

**BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF MISSOURI**

**IN THE MATTER OF:**

Gessling Farms LLC, Confined Animal Feeding  
Operation

No. 2012-WPCB-1192

**SERVE:**

Mr. Dennis Gessling, Owner/Operator  
Gessling Farms

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuance of this Abatement Order on Consent (AOC) No. 2012-WPCB-1192 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Confined Animal Feeding Operation (CAFO) serving Gessling Farms LLC (Gessling Farms) was in violation of the Missouri Clean Water Law (Law) and its implementing regulations. This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the Law. 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 of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Gessling Farms of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any, including future, violations of the Law, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**II. FINDINGS OF FACT**

A. Mr. Dennis Gessling owns and operates a Class IC CAFO consisting of four (4) barns and one (1) lagoon, known as Gessling Farms. The CAFO is located in NE ¼, SE ¼, Section 9, Township 50 North, Range 19 West, in Saline County. Each barn's design capacity is 960 swine over 55 pounds. The total design capacity of the CAFO is 3,840 swine over 55 pounds or 1,536 Animal Units. The CAFO lagoon has a design

flow of 7,771 gallons per day and a sludge production rate of 22 tons per year. The lagoon operates pursuant to Missouri State Operating Permit (MSOP) number MO-G010524 (operating permit). Process waste from the lagoon is collected and reused as fertilizer by land application to agricultural fields pursuant to the requirements and conditions of the operating permit. The CAFO is in the watershed of an unnamed tributary to Pierre Fleche Creek. Pierre Fleche Creek is a Class "C" stream with beneficial uses for livestock and wildlife watering, protection of aquatic life, and whole body "B" contact recreation.

- B. Gessling Farms' land application site drains to Pierre Fleche Creek. Pierre Fleche Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- C. Agricultural waste is a water contaminant as the term is defined in Section 644.016(23), RSMo.
- D. On January 9, 2012, Department staff conducted a compliance inspection at Gessling Farms in conjunction with an investigation of an environmental report that swine effluent was evident in Pierre Fleche Creek. During the inspection of Gessling Farms' CAFO, Department staff observed land applied wastewater from Gessling Farms' lagoon entering an unnamed tributary to Pierre Fleche Creek. The inspector documented swine effluent in the unnamed tributary to Pierre Fleche Creek outside the boundary of Mr. Gessling's property. The inspector could not determine the extent the swine effluent traveled downstream because the inspector did not have permission to enter the adjoining property. Water quality analysis of a sample taken directly below the location where the swine effluent entered the unnamed tributary to Pierre Fleche Creek showed 404 milligrams Ammonia per liter water, which exceeded the acute criteria for total Ammonia for warm-water fisheries. The Department inspector also documented the CAFO operator failed to conduct inspections and adequately maintain records required by the operating permit.
- E. On January 30, 2012, the Department issued Notice of Violation (NOV) number NER201211114035058 to Mr. Dennis Gessling for failing to properly operate and maintain the CAFO, causing pollution to waters of the state, and discharging water contaminants into the unnamed tributary to Pierre Fleche Creek.
- F. As a result of the above investigation, the State incurred costs for staff time in the amount of one-thousand four-hundred sixty-two dollars and thirty-two cents (1,462.32).
- G. 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 Section 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 the State because of the violation.

H. Section 644.076.1, RSMo, makes it unlawful to violate the Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

### **III. CONCLUSIONS OF LAW**

Violations of the Law and its implementing regulations alleged herein and found to have been committed by Mr. Gessling at the CAFO are as follows:

1. Failed to operate the CAFO as a no-discharge operation as required by effluent limitations and monitoring requirements of the operating permit in violation of Sections 644.076.1, RSMo;
2. The operation failed to properly monitor the land application area as required by the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard referenced in the operating permit in violation of Section 644.076.1, RSMo;
3. Failed to conduct inspections and maintain records of lagoon levels, water lines, and all stormwater diversion devices as required by the operating permit in violation of Sections 644.076.1, RSMo, 10 CSR 20-6.300(3) (D)1, and CSR 20-6.300(3)(E)1;
4. Caused pollution to an unnamed tributary to Pierre Fleche Creek, or placed or caused or permitted to be placed a water contaminant, swine effluent, where it was reasonably certain to cause pollution of the waters of the state in violation of Sections 644.051.1(1) and 644.076.1, RSMo;
5. Discharged water contaminants into waters of the state which reduced the quality of such water below general and specific 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; and
6. The operation failed to provide an accurate lagoon depth level marker in violation of Sections 10 CSR 20-8.200(8)(G) and 10 CSR 6.300(4)(D).

### **IV. AGREEMENT**

- A. The Department and Mr. Gessling desire to amicably resolve all claims that might be brought against Mr. Gessling for the violations alleged above in Section III, Conclusions of Law, without Mr. Gessling admitting the validity or accuracy of such claims.
- B. 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 Mr. Gessling under this AOC. If Mr. Gessling sells or otherwise transfers the CAFO, then Mr. Gessling shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Mr. Gessling under this AOC in writing. In such event, Mr. Gessling shall provide thirty (30) days prior written notice of such assumption to the Department.

