

**BEFORE THE  
MISSOURI CLEAN WATER COMMISSION**

|                              |                          |
|------------------------------|--------------------------|
| <b>In The Matter Of:</b>     | )                        |
|                              | )                        |
|                              | )                        |
| <b>TRENTON FARMS RE, LLC</b> | ) <b>NO. 15-1345 CWC</b> |
| <b>PERMIT NO. MOGS10500</b>  | )                        |
|                              | )                        |

**FINAL DECISION**

The Administrative Hearing Commission (AHC) issued its recommendation to the Missouri Clean Water Commission (Commission) on December 24, 2015. The AHC concluded that the Department of Natural Resources (DNR) has met its burden of proving that the operating permit for Trenton Farms' CAFO was issued in accordance with current law.

The Commission may 1) adopt the AHC's recommendation, 2) change findings of fact or conclusions of law, or 3) vacate or modify the recommended decision. If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s) as prescribed in Section 621.250.3, RSMo.

The Commission hereby MODIFIES the AHC's recommendation and determines that the Department of Natural Resources failed to meet its burden of proving that the Missouri State Operating Permit MOGS10500 issued to Trenton Farms RE, LLC on August 12, 2015 was lawful.

The Commission's reasons for making a change to the AHC's recommendation are stated below. All portions of the AHC Recommended Decision not modified herein are specifically incorporated into this Final Decision.

## **Procedure**

Petitioner filed its Petition for Appeal and Entry of Appearance on August 28, 2015. The AHC issued its Recommended Decision on December 24, 2015 and transmitted it along with the record and transcript of the proceedings to the Commission on January 4, 2016. The Commission reviewed the record and transcript of the proceedings. It heard the parties' arguments through their respective attorneys, received the parties' written arguments, deliberated, and voted in open session at a meeting on February 17, 2016.

## **Findings of Fact**

48. Trenton Farms' permit application included a document prepared by Todd Van Maanen, P.E. titled "Gestation Facility Manure Productions & Storage Calculations, Farrowing Facility Manure Production & Storage Calculations, and Gilt Development Facility Manure Production & Storage Calculations" (calculations document). Said document was certified, sealed and signed by Mr. Van Maanen.

## **Conclusions of Law**

### Count I. 100 Year Floodplain

We disagree with the AHC's conclusion that the certification made by Professional Engineer Todd Van Maanen on the calculations document is sufficient to support a finding that the proposed Trenton Farms CAFO location is protected from inundation or damage due to the one hundred-year flood. The certification reads as follows:

"I hereby certify that I am a licensed professional in the State of Missouri. To the best of my knowledge, information and belief, the manure management and containment system is designed in general conformance with applicable laws, codes and regulations as of the date of signing."

The AHC construed that language to mean Mr. Van Maanen "has certified that the buildings will be protected from inundation or damage due to the 100-year flood as required by the rule." But Mr. Van Maanen certified and attached his seal to the calculations document—not the permit application as a whole. The calculations document reflects numeric calculations for manure. It provides no direct evidence that the CAFO is protected from inundation or damage due to the one hundred-year flood. The AHC concluded that, by

certifying the manure calculations, Mr. Van Maanen guaranteed compliance with all Missouri CAFO laws. We think it unreasonable to assume that Mr. Van Maanen intended to risk his professional engineer's license by signing one document within a permit application.

In light of the above, and because we agree with the AHC's analysis and ultimate rejection of the other evidence offered in support of the contention that the proposed CAFO location is protected from the one hundred-year flood, we determine that DNR failed to meet its burden of showing compliance with 10 CSR 20-8.300(5)(A).

### Count III. Continuing Authority

We disagree with the AHC's analysis of whether DNR met its burden of proving that Trenton Farms meets the requirements of 10 CSR 20-6.010(3). The regulation requires "that a permanent organization exists *which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made*" (emphasis added). The phrase "continuing authority" is not defined in this Commission's regulations. We do not disagree with the AHC's conclusion that Trenton Farms' compliance with Section 347.037.3, RSMo 2000 shows that it is a permanent organization. But the regulation requires more than just a permanent organization. If duly filed corporate documents were enough, then the sentence would not include the phrase "which will serve as the continuing authority for the operation, maintenance, and modernization of the facility." But it does, and so this Commission determines DNR must prove that Trenton Farms can operate, maintain, and modernize the CAFO facility it intends to build. DNR showed only that Trenton Farms is a permanent organization. Therefore, we determine that DNR failed to meet its burden as it pertains to 10 CSR 20-6.010(3).

### **Summary**

The Department of Natural Resources failed to meet its burden of proving that the operating permit for Trenton Farms was issued in accordance with current law. We therefore overrule the Department's decision granting the permit.

WHEREFORE, THE UNDERSIGNED MEMBERS HAVING VOTED ON FEBRUARY 17, 2016 TO MODIFY THE AHC RECOMMENDED DECISION, NOW ISSUE THIS WRITTEN DECISION EFFECTIVE THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2016.

MISSOURI CLEAN WATER COMMISSION

  
Chair Bennett

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Commissioner Parnell

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Commissioner Wood

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Commissioner Warren

THE UNDERSIGNED MEMBERS DISAGREE WITH THIS DECISION.

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Vice Chair McCarty

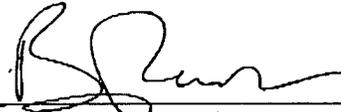
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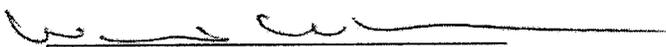
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*Ashley McCarty*  
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Vice Chair McCarty

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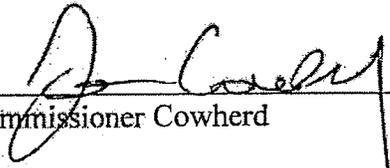
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