



**MISSOURI**  
DEPARTMENT OF  
NATURAL RESOURCES

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February 1, 2023

Tom Ratermann  
Boone County Regional Sewer District  
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Columbia, MO 65201

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314 E. High Street  
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Dear Tom Ratermann:

Thank you for your comments dated May 23, 2022, concerning the draft permit modification to transfer ownership for the Hallsville Wastewater Treatment Facility, Missouri State Operating Permit No. MO-0104990. Following are our responses.

**Comment 1 – A (paraphrased, with footnotes omitted):** *The District's Regulations Preclude Granting The Application and Issuing The Modification*

*Here, the CWC's approval of the District as a L2CA endorsed the District's regulations and its long-term planning authority in Boone County under Chapter 204 and 250 RSMo.*

*The District's Regulations distinguish between private sanitary sewer systems and private sanitary sewer systems within Boone County, generally prohibiting any person from operating a private sanitary sewer system in Boone County.<sup>6</sup> Section 2.7.4.1 states:*

*Unless exempt from the provisions of these regulations, no owner or other person shall operate any wastewater collection system and/or treatment facility not owned by the District except under an operating permit issued by the District.<sup>7</sup>*

*In addition, the Regulations require non-exempt wastewater collection systems and treatment facilities to be conveyed to the District or connected to a District owned or operated public sanitary sewer.<sup>8</sup>*

*This regulation further requires DNR to deny transfer of an existing operating permit when the District requires an operator to connect under its Regulations.*

*Work-in-Progress*  

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*Hallsville*



**Response 1 – A:** It is not within the authority of the Missouri Department of Natural Resources (Department) as granted in the Missouri Clean Water Law to deny a permit on the basis that the permit issuance may violate county regulations or local ordinances. Those laws exist independently of the Missouri Clean Water Law and the Department does not enforce sewer district regulations anywhere in the state, including those established by the Boone County Regional Sewer District (District). The Missouri Clean Water Law provides that the Department must issue permits based on compliance with federal requirements and state statutes and regulations.

Although the Department does not enforce District regulations or deny or issue permits based on District regulations, the Department acknowledges that the District included its then-existing regulations in its 2009 application to the Missouri Clean Water Commission (Commission) for Level 2 Continuing Authority. The regulations at the time included an earlier version of § 2.6.2.3, compared to the version quoted in the District’s comment letter, which had been recently amended, in February 2022.<sup>1</sup> The District has not submitted any amendments of regulations to the Commission, and therefore the Department reviewed the District’s regulations in effect at the time of the Commission’s approval of the District as a Level 2 Continuing Authority. Neither the documents from the 2009 application nor the Commission minutes related to this matter demonstrate any discussion regarding a prohibition against a municipal facility being sold at all, whether or not to a private organization.

Further, to the extent the District’s regulations purport to require the Department to take any specific action, in this case to deny transfer of an existing operating permit when the District would require the applicant to connect, the Department respectfully disagrees that these regulations affect the Department’s authority in any way. The federal Clean Water Act and the Missouri Clean Water Law are the substantive sources of law that apply to the Department’s permit decision at issue here, and any regulations passed by political subdivisions of the State or by counties cannot supersede federal law or state statutes. The Department agrees that the Commission’s approval endorsed the District’s long-term planning authority within the jurisdiction of its regional Level 2 area. However, the Department’s position is that its decision to issue the permit is consistent with the area-wide management plan that was approved in the 2009 application and, although not required, is consistent with the District’s regulations that were approved at that time, because the Hallsville treatment plant was not listed in the District’s area-wide management plan. As explained in the July 1, 2009 CWC transcript, the goals of the District’s plan were to close and consolidate small outdated facilities and regionalize the treatment of these collection systems to larger District-owned plants. Hallsville was not listed in the plan as one of the plants to be consolidated.

