

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

**RECEIVED
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Water Protection Program

IN THE MATTER OF:

Wilson Feedlot

SERVE:

Warren Wilson, President, Wilson Feed Lot Inc.

No. 2015-WPCB-1372

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1372, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Wilson Feed Lot Inc. (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 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 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 Class II Animal Feeding Operation (AFO) located in the SE ¼, NW ¼, Section 12, Township 52 North, Range 10 West in Audrain County, Missouri. The AFO is designed to house 700 head of cattle in three confinement buildings. Animal waste is removed from the buildings by a gutter flush system into two settling ponds and then into two no-discharge lagoons using recycled lagoon water. Animal waste is pumped from the lagoons and land applied on the property.

2. The Respondent is a registered company that is in good standing with the Missouri Secretary of State.

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

4. On May 10, 2014, department staff conducted an investigation of the feedlot and its immediate surroundings in response to an Environmental Concern received by the department on that same day. During the investigation, staff observed animal waste discharging from a tile train outlet on the Respondent's property into a tributary to Youngs Creek. From the tile drain outlets, staff traveled east onto the Respondent's property and discovered a drop inlet that was surrounded by pools of water and animal waste-stained ground, which was located west of an uncapped riser. The broken cap to the riser was observed nearby. Staff observed dead fish in several sections of Youngs Creek that were impacted by the animal waste. Staff collected several water samples from Youngs Creek and the tributary to Young's Creek affected by the animal waste discharge. Sample No. 149118, which was collected 20 feet upstream (west) of the

confluence of Youngs Creek and the tributary, had a Dissolved Oxygen (DO) concentration of 13.66 milligrams per liter (mg/L), a conductivity reading of 336 microsiemens (μ S) and an Ammonia concentration of 0.097 mg/L. Sample No. 149119, which was taken at the confluence, had a DO concentration of 12.4 mg/L, a conductivity reading of 404 μ S and an Ammonia concentration of 4.88 mg/L (the acute criteria is 2.7 mg/L). Sample 14920, which was taken from the tributary to Youngs Creek approximately 10 feet upstream from the confluence, had a DO concentration of 0.39 mg/L, a conductivity reading of 4,080 μ S and an Ammonia concentration of 236 mg/L (the acute criteria is 5.51 mg/L).

5. Also on May 10, 2014, Missouri Department of Conservation (MDC) staff conducted an investigation of the fish kill caused by the animal waste discharge into the tributary to Youngs Creek. During the investigation, MDC staff observed 7,180 dead fish in a 0.7-mile stretch of Youngs Creek. Due to the inclement weather, MDC staff were unable to complete their investigation and identify all species that experienced mortality as a result of the discharge, although dead madtom, sucker, sunfish, darter and minnows were observed. MDC staff calculated damages of \$1,002.58 for the value of the fish kill.

6. On May 11, 2014, department staff contacted the Respondent's president, Mr. Warren Wilson. Mr. Wilson stated that the Respondent had land applied animal waste on the property on either May 8 or May 9, 2014. Mr. Wilson stated that during that time, the animal waste line suffered a loss of pressure and had to be shut off. After repressurizing the animal waste line, Mr. Wilson stated that he discovered that the cap had blown off the riser and animal waste was discharging from the riser. Mr. Wilson stated that animal waste escaped from the broken riser for approximately two to three hours before the animal waste line was shut off.

7. On May 13, 2014, department staff conducted a follow up inspection of the AFO. During the inspection, staff observed tall vegetation on the lagoon berms and trees growing on the outer slope of the northern lagoon's berms. Staff also observed manure solids adjacent to the tile drain inlet that was previously observed by department staff during the May 10, 2014, investigation.

8. On June 6, 2014, the department issued Notice of Violation (NOV) No. NER2014052311464236 to the Respondent for violations observed during the May 10, 2014, investigation and the May 13, 2014, inspection. The inspection report that accompanied the NOV required the respondent to take corrective actions to address the violations. The department did not receive a response to the NOV.

