

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

IN THE MATTER OF:

Pork Masters, Inc.
Confined Animal Feeding Operation
Spill

No. 2014-WPCB-1320

SERVE:

Mr. Gary L. Horstmeier, President
Pork Masters, Inc.

Mr. Joshua T. Lehenbauer, Managing Member
PSCO, LLC

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2014-WPCB-1320, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Pork Masters, Inc. and PSCO, LLC (respondents) violated the Missouri Clean Water Law (MCWL). 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 MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative 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 respondents of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. Pork Masters, Inc. swine operation is a Class IC concentrated animal feeding operation (CAFO), as defined by regulation 10 CSR 20-6.300, located at 3635 County Road 235 in Callaway County. The total design capacity of the operation is 5,600 swine over 55 pounds, or 2,240 animal units. Swine are housed in eight open gutter flush confinement buildings with slotted floors. The buildings are

flushed with recycled water from an anaerobic lagoon, and manure from the buildings is transported to a solids separation basin. Any overflows from the solids separation basin is directed to the lagoon. The CAFO operates pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-GS10096. MSOP No. MO-GS10096 is a state no-discharge permit that requires process wastes from the operation to be collected and managed as fertilizer by spreading onto agricultural fields in accordance with the MSOP. The legal description for the lagoon is the Southwest ¼, Northeast ¼, Section 20, Township 48 North, Range 10 West, in Callaway County, Missouri, and the receiving stream is an unnamed tributary to Millers Creek.

- B. Millers Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- C. Swine effluent is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. MSOP No. MO-GS10096 was issued to Pork Masters on February 15, 2013, and is set to expire on January 27, 2018. This MSOP does not authorize discharge of manure, litter, process wastewater or mortality by-products to surface waters of the state or any releases that cross property boundaries from the production area.
- E. Pork Masters, Inc. has a contract with PSCO, LLC, to conduct land application of effluent and manure produced at the operation on land owned by Pork Masters.
- F. On October 20, 2014, Department staff conducted a complaint investigation at the operation in response to an environmental concern reporting that swine effluent discharged off the operation's land application site and entered a tributary to Millers Creek causing the water to appear black and smell like swine effluent. During the investigation, Department staff observed that water in an unnamed tributary to Millers Creek was dark brown and had an odor characteristic of swine effluent. Department staff followed the dark brown, odorous water upstream from Mark Twain National Forest to a land application field owned by Pork Masters. Immediately southwest of the land application field, staff observed a catch basin; the berm was not intact and there were large pools of dark brown liquid that had an odor character of swine effluent. Staff determined that approximately 600 yards of the tributary to Millers Creek was impacted by the discharge. During the investigation, Department staff learned from Mr. Josh Lehenbauer that PSCO applied swine effluent from Pork Masters on application fields immediately west of the operation (i.e., northeast of Mark Twain National Forest) on October 19, 2014. Effluent from the application field discharged from the property in two discrete locations on the western perimeter of the land application field and entered unnamed tributaries to Millers Creek. Staff did not observe any dead or distressed fish or aquatic life in the tributaries. During the investigation, Department staff instructed Mr. Lehenbauer to coordinate with the downstream land owners to complete clean-up of the stream.

- G. On October 22, 2014, Department staff conducted a follow-up inspection at the operation to document progress of clean-up efforts in the receiving streams and conduct a compliance inspection of the operation's buildings and lagoon. During the inspection, Department staff documented that the production buildings, lagoon and mortality incinerator appeared to be properly maintained. The operation's records were briefly reviewed and found to be adequate. Department staff observed that water in the tributary to Millers Creek, which flows southwest through Mark Twain National Forest, was light brown in color, but no longer exhibited an odor of swine effluent. Staff also observed the smaller tributary to which the second discharge had occurred, and observed that the water was still dark brown and had an odor characteristic of swine effluent. Department staff informed Mr. Lehenbauer that clean-up of this tributary needed to be completed as well.
- H. On October 24, 2014, Mr. Lehenbauer called to inform the Department that clean-up activities in the smaller tributary had been completed by pumping contaminated water onto a nearby field and flushing the tributary with fresh pond water.
- I. As a result of violations documented during the investigation, on October 28, 2014, the Department issued Notice of Violation (NOV) No. NER2014102313314866 to Pork Masters, Inc. and NOV No. NER2014102313324872 to PSCO, LLC.
- J. On October 30, 2014, the Department received a written response from Pork Masters stating that the following actions would be taken to prevent future discharges from the operation: 1) chiseling and/or tillage of field boundaries; 2) use of additional basins; 3) use of additional personnel and/or equipment for manure application; and 4) follow all setbacks and safe distances set forth by the Department and ensure all individuals involved in the operation do the same.
- K. As a result of the above investigations, the Department incurred costs for staff time and resources in the amount of \$2,439.85.
- L. Section 644.096, RSMo, creates a cause of action in favor of the state, or any of its political subdivisions or agencies, 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.
- M. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to \$10,000.00 per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have occurred at the operation are as follows:

1. Failed to properly land apply swine effluent as required in the Special Requirements and Standard Conditions, and the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard, of MSOP No. MO-GS10096 in violation of Section 644.076.1, RSMo.
2. Caused pollution of a tributaries to Millers Creek, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where they are reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.
3. Discharged water contaminants into waters of the state which reduced the quality of such waters below the 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.

