

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 Patterson Farms )  
 ) **Order No. 2015-WPCB-1347**  
**Serve:** )  
 )  
 Mr. Logan Patterson )

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**ABATEMENT ORDER ON CONSENT**

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**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT**

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1347, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Mr. Logan Patterson (respondent) 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 of 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 respondent 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 respondent owns and operates a swine operation, which is a Class II Animal Feeding Operation located off of Union Ford Road, south of California, Missouri, and west of Highway 87 in Moniteau County. The operation consists of four production buildings and one lagoon with 640 animal units. The production buildings contain shallow pits that are automatically flushed to the lagoon with recycled water from the lagoon. The receiving stream for the operation is a tributary to Medlen Creek.

2. Medlen 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. On January 3, 2015, the department received a report from the respondent that there was a release of swine waste from a drain pipe on the property that reached waters of the state. Department staff instructed the respondent to construct a dam in the tributary.

5. On January 4, 2015, department staff visited the site and met with the respondent. The respondent informed staff that a neighbor alerted him that he had detected swine waste odor approximately two weeks prior. The respondent informed staff that he observed a release of swine waste from a riser on December 31, 2014. The respondent stated that there had been a plug in the line that resulted in the waste flowing from the riser. Staff observed swine waste solids in the fence line separating the properties, adjacent to the lagoon. Staff observed swine waste solids at the entry point in the tributary and numerous locations in the tributary. Staff collected samples upstream, downstream, and at the entry point of the waste into the tributary.

6. On January 6, 2015, department staff conducted an environmental investigation of the site and met with the respondent. Staff observed solids from the swine waste discharge on the ground and around the clean out riser. Staff informed the respondent that the solids need to be removed from the ground and could be land applied so that additional solids do not enter the creek. Staff observed deposited solids in the field, along the storm water diversion berm of the lagoon, and along the property fence. Staff observed approximately six inches of freeboard in the lagoon. Staff observed areas in the tributary to Medlen Creek that had large deposits of solids from the swine waste and a large amount of maggots in the solids.

7. Based on the violations documented during the January 6, 2015, investigation, the department issued Notice of Violation No. NER20150109080302898 to the respondent on January 20, 2015, for violations of the MCWL.

8. On January 8, 2015, department staff sent copies of the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard and the Concentrated Animal Feeding Operation Record Keeping Checklist to the respondent. Staff had a telephone conversation with the respondent and informed the respondent that the cleanup efforts of the tributary to Medlen Creek needed to be focused on the large areas of solid deposits. Staff stated that the cleanup needed to be accomplished using means that do not cause more of an impact to the tributary, including manual effort. The respondent stated that solids from the field around the clean out risers and from the drainage along the fence had already been removed.

9. The 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 the violation, sustained by it because of any violation.

10. The department dispatched employees to investigate the January 3, 2015, swine waste spill report. 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 \$2,090.59.

11. 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:

12. On or before January 3, 2015, the respondent caused pollution of a tributary to Medlen Creek, 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.

13. On or before January 3, 2015, the respondent 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.

14. On or before January 3, 2015, the respondent operated, used or maintained a water contaminant source, animal waste from a swine operation, which discharged to a tributary

to Medlen Creek, waters of the state, without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.300(2)(B).

### AGREEMENT

15. The department and the respondent desire to amicably resolve all claims that may be brought against the respondent for violations alleged above in Statement of Violations.

16. 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 respondent under this AOC.

17. The respondent, in compromise and satisfaction of the department's claims relating to the above referenced violations, agrees and is ordered, without admitting liability or fault, to pay a penalty in the amount of \$8,000.00. The parties further agree that \$5,500.00 of such civil penalty shall be suspended as described in Paragraph 19 below. The payment of the civil penalty in the amount of \$2,500.00 shall be paid in the form of a check made payable to the "*Moniteau County Treasurer, as custodian of the Moniteau County School Fund.*" The civil penalty shall be paid in four installments of \$625.00. The first penalty payment in the amount of \$625.00 is due within 30 days of the effective date of this AOC, the second penalty payment of \$625.00 is due within 60 days of the effective date of this AOC, the third penalty payment of \$625.00 is due within 90 days of the effective date of this AOC, and the fourth penalty payment

of \$625.00 is due within 120 days of the effective date of this AOC. The signed copy of this AOC shall be delivered to:

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

18. The suspended penalty described in Paragraph 18 in the amount of \$5,500.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the respondent does not violate the terms of the AOC. Upon determination that the respondent has failed to meet the terms of this AOC, including the requirements of Paragraphs 21 through 24, the department shall send a written demand for the suspended penalty to the respondent. The respondent shall have 15 days from the receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 18.

19. The respondent agrees and is ordered to pay the state's investigative costs in the amount of \$2,090.59 in the form of a check made payable to the "State of Missouri." The check in the amount of \$2,090.59 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 65102-0477

20. Within 30 days of the effective date of this order, the respondent is ordered and agrees to reduce the wastewater level in the lagoon by land application and maintain a minimum of two feet of freeboard at all times. The respondent agrees to manage the operation and land application areas so that there are no discharges of manure, litter, or process wastewater to

surface waters of the state. The respondent further agrees 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. Within 30 days of the effective date of this order, the respondent is ordered and agrees to complete the following:

- a. Ensure that the lagoon level marker accurately depicts the current wastewater level in the lagoon;
- b. Ensure that all clean out risers are above ground and do not allow stormwater or dirt to enter the riser;
- c. And ensure that all clean out risers in the field are protected to help ensure that farming equipment does not damage the riser.

22. Within 60 days of the effective date of this order, the respondent is ordered and agrees to ensure that the emergency overflow on the lagoon berm is graded and vegetation is established.

23. Within 15 days of the completion of the above corrective actions, the respondent is ordered and agrees to submit to the department documentation, including photographs, of the improvements made to the operation and the lagoon.

#### **SUBMISSIONS**

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

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

**OTHER PROVISIONS**

25. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the respondent 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 respondent shall submit to the department for review and approval a written request containing the same information. 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 extension.

26. Should the respondent fail to meet the terms of this AOC, including the deadlines for completion of corrective actions set out in Paragraphs 21 through 24, 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 "*Moniteau County Treasurer, as custodian of the Moniteau 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 65102-0477

27. Compliance with this AOC resolves only the specific violations described herein, and this AOC 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.

28. 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 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 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.

29. 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.

30. 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.