- C. Mr. Gessling, 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 two-thousand five-hundred dollars and zero cents (\$2,500.00). The civil penalty shall be paid in the form of certified checks or cashier's checks made payable to "Saline County School Treasurer, as custodian of the Saline County School Fund." A check in the amount of two-thousand five-hundred dollars and zero cents (\$2,500.00) is due and payable upon execution of this AOC by Mr. Gessling. The check and signed copy of the AOC shall be delivered to:

Accounting Program  
Missouri Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0176

- D. Mr. Gessling agrees to pay the state's investigative costs in the amount one-thousand four-hundred sixty-two dollars and thirty-two cents (\$1,462.32) in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of one-thousand four-hundred sixty-two dollars and thirty-two cents (\$1,462.32) is due and payable upon execution of this AOC by Mr. Gessling. The check shall be delivered to:

Accounting Program  
Missouri Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0176

- E. Mr. Gessling agrees to conduct inspections and properly maintain all records as required by the operating permit and submit its annual reports to the Department by February 15<sup>th</sup> for the previous calendar year.
- F. Mr. Gessling agrees to verbally notify the Department within twenty-four (24) hours from the time Mr. Gessling becomes aware of any discharge from the production area, lagoon, or land application site and submit a written response to the Department's Northeast Regional Office at 1709 Prospect Dr., Macon, MO 63522, within five (5) days from the time Mr. Gessling becomes aware of the discharge explaining the corrective actions taken to resolve the discharge and prevent future discharges.
- G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, Mr. Gessling 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; iii) and proposing an extension to the deadline. Within five (5) days of notifying the Department, Mr. Gessling 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 Mr. Gessling's right to request an extension and may be grounds for the Department to deny Mr. Gessling an extension.

- H. Should Mr. Gessling fail to meet the terms of this AOC, including the terms set out in Paragraph C through Paragraph H, Mr. Gessling shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Saline County Treasurer, as custodian of the Saline County School Fund.*" Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program  
Missouri Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0176

- I. No portion of the penalties paid pursuant to this AOC may be used to reduce the Gessling Farms' or Mr. Gessling's federal or state tax obligation.
- J. Nothing in this AOC forgives Mr. Gessling 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 any noncompliance 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 within are 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.
- K. 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.
- L. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to Mr. Gessling for his records.

M. Mr. Gessling shall comply with the Law, Chapter 644, RSMo, and its implementing regulations at all times in the future.

**V. RIGHT OF APPEAL**

By signing AOC No. 2012-WPCB-1192, Mr. Gessling waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC No. 2012-WPCB-1192 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

**VI. CORRESPONDENCE AND DOCUMENTATION**

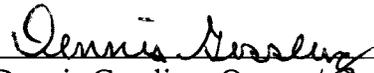
Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

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

Agreed to and Ordered this 24 day of August, 2012

  
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for John Madras, Director  
Water Protection Program  
Missouri Department of Natural Resources

Agreed to and Ordered this 9th day of August, 2012

  
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Dennis Gessling, Owner / Operator  
Gessling Farms

Copies of the foregoing served by certified mail to:

Mr. Dennis Gessling, Owner/Operator CERTIFIED MAIL:  
Gessling Farms  
23424 Pecan Ave.  
Marshall, MO 65340

- c. Ms. Diane Huffman  
Chief, NPDES and Facilities Management Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region VII  
901 North Fifth Street  
Kansas City, KS 66101

Ms. Irene Crawford  
Northeast Regional Office  
1709 Prospect Dr.  
Macon, MO 63552

Mr. Refaat Mefrakis  
Unit Chief, Engineering Section  
P.O. Box 176  
Jefferson City, MO 65102

Dr. Samuel M. Hunter, Chair  
Missouri Clean Water Commission  
P.O. Box 984  
216 Tanner Street  
Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice-Chair  
Missouri Clean Water Commission  
Drury University  
900 N. Benton  
Springfield, MO 65802

Mr. John Cowherd, Commissioner  
Missouri Clean Water Commission  
1303 Deer Lane  
Mount Vernon, MO 65712

Mr. Buddy Bennett, Commissioner  
Missouri Clean Water Commission  
7361 Summer Azure Lane  
Higginsville, MO 64037

Mr. Samuel D. Leake, Commissioner  
Missouri Clean Water Commission  
41690 Harrison Trail  
Perry, MO 63462

Ms. Wallis Warren, Commissioner  
Missouri Clean Water Commission  
2671 Jefferiesburg Road  
Beaufort, MO 63013

Mr. Dennis Wood, Commissioner  
Missouri Clean Water Commission  
P.O. Box 112  
Kimberling City, MO 65686