IV. AGREEMENT

- A. The Department and respondents desire to amicably resolve all claims that may be brought against the respondents for violations alleged above in Section III, Citations and Conclusions of Law, without the respondents admitting to 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 the respondents under this AOC.
- C. The respondents in compromise and satisfaction of the Department's claims relating to the above-referenced violations agree, without admitting liability or fault, to pay a civil penalty in the amount \$12,000.00 which shall be paid in the form of a check made payable to "*Callaway County Treasurer, as custodian of the Callaway County School Fund.*" The check in the amount of twelve thousand dollars and zero cents (\$12,000.00) is due within 30 days following execution of this AOC by the respondents. The check shall be delivered to:

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

- D. The respondents agree to pay the state's investigative costs in the amount of \$2,439.85 in the form of a separate check made payable to the "*State of Missouri*." The check in the amount of \$2,439.85 is due within 30 days following execution of this AOC by the respondents. The check shall be delivered as provided in Paragraph IV, C.
- E. The respondents agree to manage the operation and land application areas so that there are no discharges of manure, litter, process wastewater or mortality by-products to surface waters of the state or releases that cross property boundaries. The respondents agree to maintain adequate setback distances established in Table A1 of the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard and regularly inspect the land application field perimeter during land application to confirm there are no discharges from the field.
- F. Within 365 days of the effective date of this AOC, Pork Masters, Inc. agrees to employ, or contract with a company that employs, an operator who holds at minimum a CAFO "B" level certificate pursuant to 10 CSR 20-14.010 to be responsible for conducting, or at minimum overseeing, land application of manure, litter, process wastewater and mortality by-products for the operation, and submit written correspondence notifying the Department the name of the operator and his or her certificate number. Following initial employment or execution of a contract with a company that employs a CAFO "B" level operator, Pork Masters agrees to maintain a CAFO "B" level operator, or higher, for conducting or overseeing land application for the operation for 5 years.
- G. Within 365 days of the effective date of this AOC, PSCO, LLC agrees to employ at least one operator who holds at minimum a CAFO "B" level certificate pursuant to 10 CSR 20-14.010 to be responsible for conducting, or at minimum overseeing, PSCO's projects for land application of manure, litter, process wastewater and mortality by-products, and submit written correspondence notifying the Department the name of the operator and his or her certificate number. Following initial employment of the operator, PSCO agrees to maintain a CAFO "B" level operator, or higher, on staff for conducting or overseeing PSCO's land application projects for 5 years.
- H. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the respondents 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; and iii) proposing an extension to the deadline. Within five days of

notifying the Department, the respondents 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 the respondent's right to request an extension and may be grounds for the Department to deny the respondents an extension.

- I. Should the respondents fail to meet the terms of this AOC, including the deadlines set out in Paragraphs F and G, the respondents 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	\$250.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1,000.00 per day

Stipulated penalties will be paid in the form of a check made payable to "Callaway County Treasurer, as custodian of the Callaway County School Fund." Any such stipulated penalty shall be paid within 10 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

- J. Nothing in this AOC forgives the respondents 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 of 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 AOC. The Department shall send a fully executed copy of this AOC to the respondents for their records.
- M. The respondents shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, the respondents consents to its terms and waive 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.

VI. CORRESPONDENCE AND DOCUMENTATION

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

Ms. Corinne Rosania
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 10th day of December, 2014

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

Agreed to and Ordered this 24th day of Nov., 2014

Mr. Gary L. Horstmeier Pres.
Mr. Gary L. Horstmeier, President
Pork Masters, Inc.

Agreed to and Ordered this 24th day of Nov, 2014

Mr. Joshua T. Lehenbauer PSCO LLC
Mr. Joshua T. Lehenbauer, Managing Member
PSCO, LLC

Copies of the foregoing served by certified mail to:

Mr. Gary L. Horstmeier CERTIFIED MAIL # 7013 2250 0002 2840 0989
Pork Masters, Inc.
3305 State Road HH
Kingdom City, MO 65262

Mr. Josh T. Lehenbauer CERTIFIED MAIL # 7013 2250 0002 2840 0972
PSCO, LLC
1085 State Road M
Auxvasse, MO 65231

- c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Mr. Geoffrey Luebbering, Accounting Specialist, Accounting Program
Ms. Irene Crawford, Director, Northeast Regional Office
Missouri Clean Water Commission