free chlorine).

6. The Missouri Water Quality Standards Acute Criteria for Total Residual Chlorine contained in Table A of 10 CSR 20-7.0 is 19 micrograms per liter or 0.019 ppm.

7. On September 19, 2016, the Department issued Notice of Violation (NOV) No. NER160199 to the Respondent for violations observed during the September 6, 2016, investigation. The investigation report that accompanied the NOV required the Respondent to take corrective actions to address the violations by submitting an application for a General Permit (Permit) to discharge pool water in the future and submitting a written response explaining what actions have been taken to correct the violations and prevent a reoccurrence. On October 14, 2016, the Department received an application for a Permit and on November 11, 2016, the Department issued a Permit to the Respondent.

8. Section 644.096, RSMo, authorizes 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.

9. The Department dispatched employees to investigate the September 6, 2016, environmental concern 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 \$1,057.92. In addition, MDC incurred costs and expenses in the amount of \$671.70, which includes the value of aquatic life killed.

#### **STATEMENT OF VIOLATIONS**

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

10. Operated, used or maintained a water contaminant source, chlorinated pool water, which discharged to a tributary to Harmony Creek, waters of the state, without a Permit in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A);

11. Discharged water contaminants into waters of the state which reduced the quality of waters below Water Quality Standards established by the Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031 or applicable subsections of 10 CSR 20-7.031; and

12. Caused pollution of a tributary to Harmony Creek, waters of the state, or placed or caused or permitted to be placed, water contaminants 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

13. 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.

14. 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.

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. 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 an administrative penalty in the amount of \$6,000. The Department and Respondent further agree that \$1,800 of the civil penalty shall be paid upfront and the remaining \$4,200 shall be suspended as described in Paragraph 16 below. The payment shall be in the form of a check made payable to the "Boone County Treasurer, as custodian of the Boone County School Fund." The checks for the penalty and costs and damages 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

16. The suspended penalty described in Paragraph 15 in the amount of \$4,200 shall be suspended for a period of two years from the execution of this AOC upon the condition that the

Respondent does not violate the terms of the AOC. Upon determination that the Respondent has failed to meet the terms of this AOC the Department shall send a written demand for the suspended penalty to the Respondent. The Respondent shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 15.

17. The Respondent agrees and is ordered to pay the state's investigative costs and damages in the amount of \$1,729.62 in the form of a separate check made payable to the "State of Missouri." The check shall be delivered as provided in Paragraph 15 of this AOC.

18. The Respondent agrees and is ordered to operate and maintain the swim club pool at all times in compliance with the MCWL.

19. The Respondent agrees and is ordered to maintain Permit coverage for all future discharges from the swim club and to comply with all effluent limits, monitoring requirements, and conditions contained in the Permit.

#### **SUBMISSIONS**

20. 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**

21. Should the Respondent fail to meet the terms of 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	\$50 per day
31 to 90 days	\$100 per day
91 days and above	\$250 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

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 or 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.

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

**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 7<sup>th</sup> day of May, 2017

Mindy Cherrington  
Mindy Cherrington, President  
West Broadway Swim Club, Inc.

Agreed to and so Ordered on this 18<sup>th</sup> day of May, 2017

David J. Lamb  
DEPARTMENT OF NATURAL RESOURCES  
David J. Lamb, Acting Director  
Water Protection Program



c: Ms. Diane Huffman, Environmental Protection Agency  
Ms. Irene Crawford, Director, Northeast Regional Office  
Missouri Clean Water Commission  
General Counsel's Office  
Accounting Program