

BEFORE THE DEPARTMENT OF NATURAL RESOURCES STATE OF MISSOURI

IN THE MATTER OF:

Buschjost Farms

SERVE:

Mr. Paul Buschjost
Mrs. Elaine Buschjost

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No. 2014-WPCB-1321

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ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2014-WPCB-1321, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Buschjost Farms is in violation of 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 Mr. Paul and Mrs. Elaine Buschjost (the Buschjosts) 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.

FINDINGS OF FACT

1. The Buschjosts own and operate Buschjost Farms, which is a Class II Animal Feeding Operation (AFO) located in Section 11, Township 46 North, Range 16 West, of the Lone Elm Quadrangle, in Cooper County. The farm has a design capacity for 218 animal units and is a sow operation consisting of two confinement buildings and an anaerobic lagoon. The buildings have slated floors over shallow gutters from which the manure is flushed through Polyvinyl Chloride (PVC) pipes to the lagoon. The receiving stream for the operation is a tributary to Pisgah Creek.

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

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

4. Missouri Revised Statutes 644.051.1 makes it unlawful for any person to discharge any water contaminants into any waters of the state or to discharge any water contaminants into waters of the state which reduce the quality of such waters below the water quality standards of the Missouri Clean Water Commission.

5. Missouri Clean Water Commission Regulations 10 CSR 20-7.031(4)(I) Table B establishes acute toxicity criteria for Total Ammonia as Nitrogen.

6. On May 30, 2014, the Department received a report that the water in Pisgah Creek at a low river crossing on Prairie Road was reddish in color and had an odor that smelled of manure. On this same day, Department staff visited the site at the low river crossing at Prairie Road and observed there was no flow and that the water was red in color with an odor characteristic of swine effluent. Water observed downstream of the low water crossing at Prairie

Road had the same color and odor. A sample was collected at the low water crossing for chemical analysis and the results documented the Ammonia as Nitrogen level exceeded the acute toxicity criteria by 257 percent. The inspector walked upstream and observed red water in the tributary and in the streambed. Department Staff collected a sample of the water at this location and the results documented the Ammonia as Nitrogen level exceeded acute toxicity criteria for Ammonia as Nitrogen by 432 percent.

7. Department staff met Mr. Paul Buschjost at his farm. Mr. Buschjost accompanied the inspector on the investigation. On route to observe the recycle line, Mr. Buschjost stated that he had turned cows into the lagoon and two days prior he noticed that the recycle line was separated. Mr. Buschjost stated that he believed the cows had hit the line and caused the separation. He stated that he repaired the line but did not think the discharge had left the site. Staff observed the recycle line which was made of PVC pipe lying on the surface of the ground. It was noted that the ground was wet from the point of separation to the drainage area approximately 100 feet to the southeast. The inspector and Mr. Buschjost walked to a tributary that fed into the tributary to Pisgah Creek. The inspector and Mr. Bushjost walked along the tributary to the confluence with the tributary to Pisgah Creek. The inspector observed several pools of water in the tributary were red in color and had an odor characteristic of swine effluent.

8. Based on the violations documented during the investigation May 30, 2014, investigation, the Department issued Notice of Violation No. NER2014060611124032 to Mr. Buschjost on June 13, 2014, for violations of the MCWL.

9. On June 2, 2014, the Department received a telephone call from Mr. Buschjost, explaining that he had begun to flush the stream with water from his well and the next morning he would use his vacuum truck to remove the water and then land apply the water removed.

10. On November 13, 2014, the Buschjosts met with Department staff to discuss the steps they have taken to correct the violations of the MCWL at their hog operation.