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<sup>1</sup> <https://bcrsd.com/wp-content/uploads/2022/05/2-Chapter-Two-User-Regs-revised-2-2022-Private-sanitary-sewer-systems.pdf>



**Comment 1 – B (paraphrased, with footnotes omitted):** *While owned and operated by Hallsville under a MSOP from DNR, the Hallsville Facility is exempt from the District's Regulations.*

*However, MAWC, unlike Hallsville, is a private entity. MAWC's acquisition of the Hallsville Facility converts the facility from an exempt municipal or public sewer system to a private system that is subject to the District's regulations unless the District waives its authority. The District has repeatedly indicated that it will not waive its authority and has attempted to purchase the Hallsville Facility. Hallsville instead entered into the Agreement with MAWC. Under these circumstances, the Agreement violates the District's Regulations, is void for illegality of consideration, and MAWC is not a lawful owner of the Hallsville Facility. Therefore, MAWC cannot and does not meet the requirement in 10 CSR 20-6.010 (2)(A) and (11) to submit an Application signed by a lawful new owner. Accordingly, DNR cannot lawfully grant the Application or issue the Modification.*

**Response 1 – B:** On January 6, 2010, the Commission approved, following the Department's recommendation, the joint request of the Boone County Regional Sewer District and the city of Columbia for designation as a Continuing Authority Level 2 pursuant to 10 CSR 20-6.010(3)(B) and (C), on the condition that they hold a public meeting annually and submit a Level 2 Plan by July 1, 2013.<sup>2</sup>

In the joint application for Level 2 Continuing Authority status, which was attached to a letter dated August 10, 2009, the District specifically requested that the Commission grant "Level 2 continuing authority in the unincorporated areas of Boone County as they exist at the date of this Commission's approval." This was repeated to the Commission, according to the transcript of the January 6, 2010 Commission meeting, in which the stated regionalization plan was for the city to provide sewer services inside the city limits and in any subsequently annexed area not served by the District, and for the District to provide regional sewer services in the unincorporated areas of Boone County as they exist at the date of this Commission's approval.<sup>3</sup>

Also in the January 6, 2010 transcript, a representative for the District stated that "all the incorporated small towns that have their own responsibility—unless they want us to assume their responsibility under our rights as a District—they are still autonomous."<sup>4</sup>

The initial Tier 2 proposal was focused on approximately 50 privately owned wastewater systems, which the District explained were mostly lagoons that were rapidly becoming obsolete due to the disinfection standard and the age of the facilities.<sup>5</sup> The District's 2009 plan did not include the Hallsville treatment facility as a proposed facility to regionalize and close.

The Department does not have the authority to determine the "lawfulness or legality" of the purchase or sale of any property, even when that property is or contains a regulated water

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<sup>2</sup> Transcript of Missouri Clean Water Commission meeting, Jan. 6, 2010, testimony of Refaat Mefrakis, at 18:19–18:23; testimony of David Shorr, at 27:13–27:17; and discussion at 30:10–31:16.

<sup>3</sup> *Id.*, testimony of Refaat Mefrakis, at 19:19–20:1.

<sup>4</sup> *Id.*, testimony of David Shorr, at 29:15–29:19.

<sup>5</sup> *Id.*, testimony of Tom Ratermann, at 74:24–75:3.





contaminant source. The Department also does not have the authority to enforce, regulate, or intervene into agreements between two or more other government entities or between a private company and a local government entity. As part of the review of the application to transfer ownership of the wastewater operating permit, the Department reviewed county records and the Certificate of Convenience and Necessity (CCN), which show MAWC is the lawful owner of the property. The next step in reviewing the operating permit transfer application was for, the Department to determine whether the applicant was the appropriate Continuing Authority.

MAWC meets the definition of a “person” as defined in Section 644.016(15), RSMo, and, as stated above, the Department has determined that MAWC is the owner and operator of the Hallsville wastewater treatment facility. Pursuant to 10 CSR 20-6.010(2)(A), this person shall be designated as the continuing authority, and must submit an application to transfer the operating permit in accordance with 10 CSR 20-6.010(11). However, this is not the end of the inquiry, because the Department must still ensure that there is no available higher level authority or that one of the conditions of 10 CSR 20-6.010(2) have been satisfied that allow permit issuance to a lower level authority.

The Department has determined that MAWC has sufficiently demonstrated that MAWC is the appropriate continuing authority because of a to-scale map showing that all parts of the legal boundary of the WWTF property to be connected are beyond 2000 feet from the collection system operated by the higher preference authority, the District, in accordance with 10 CSR 20-6.010(2)(C)3., and because there is no conflict with an area-wide management plan. The Department acknowledges that 10 CSR 20-6.010(2)(C) precludes the use of a lower level authority when it conflicts with an area-wide management plan approved by EPA under Section 208 of the federal Clean Water Act or by the Commission. However, the Department has not located any documents that include the Hallsville WWTF in an area-wide management plan, and therefore, the Department has not identified any such conflict.

