

FINDINGS OF FACT

1. The respondent owns and operates the class IC, Danny Bevill Confined Animal Feeding Operation (CAFO), located on the south side of County Road 156, south of Highway J in Shelby County. The legal description for the CAFO is in the NW ¼, NE ¼, Section 36, Township 59 North, Range 10 West. The CAFO is a Class IC swine operation with approximately 3920 hogs over 55 pounds and the operation consists of four shallow pit production buildings with slotted floors using pull plug system.
2. Missouri State Operating Permit (MSOP) No. MO-GS10428 was issued July 9, 2013, and expires January 27, 2018. The MSOP authorizes manure from the buildings to be flushed to an anaerobic lagoon using recycled lagoon water. The MSOP states that land application are conducted using a traveling gun system. The MSOP lists the operation as owning 77 acres of row cropland that are available for land application, with an additional 265 acres of non-owned row cropland and 64 acres of non-owned grassland available under spreading agreement. The receiving stream is a tributary to Looney Creek, which is a Class P stream with beneficial uses of Livestock and Wildlife Watering, Protection of Warm Water Aquatic Life and Human Health-Fish Consumption and Whole Body Contact- secondary contact recreation. Looney Creek flows to the North River.
3. Agricultural wastes are water contaminants as the term is defined in Section 644.016(24), RSMo.
4. Looney Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

5. On June 5, 2013, the respondent contacted the department to report a hog effluent spill observed in a road ditch on Highway J to the east of the respondent's residence and also entering Looney Creek approximately .5 miles to the southwest of the production barns. Department staff arrived on scene the same day and met with the respondent who explained that on June 2, 2013, the respondent land applied 13,488 gallons per acre for an application rate of .5 inches of hog effluent on a 40 acre field located southeast of the respondent's residence in order to allow the hog effluent to flow from the barns to the lagoon and lower the level of the lagoon to prevent the wastewater from overtopping the lagoon berm. During the investigation, department staff observed the water flowing into and out of the culvert was dark brown in color and had an odor characteristic of swine effluent on Highway J and noted this was the location where the effluent flowed off the respondent's property and entered the tributary to Tiger Fork. Department staff observed dead fish on the bottom of the concrete box culvert on Highway J near the junction of Country Road 167 and Highway J. Department staff further observed a pool of brown water with an odor characteristic of swine effluent immediately downstream of a culvert off of County Road 255. Department staff documented the water flowing out of the culvert and upstream of the culvert was clear with no odor.
6. The department contacted the Missouri Department of Conservation (MDC) concerning the dead fish. On the same day, MDC staff arrived on site and observed the dead fish at the concrete box culvert on Highway J and conducted observations upstream approximately one mile to the confluence of Tiger Fork and Looney Creek to determine

the swine effluent was not upstream from Highway W. MDC staff recorded the number and types of fish and aquatic life that were observed to be dead.

7. Department staff collected samples from the tributary to Tiger Fork, and conducted water quality field monitoring. The water in the tributary to Tiger Fork at the concrete box culvert on Highway J was dark brown in color and had an odor characteristic of swine effluent and was observed to have reached an area of approximately .25 miles downstream of the concrete box culvert. Staff observed a biological film on top of the water at this location. Department staff also found dead fish and other aquatic life in the tributary to Tiger Fork in the area impacted with swine effluent, which was approximately 0.6 to 0.75 miles downstream. Department staff observed a pool of light brown water with swine effluent odor downstream of the road culvert on County Road 255 in Looney Creek, which flows to the North River. The water in the pool was stratified with the dark water at the bottom and clearer water on top.
8. On June 6, 2013, the respondent contacted to department and stated that 11 loads of hog effluent had been removed from the creek by utilizing a honey wagon and that they will continue removing the effluent.
9. On June 10, 2013, in a meeting between the respondent and the department to discuss the respondent's MSOP renewal and record review, the respondent stated that additional loads of hog effluent were removed from the creek, and since the rain, the water looks normal.
10. On June 20, 2013, the department received a written response from the respondent explaining the effluent spill on June 2, 2013, was caused by land applying on wet soils

and that the runoff lasted approximately two to three hours totaling approximately 10,000 gallons. The respondent also included steps to prevent effluent spills from occurring again in the future and would monitor the surrounding area hourly during land application and apply effluent on dry soils.

11. Based on the violations documented during the June 5, 2013, effluent spill investigation, the department issued Notice of Violation No. NER2013061208132958 to the respondent on June 28, 2013, for violations of the MCWL. The inspector's report associated with the NOV required the respondent to provide the department a written statement outlining what actions have been implemented to correct the deficiencies and what actions will be taken to prevent a reoccurrence of the violations in the future by July 19, 2013.
12. The department dispatched employees to investigate the June 5, 2013, hog effluent 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 \$2,759.73.
13. 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.
14. Section 644.076.1, RSMo makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,000.00 per day per violation.

STATEMENT OF VIOLATIONS

The respondent has violated the MCWL and its implementing regulations as follows:

15. Failed to properly land apply swine effluent in accordance with the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard fully incorporated into the MSOP No. MO-G010451 in violation of Section 644.076.1, RSMo.
16. Caused pollution of the tributary to Tiger Fork and Looney Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant, swine effluent, 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.
17. Discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the MCWL 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.

AGREEMENT

18. The department and the respondent desire to amicably resolve all claims that may be brought against the respondents for violations alleged above in Statement of Violations.
19. 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 as the Respondents under this AOC.

20. The respondent agrees 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.
21. The respondent, in compromise and satisfaction of the department's claims relating to the above referenced violations, agrees without admitting liability or fault, to pay a penalty in the amount of \$ 7,000.00. The parties further agree that \$2,000.00 shall be paid upfront and the remaining \$5,000.00 will be suspended for a period of two years from the effective date of this AOC on the conditions the respondents comply with the conditions and requirements of this AOC. The payment in the amount of \$2,000.00 shall be in the form of a check made payable to the "*Shelby County Treasurer, as custodian of the Shelby County School Fund*" and is due and payable upon execution of this AOC by the respondents. The check and the signed copy of this AOC shall be delivered to:

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

22. The respondent agrees to pay the state's investigative costs in the amount of \$2,759.73 in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of \$2,759.73 is due and payable upon execution of this AOC by the respondent. The check shall be delivered to:

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

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

SUBMISSIONS

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

Ms. Erin Meyer
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

25. Should the respondents fail to meet the terms of this AOC, the respondent 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	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a check made payable to “*Shelby County Treasurer, as custodian of the Shelby County School Fund*”. Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

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

26. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification of 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.
27. Nothing in this AOC forgives the respondent 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.
28. 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.
29. 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 respondent for their records.

NOTICE OF APPEAL RIGHTS

30. 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.

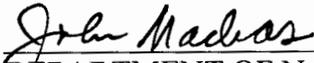
SIGNATURE AUTHORITY

Agreed to and Ordered this 21 day of April, 2015



Danny Bevill

Agreed to and Ordered this 6th day of May, 2015



DEPARTMENT OF NATURAL RESOURCES
John Madras, Director
Water Protection Program

Copies of the foregoing served by certified mail to:

Mr. Danny Bevill CERTIFIED MAIL #
6839 Highway J
Bethel, MO 63434

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