Mr. Buschjost explained that he wrote up the events of the May 2014 release in a journal stating the details of his actions. He stated that the clean-up efforts consisted of two phases. The first phase included flushing the creek the morning of May 31, 2014; pumping the water until it was dry; and pumping water anywhere there was a pool. He then spread the wastewater on his fields and repeated this process for four days. The second phase included following measures:

- i) Constructed a berm around the third cell of the lagoon, seeded, and fenced the area;
- ii) encased the recirculating flush pipe with a 4-6 inch PVC pipe along the critical area, so in the event of a future release, the wastewater would flow back to either the first, second, or third cell and be contained; and iii) installed 600 feet of new black irrigation pipe and reduced the exposure of coupling joints and buried the two exposed areas of pipe.

11. MCWL and Section 644.096, RSMo, authorize 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 Sections 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 violation, sustained by it because of any violation.

12. The Department dispatched employees to investigate the May 30, 2014, manure spill concern. In doing so, the Department incurred costs and expenses, including but not limited to, water sampling and analysis, photographs, and travel expenses. These costs incurred by the Department total \$1,658.42.

13. 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.

CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by the Buschjosts are as follows:

14. On or about May 30, 2014, discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards, as established by the Missouri Clean Water Commission, in violation of Sections 644.051(2) and 644.076.1, RSMo, and 10 CSR 20-7.031;

15. Caused pollution of a tributary to the Pisgah 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;

16. On May 30, 2014, operated, used, or maintained a water contaminant source, process waste from a manure pit, which discharged to a tributary to Pisgah Creek, waters of the state, without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 64.076.1, RSMo and 10 CSR 20-6.010(1)(A) and (5)(A); and 20-6.300 (2)(B).

AGREEMENT

17. The Department and the Buschjosts desire to amicably resolve all claims that may be brought against the Buschjosts for violations alleged above in Section III, Citations and Conclusions of Law, without the Buschjosts admitting to the validity or accuracy of such claims.

18. 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 Buschjosts under this AOC.

19. The Buschjosts in compromise and satisfaction of the Department claims relating to the above-referenced violations agree, without admitting liability or fault, to pay a civil penalty in the amount of \$2,000.00. The payment shall be in the form of a certified or cashier's check made payable to "*Cooper County Treasurer, as custodian of the Cooper County School Fund*". The check in the amount of \$2,000.00 is due and payable upon execution of this AOC by the Buschjosts. The check and signed copy of the AOC shall be delivered to:

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

20. The Buschjosts agree to pay the state's investigative costs in the amount of \$1,658.42 in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of \$1,658.42 is due and payable upon execution of this AOC by the Buschjosts. The check shall be delivered to:

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

21. Nothing in this AOC forgives the Buschjosts 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.

22. 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.

23. 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 Buschjosts for their records.

24. The Buschjosts shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

RIGHT OF APPEAL

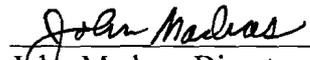
By signing this AOC No. 2014-WPCB-1321, the Buschjosts consent to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

CORRESPONDENCE AND DOCUMENTATION

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

Ms. Joan Doerhoff
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 5th day of February, 2015

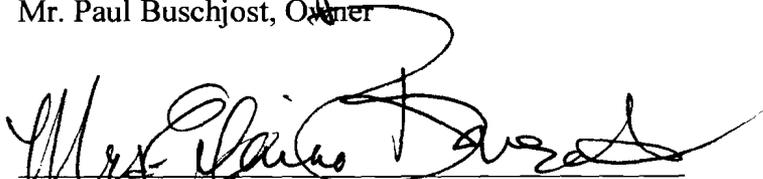


John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 27 day of January, ~~2014~~ 2015



Mr. Paul Buschjost, Owner



Mrs. Elaine Buschjost, Owner

Copies of the foregoing served by certified mail to:

Mr. Paul and Mrs. Elaine Buschjost, CERTIFIED MAIL # 7013 2250 0002 2840 0644
Buschjost Farms
22400 Prairie Road
California, MO 64018

c: Ms. Irene Crawford, Director, Northeast Regional Office
Accounting Program
Ms. Diane Huffman, Environmental Protection Agency
Missouri Clean Water Commission