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 May 10, 2014 complaint report. In doing so, the department incurred costs and expenses, including but not limited to, water sampling and analysis and travel expenses, in the amount of \$2,398.74. In addition, MDC incurred similar costs and expenses in the amount of \$1,002.58, which includes the value of aquatic life killed in the amount of \$1,002.58. .

STATEMENT OF VIOLATIONS

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

11. Operated, used or maintained a water contaminant source, animal waste from a Class II Concentrated Animal Feeding Operation (CAFO), which intermittently discharges through tile drains into an unnamed tributary to Youngs 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 20-6.010(1)(A) and (5)(A).

12. Discharged water contaminants into an unnamed tributary to Youngs Creek, waters of the state, which reduced the quality of waters of the state below water quality standards established by the Clean Water Commission in violation of Sections 644.051.1(2) and 644.076.1, RSMo.

13. Caused pollution of an unnamed tributary to Youngs Creek, waters of the state, or placed or caused or permitted to be placed, a water contaminant, animal waste from a Class II CAFO, 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.

AGREEMENT

14. The department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in the Statement of Violations, without the Respondent admitting to the validity or accuracy of such claims.

15. 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 Respondent under this AOC.

16. 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 civil penalty in the amount of \$8,000.00. The department and Respondent further agree that \$5,250.00 of the civil penalty shall be suspended as described in Paragraph 16 below. The civil penalty shall be paid in two installments of \$1,000.00 and \$1,750.00. The first installment is due and payable upon execution of this AOC by the Respondent, and the second payment is due and payable by December 31, 2015. The payments shall be in the form of certified checks or cashier's checks made payable to "Audrain County Treasurer, as custodian of the Audrain County School Fund." The checks 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

17. The suspended penalty described in Paragraph 16 in the amount of \$5,250.00 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 16 through 20, the department shall send a written demand for the suspended penalty to the Respondent. The Respondent shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 16.

18. The Respondent agrees and is ordered to pay the state's investigative costs and damages in the amount of \$3,401.31 in the form of a separate check made payable to the "State

of Missouri.” The check in the amount of \$3,401.31 is due and payable by December 31, 2015. The check shall be delivered as provided in Paragraph 16 of this AOC.

19. The Respondent agrees and is ordered to operate and maintain the AFO at all times in compliance with the MCWL.

20. The Respondent agrees and is ordered to report all future discharges of animal waste within 24 hours of discovery.

SUBMISSIONS

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

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

OTHER PROVISIONS

22. 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 1) identifying the deadline that will not be completed; 2) identifying the reason for failing to meet the deadline; and 3) 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 basic provisions of 1, 2, and 3 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 Respondent an extension.

23. Should the Respondent fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs 26 through 35, 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	\$50.00 per day
31 to 90 days	\$100.00 per day
91 days and above	\$250.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Audrain County Treasurer, as custodian of the Audrain 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 / 76
Jefferson City, MO 65102-0477

24. 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.

25. 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 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 or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

26. 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.

27. 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 its records.

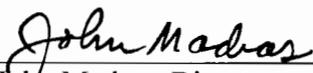
28. The Respondent shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

NOTICE OF APPEAL RIGHTS

By signing this AOC, the Respondent consents 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.

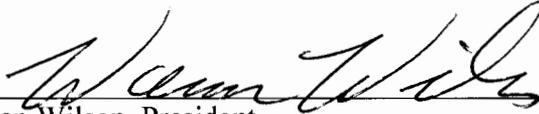
SIGNATORY AUTHORITY

Agreed to and Ordered this 12th day of November, 2015



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

Agreed to and Ordered this 27 day of Oct, 2015



Warren Wilson, President
Wilson Feed Lot, Inc.

Copies of the foregoing served by certified mail to:

Warren Wilson, President CERTIFIED MAIL # 7012 2920 0002 0660 6894
Wilson Feed Lot, Inc.
2651 Audrain Road 395
Thompson, MO 65285

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