

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Laverne L. and Josephine J. Yoder)
 Yoder Farm)
 2440 South Highway E)
 Norwood, MO 65717)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2014-WPCB-1314

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

SERVE BY CERTIFIED MAIL # 7013 2250 0002 2840 5564
RETURN RECEIPT REQUESTED

TO: Mr. Laverne L. and Ms. Josephine J. Yoder, Owners
2440 South Highway E
Norwood, MO 65717

NOTICE IS HEREBY GIVEN that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to Mr. Laverne L. Yoder and Ms. Josephine J. Yoder (respondents) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically sections 644.056 and 644.079 RSMo.

Failure to comply with this order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to \$10,000.00 per day for each day or part thereof of non-compliance, 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 tracts of land located in the Southwest ¼, Southeast ¼ of Section 1, Township 28N, Range 14 and Southeast ¼, Southeast ¼ of Section 1, Township 28 North, Range 14 in Wright County, Missouri. The respondents own and operate a cattle feedlot located on said property off South Highway E in Norwood, Missouri, known as Yoder Farm. The farm includes approximately 76 acres and currently contains less than 1,000 head of cattle. The respondents use a plugged sinkhole as a water source for the cattle, which is located next to a second sinkhole with a visible open throat that serves as a conduit to subsurface resources. The livestock are fenced into this bowl-shaped area so any waste flows downhill and would flow into the sinkholes. Stormwater contaminated with animal waste discharges from the farm to a tributary of Fox Creek.

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

3. Fox Creek is a losing stream as the term is defined by 10-CSR 20-2.010 (36) in that Fox Creek distributes 30% or more of its flow during low flow conditions through natural processes.

4. Agricultural wastes, including manure, are water contaminants as the term is defined in Section 644.016(24), RSMo.

5. Section 578.215.1 makes it unlawful to purposely introduce into any cave, cave system, sinkhole or subsurface waters of the state any substance or structure that will or could

violate any provision of the MCWL as set forth in chapter 204, or any water quality standard or effluent limitation promulgated pursuant thereto.

6. 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 from the commission.

7. Pursuant to 10 CSR 20-6.300(2)(D), the Department hereby finds that the farm is an Animal Feeding Operation 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 National Pollutant Discharge Elimination System (NPDES) permit or a state no-discharge operating permit pursuant to 10 CSR 20-6.300(2)(B).

8. Pursuant to 10 CSR 20-6.300(3)(G)2.E, at a minimum, manure, litter, and process wastewater shall not be land applied closer than 100 feet from any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.

9. Between December 12, 2012, and November 6, 2013, Department staff conducted three investigations at the farm and observed stormwater contaminated with animal waste running off the farm across a public road and into a pond on neighboring property. Staff observed that the two sinkholes were located within the confined areas used for feeding cattle. Staff observed that this feeding area was lacked vegetation and there were large piles of manure around the rims of the two sinkholes.

10. Between January 17, 2013, and December 20, 2013, the Department sent four letters, issued one Notice of Violation and spoke on the telephone with Mr. Yoder informing him of the violations of the MCWL and its implementing regulations, and discussing steps necessary to correct the violations. In correspondence dated May 1, and May 24, 2013, the Department offered to meet with the respondents to discuss a plan to correct the violations and achieve compliance. To date, the respondents have not accepted the Department's offer to meet and have not resolved the violations.

11. On July 16, 2014, a registered geologist with the Department's Division of Geology and Land Survey conducted a site visit regarding verification of two presumed sinkholes on the respondents' property. The geologist confirmed that the presumed sinkholes were sinkholes. The geologist observed that the east sinkhole was holding water; however, there was evidence that it was losing water at a slow rate. There was evidence that the west sinkhole held water at one time, but it no longer does due to a visible open throat going below ground. Debris has collected in the west sinkhole throat. The sinkholes are approximately 250 feet and 225 feet in diameter. The depth of each sinkhole is unknown; however, geologic mapping and well logs in the area indicate that the top of bedrock is approximately 50 feet below the sinkholes. The depth of another sinkhole, located approximately 0.86 miles to the southwest, has been recorded at 60-80 feet.

12. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein had a major potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the MCWL and its implementing regulations. Using the gravity-based matrix, the base penalty falls within a range of \$7,501.00 to \$8,500.00. Since the respondents failed to correct the

non-compliance after being informed of the violations by the Department on at least five separate occasions an administrative penalty in the amount of \$8,000.00 is justified.

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

STATEMENT OF VIOLATIONS

The respondents have violated the MCWL and its implementing regulations as follows:

14. Since December 12, 2012, the respondents operated, used or maintained a water contaminant source, agriculture waste from a confined feedlot operation which discharge to subsurface waters, waters of the state, through drainage to sinkholes, without a Missouri State Operating Permit, in violation of Sections 644.051.2, 644.076.1, and 578.215.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

15. Since December 12, 2012, the respondents caused pollution of a tributary to Fox Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant, animal manure, in a location where it was reasonable certain to cause pollution of waters of the state, in violation of, Sections 644.051.1(1) and 644.076.1, RSMo.

CORRECTIVE ACTIONS

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

16. Within 30 days of receipt of this order, the respondents are ordered to relocate the feeding area, watering operation and manure stockpiles to a location at least 100 feet away from the mapped sinkholes and tributaries to Fox Creek, and install a fence around the sinkholes to restrict access livestock to the sinkholes. The manure stockpiles shall be covered so they are not exposed to stormwater, or they may be relocated to a containment area such that any stormwater

that comes into contact with the manure is contained and does not discharge. All stormwater that comes into contact with the manure stockpiles shall be land applied at proper agronomic rates so that there is no discharge or runoff from the land application area. Within 30 days of receipt of this order, the respondents are also ordered to provide a written report to the Department documenting that the feeding area, watering operation and manure stockpiles have been adequately moved away from the sinkholes.

17. Within 60 days of receipt of this order, the respondents are ordered to submit to the Department a complete application for a CAFO general operating permit with the applicable fee, a Nutrient Management Plan and an engineering report evaluating stormwater control at the farm and recommending improvements necessary to operate as a no-discharge system. The engineering report shall be prepared and sealed by a professional engineer licensed in the state of Missouri.

18. Within 120 days of receipt of Department approval of the engineering report, the respondents are ordered to implement the 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 the respondents to pay administrative penalties for the above-referenced violations as follows:

19. Within 60 days from receipt of this order, the respondents shall pay to the Department an administrative penalty in the amount of \$8,000.00.

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

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

SUBMISSIONS

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

Mr. Kurtis Cooper
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

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

24. 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 MCWL 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.

25. This order shall apply to and be binding upon the respondents and any of the respondents' agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under; through, or for the 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 the respondents of their obligation to comply with this order.

26. For any submittal from the 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 the respondents. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the respondents shall submit a revised version of the 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 submittal, it shall become enforceable under this order, and the respondents shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

27. 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

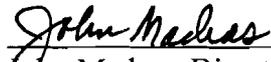
other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

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 10th day of December 2014 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

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

