

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Twin Hills Farms, LLC)
)
 and) **Order No. 2013-WPCB-1238**
)
 Mr. Jody Shelenhamer)
)
 and)
)
 Robin J. Shelenhamer Trust)
)
 Proceeding under the)
 Missouri Clean Water Law)

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

SERVE BY UNITED POSTAL SERVICE NEXT DAY AIR
1Z6677504444859292

TO: Mr. Jody Shelenhamer
c/o Twin Hills Farms, LLC
114 E. Jackson, Suite 200
Bolivar, MO 65613

#1Z6677504445860671

Mr. K. Patrick Douglas, Registered Agent and Organizer
c/o Twin Hills Farms, LLC
111 W. Broadway
Bolivar, MO 65613

#1Z6677504445137686

Robin J. Shelenhamer Trust
114 E. Jackson, Suite 200
Bolivar, MO 65613

NOTICE IS HEREBY GIVEN that on this date the Missouri Department of Natural Resources (Department) has issued this Notice and Order to Abate Violations and Pay Administrative Penalties (Order) to Mr. Jody Shelenhamer (Shelenhamer), the Robin J.

Shelenhamer Trust (Trust), and Twin Hills Farms, LLC, under the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically sections 644.056 and 644.079 RSMo. Shelenhamer, the Trust, and Twin Hills Farms, LLC, may be collectively referred to as the Respondents for purposes of this Order.

Failure to comply with this Order is, by itself, a violation of the Missouri Clean Water Law under section 644.076 RSMo. Continued noncompliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to ten thousand dollars (\$10,000.00) per day for each day or part thereof of noncompliance, a surcharge of 15% of the penalty described herein, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. Respondents own and operate a cattle feedlot located on Highway PP near Bolivar, Missouri, which is commonly known as Twin Hills Farms (the Farm). The Farm includes approximately 216 acres, which real estate is owned by the Trust. The Farm currently has approximately 1,000 head of cattle (feeders/stockers), or 1,000 Animal Units (AU), that are continuously stored in nine (9) pens. According to the Polk County Geographic Information System, the Farm is located in the NE $\frac{1}{4}$, SW $\frac{1}{4}$ and NW $\frac{1}{4}$, SE $\frac{1}{4}$ and SE $\frac{1}{4}$, NE $\frac{1}{4}$ and S $\frac{1}{2}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$, and E $\frac{1}{2}$ in Polk County. The east property boundary of the Farm is approximately 0.87 miles upstream of Pomme de Terre Lake, and the receiving stream for stormwater discharges from the Farm is a tributary to Pomme de Terre Lake.

2. Section 644.051.1(1) makes it unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.

3. Section 644.051.1(2) makes it unlawful for any person to discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established under chapter 644.

4. Section 644.051.2 makes it unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds a permit under chapter 644.

5. Pursuant to 10 CSR 20-6.300(2)(D), the Department hereby finds that the Farm is an animal feeding operation (AFO) which is a significant contributor of pollutants to waters of the state, and designates the Farm as a concentrated animal feeding operation (CAFO) that must obtain and maintain coverage under either a state NPDES permit or a state no-discharge operating permit pursuant to 10 CSR 20-6.300(2)(B).

6. Pomme de Terre Lake and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.

7. Animal wastes from AFOs and CAFOs, and sediment, are water contaminants as the term is defined in Section 644.016(24), RSMo.

8. Between April 8 and September 15, 2011, Department staff conducted three (3) investigations at the Farm in response to environmental concerns, and observed stormwater contaminated with sediment and animal waste running off the Farm along the south property line

and filling portions of a tributary to Pomme de Terre Lake. During these investigations, the Farm consisted of approximately 1,500 head of cattle, or 1,500 AU.

9. Between April 28, 2011, and February 22, 2012, the Department sent Respondents two (2) letters and issued one (1) Notice of Violation (NOV) documenting violations of the Missouri Clean Water Law and requiring corrective actions to be completed at the Farm. The NOV explained that Respondents must stop discharging sediment and animal waste from the Farm, and develop a comprehensive Nutrient Management Plan that describes in detail how he will properly manage animal waste, stormwater, and dead animals at the Farm.

10. During the September 15, 2011, site investigation, Department staff requested to meet with Respondents to discuss corrective actions to be completed at the Farm, including properly land-applying manure piles and contacting a proper Nutrient Management Plan preparer to develop a Nutrient Management Plan for the Farm. During the meeting, Respondents informed Department staff that he had constructed a buffer zone along his property and planned to land-apply his manure piles to reduce the discharge from his property.

11. On January 27, 2012, Department staff conducted a site investigation at the Farm in response to environmental concerns, and again observed stormwater contaminated with sediment and animal waste running off the Farm and filling portions of a tributary to Pomme de Terre Lake. During the investigation, Department staff also observed two (2) constructed sedimentation basins with outlet pipes that allowed stormwater to discharge from the Farm without a permit.