The application submitted by MAWC is a complete application and meets the requirements of 10 CSR 20-6.010(2) and -(11).

**Comment 2 (paraphrased, with footnotes omitted):** *1. The District's Has Jurisdiction Over The Hallsville Facility*

*The District undisputedly is a higher level continuing authority than MAWC, with the District being a L2CA and MAWC being a L3CA. MAWC's Application seeks to use a lower preference continuing authority, instead of the District. The District's application for L2CA status approved by the CWC covered all areas of Boone County not served by a municipal system in Boone County. Accordingly, the District's L2CA jurisdiction approved by the CWC undisputedly includes all unincorporated areas of Boone County. During the July 1, 2009 CWC meeting, there was a discussion about whether the District's L2CA jurisdiction would include municipal systems if a municipality chooses to cease operating its system.<sup>13</sup> This discussion shows that the District's L2CA jurisdiction includes incorporated areas of Boone County in a situation where a municipality decides to forgo its statutory right to own and operate its own system. This is the situation with respect to the Hallsville Facility --- Hallsville decided it no longer wanted to own and operate the Hallsville Facility. Under these circumstances, the Hallsville Facility is within*



*the District's L2CA jurisdiction without regard to its location within Boone County. Even if this were not the case the District's L2CA could be found to be limited to unincorporated areas of Boone County, the District still would have jurisdiction over the Hallsville Facility because the entire wastewater treatment facility and portions of the collection system are located in unincorporated areas of Boone County.*

**Response 2:** The Department does not agree that the District's Level 2 authority automatically includes incorporated areas of Boone County if a municipality forgoes its statutory right to own and operate its own system. The discussion in the Commission minutes from July 1, 2009, do not address this particular scenario, and even if it did, there was no acknowledgement of this issue in the Commission's January 2010 approval. When approved by the Commission as a Level 2 continuing authority, the District's pending application sought authority only over the unincorporated areas of Boone County.

The Department agrees that the Hallsville WWTF and a portion of its collection system are located in unincorporated areas of Boone County, and that the entire WWTF and collection system are now owned by a Level 3 authority and not the City of Hallsville. However, the collection system within the City of Hallsville is still in an incorporated area, and those portions of the collection system produce the vast majority of the flow comprising the sewer services. And as stated above, in the application for Level 2 continuing authority, the District expressly sought approval to provide regional sewer services "in the unincorporated areas of Boone County as they exist at the date of this Commission's approval." The Level 2 approval is not dispositive of this issue, because there is no conflict with an area-wide management plan, as stated above. Therefore, the Department has no basis to deny the permit transfer or require the City to connect to the District as part of this permit decision.

**Comment 3:** *2. The District is Available To Own And Operate The Hallsville Facility And The Application Conflicts With An Area-Wide Management Plan.*

*10 CSR 20-6.010(2)(C) prohibits the grant of an application proposing to use a lower preference continuing authority when a higher preference continuing authority is available and the application conflicts with an area-wide management plan approved by the CWC. As indicated in the Public Notice for the Modification, DNR is the administrative agent for the CWC. The term "area-wide management plan" is not defined in 10 CSR 20-6.010. Given that the entire purpose of DNR's hierarchy of continuing authorities is to prevent a lower-preference continuing authority from interfering with a long-term plan or regulatory authority of a higher preference continuing authority, the term "area-wide management plan" includes an L2CA's regional plan. To interpret the term otherwise would lead to absurd results and would render 10 CSR 20-6.010 arbitrary, capricious, nonsensical, unlawful, and void.*

*Here, the District has submitted to DNR a long-term regional plan that includes a facility plan for the Hallsville area. This plan calls for the elimination of the Hallsville Facility, and either Hallsville's or the District's ownership and operation of the Hallsville Facility until elimination is accomplished. The District has notified Hallsville, MAWC and DNR that it is available to own and operate the Hallsville Facility. DNR, in its role as the administrative agent for the CWC, has acknowledged that the District is available to own and operate the Hallsville Facility and*



*indicated that the District's plan will be approved. MAWC's Application proposing MAWC as the owner and operator of the Hallsville Facility plainly conflicts with the District's area-wide management plan and cannot lawfully be granted.*

**Response 3:** The Department agrees that 10 CSR 20-6.010(2)(C) does not allow permit issuance to a lower preference authority if it would conflict with an area-wide management plan that was approved by the Commission.