12. Between April 20, 2012, and July 5, 2012, the Department sent two (2) certified letters and spoke on the telephone with Respondents on multiple occasions offering to resolve

violations of the Missouri Clean Water Law and its implementing regulations through a negotiated agreement.

13. On December 4, 2012, the Department received a letter from Respondents stating that action had been taken to remove the sedimentation basin discharge pipes and reduce the number of cattle below 1,000 AU, and therefore, the Farm would not require a CAFO permit.

14. On December 18, 2012, the Department sent a letter to Respondents explaining that due to the violations observed at the Farm the Department is requiring him to obtain a CAFO permit to protect the environment. The letter requested a response to the Department's offer to resolve the violations within ten (10) days receipt of the letter. To date, the Department has not received a response.

15. As of the date of this Order, the Department has not received an application for a CAFO permit for the Farm, and has been unable to reach an agreement with Respondents to resolve violations of the Missouri Clean Water Law.

16. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein had at least a minor potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the Missouri Clean Water Law and its implementing regulations. Using the gravity-based matrix, the base penalty falls within a range of \$1,501.00 to \$2,500.00. Since the Department documented three (3) violations of the Missouri Clean Water Law, and Respondents failed to correct the noncompliance after being informed of the requirements by the Department on at least three (3) separate occasions and failed to respond to requests to settle, an administrative penalty in the amount of \$6,000.00 is justified.

17. This Order is necessary to compel compliance and/or to prevent or eliminate threats to human health or the environment.

STATEMENT OF VIOLATIONS

Respondents have violated the Missouri Clean Water Law and its implementing regulations as follows:

18. Since at least April 8, 2011, Respondents operated, used or maintained a water contaminant source -- animal wastes from a CAFO -- which intermittently discharges to a tributary to Pomme de Terre Lake, waters of the state, without a Missouri State Operating Permit (MSOP), in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

19. On April 8, September 9 and September 15, 2011, and January 27, 2012, Respondents caused pollution of 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.

20. On April 8, September 9 and September 15, 2011, and January 27, 2012, Respondents discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards for general criteria 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 or applicable subsection of 10 CSR 20-7.031.

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the Department hereby orders Respondents to complete each of the following corrective actions:

21. Within sixty (60) days of the effective date of this Order, Respondents must submit to the Department a complete application for a CAFO operating permit with the applicable fee, a Nutrient Management Plan, and an engineering report evaluating stormwater control at the farm.

22. Within one hundred twenty (120) days receipt of Department approval of the engineering report, Respondents must implement approved stormwater controls at the Farm and submit a written report to the Department documenting that all approved stormwater controls have been implemented at the Farm.

PENALTY

Pursuant to section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders Respondents to pay administrative penalties for the above-referenced violations as follows:

23. Within 60 days from the date of issuance of this Order, Respondents shall pay to the Department an administrative penalty in the amount of \$6,000.

24. Such payment shall be made by check made payable to: *Polk County Collector as Treasurer of the Polk County School Fund*.

25. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102, for forwarding to the Polk County Treasurer.

COST RECOVERY

Pursuant to section 644.096 RSMo, the Department hereby orders Respondents to pay for the following Department costs and expenses:

26. Within 60 days from the date of issuance of this Order, Respondents shall reimburse the Department for its costs and expenses in the amount of \$1,602.98.

27. Such payment shall be made by check made payable to Accounting Program, P.O. Box 477, Jefferson City, MO 65102.

SUBMISSIONS

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

Ms. Corinne Rosania
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

29. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if Respondents make a written request to the Department within 10 business days of this Order, and otherwise provides appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

30. Compliance with this Order resolves only the specific violations described herein, and this Order shall not be construed as a waiver or modification or any other requirements of the Missouri Clean Water Law and regulations, or any other source of law. Nor does this Order

resolve any future violations of this Order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

31. This Order shall apply to and be binding upon Respondents and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for Respondents. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve Respondents of their obligation to comply with this Order.

32. For any plan or submittal from Respondents that is required by this Order and subject to Department approval under this Order, the Department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such Department decision shall be conveyed in writing to Respondents. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, Respondents shall submit a revised version of the plan or submittal within 10 business days after receiving notice of the Department's required revisions, or within such other timeframe as the Department may specify. If the Department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and Respondents shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

33. Anyone adversely affected by this decision may be entitled to pursue an appeal before the administrative hearing commission ("AHC") pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. Appeal may be taken by the filing of a

petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
Truman State Office Building, Room 640
301 W. High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 5th day of April, 2013 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

c: Ms. Cindy Davies, Southwest Regional Office
Mr. John K. McManus, Missouri Attorney General's Office