However, the Department has reviewed the District's 2014 preliminary area-wide management plan and other documents submitted to the Department in accordance with 10 CSR 20-6.010(2)(F), and found no mention of such a plan to create a regional treatment plant which could ultimately accept the wastewater from the Hallsville WWTF and result in elimination of that treatment plant.

Prior to future permit renewals, the Department will re-evaluate continuing authority, including consideration of whether regionalization and elimination of this treatment plant is possible.

**Comment 4:**

*3. The Distance Exception Is Not Met Because The District Is Available To Own And Operate The Hallsville Facility.*

*Even if there was no conflict with an area-wide management plan that precluded the approval of the Application under 10 CSR 20-6.010(2) and (11), MAWC has not demonstrated that any of the seven exceptions to the rule requiring use of a higher-preference continuing authority apply. The distance exception in 10 CSR 20-6.010(2)(C)3 is inapplicable in a situation like this where the higher level continuing authority is available to own and operate the WWTF for which the Application is submitted. In such a situation, the higher level continuing authority is the proper permittee and the permit application must be denied. To interpret the term otherwise would lead to absurd results and would render it arbitrary, capricious, nonsensical, unlawful, and void.*

*In addition, DNR has not found and MAWC has not demonstrated that any of the other exceptions in 10 CSR 20-6.010(2)(C) apply.*

**Response 4:** State regulation 10 CSR 20-6.010(2) does not preclude a permit applicant from meeting one of the seven options in 10 CSR 20-6.010(2)(C) merely because a higher authority wants to own and operate the facility. A waiver by the higher authority is a sufficient—but not a necessary—condition for a lower authority to be the continuing authority. The distance exception in 10 CSR 20-6.010(2)(C)3 is available and the permit applicant provided documentation confirming that this exception applies here.



## Summary

The Department has carefully considered the comments submitted during the public notice of the Hallsville permit. However, for the reasons stated in this letter, the Department is issuing the modification request to transfer ownership of the Hallsville WWTF operating permit to MAWC.

The Department does not have the authority to determine the “lawfulness or legality” of the purchase or sale of property. However, the Department thoroughly reviewed the CCN and county assessment records to verify the property ownership and to verify permit transfer is being conveyed to the “person,” as defined by Section 644.016(15), RSMo, that was listed as the owner and continuing authority on the application.

The applicant satisfied 10 CSR 20-6.010(2)(C)3. by demonstrating the applicability of one of the regulatory options that allow use of a lower preference continuing authority when a higher preference continuing authority is available. Notably, only one of the options must be met, which means it is not necessary in all instances for the higher authority to waive its authority for a lower preference authority to be approved as the continuing authority.

The Level 2 application to the Commission specifically states that the District will provide regional services in the unincorporated areas of Boone County, as they exist at the date of the Commission’s approval. The area containing the Hallsville WWTF was incorporated at the time of approval. In addition, the Department reviewed the District’s preliminary area-wide management plan and other documents submitted to the Department and found no long-term plan to connect the Hallsville WWTF to a treatment system owned by the District.

The Department reviewed the District regulations that were submitted with the Level 2 application in 2009. The Department did not find information in the District regulations in existence in 2009 or in the Commission minutes that specifically address the possible private sale of a publicly owned treatment works that was not part of the District’s jurisdiction or area-wide management plan. The Department cannot enforce District regulations or issue or deny permits based on District regulations. The Department is not bound by District regulations and is not required to take specific actions that purport to be required by District regulations.

In summary, due to the comments received and the reasons explained above, the Department will issue the permit modification request. The Department received a complete application from MISSOURI-AMERICAN WATER COMPANY that complied with 10 CSR 20-6.010 and all other applicable requirements.





We appreciate your comments on the draft permit and hope this letter adequately responds to your concerns. The Department is willing to participate in future conversations with the District and MISSOURI-AMERICAN WATER COMPANY to the extent state law provides a framework for productive discussions. If you have any further questions about this permit decision, please feel free to contact Heather Martin by phone at 573-751-6569, by email at [heather.martin@dnr.mo.gov](mailto:heather.martin@dnr.mo.gov) or by mail at Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102.

Sincerely,

WATER PROTECTION PROGRAM



John Hoke, Branch Chief  
Water Protection Program

JH:hmv

