

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

IN THE MATTER OF:

Patrick Bray, dba First Class Swine

No. 2011-WPCB-1150

SERVE:

Mr. Patrick Bray

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) number 2011-WPCB-1150 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Department believes that violations of the Missouri Clean Water Law (Law) and its implementing regulations occurred at Mr. Patrick Bray's (Mr. Bray's) Confined Animal Feeding Operation (CAFO). 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 Law. Litigation may occur without further 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 Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Mr. Bray of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any, including future, violations of the Law and the violations cited in this AOC, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

- A. Mr. Bray, doing business as First Class Swine, owns and operates an unclassified CAFO with approximately five-hundred (500) large swine, or approximately two-hundred (200) animal units (AU) located in the NW ¼, NW ¼, Section 34, Township 33 N, Range 32 West in Barton County. Mr. Bray operates the CAFO

pursuant to the conditions and requirements of Missouri State Operating Permit (Permit) number MO-G010447, issued April 8, 2011. The CAFO consists of four (4) confinement buildings with underfloor shallow pits, 500 sows, a no-discharge anaerobic waste treatment lagoon (lagoon), and a mortality composter. Wastewater collected in the underfloor pits from three (3) of the four (4) confinement buildings is pumped and land applied, and the fourth is flushed directly to the lagoon through a six (6) inch PVC pipe. The lagoon has a design capacity of 350 swine (140 AU), a design storage capacity of 347 days, and an average volume of 691,892 gallons/year. Wastewater from the lagoon is transported via underground pipeline and land applied using a travelling gun. The receiving stream for the CAFO is an unnamed tributary of East Fork Drywood Creek.

- B. East Fork Drywood Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- C. Agricultural wastes are water contaminants as the term is defined in Section 644.016(23), RSMo.
- D. On February 18, 2011, Department staff responded to a complaint of an animal waste discharge from the CAFO. During the complaint investigation, Department staff observed a discharge of a liquid from the CAFO property that was bright pink in color, characteristic of swine waste, flowing west under NW 80th Lane and onto a neighboring property. Department staff collected a water sample at a culvert under NW 80th Lane for chemical analysis. Analytical results of the sample documented that the ammonia level exceeded the Water Quality Standards acute criteria by 236 percent. Department staff followed the natural flow of the wastewater approximately six tenths of a mile to its confluence with East Fork Drywood Creek. Staff collected a water sample for chemical analysis at the first crossing upstream of the confluence at the NW 80th Lane bridge over East Fork Drywood Creek. Analytical result of the sample indicated total ammonia as nitrogen was below Water Quality Standards acute criteria. During this investigation, Department staff informed Mr. Bray that they had observed evidence that process wastewater from the CAFO had impacted a tributary to East Fork Drywood Creek. Mr. Bray constructed an emergency dam across the waterway on his property to stop the flow of wastewater, pumped the contained wastewater and land applied the contaminated water away from the area where he had land applied the previous day. Department staff also inspected the lagoon and observed that it was not discharging at the time of the inspection, but staff did observe wastewater in a secondary containment terrace, and there was evidence that wind action had recently pushed wastewater over the terrace and into a waterway running south then west around the lagoon. Down gradient to the southeast toe of the lagoon, a ditch from the application field met with the waterway from the terrace. Department staff observed water in the ditch that was pink in color combining with the wastewater in the terrace causing the discharge.

- E. On May 4, 2011, the Department issued Notice of Violation (NOV) number 13567SW to Mr. Bray for operating, using or maintaining a water contaminant source, a discharge of animal waste from the facility property, which discharged to a tributary of East Fork Drywood Creek, and an unnamed tributary of Comstock Creek, waters of the state, without a Missouri State Operating Permit..
- F. On July 14, 2011, the Department received a letter from Mr. Bray describing corrective actions he had taken. In this letter, Mr. Bray explained that he built a dam to stop the flow of effluent; and then pumped and land applied the collected swine waste. Further, he stated his land application equipment had been damaged by vandals; however, the equipment was repaired and it is currently operable. To avoid future violations, Mr. Bray stated he built a dam with an eight (8) inch PVC pipe which can be plugged in the event of a future spill.
- G. As a result of the above investigations, the Department incurred costs for staff time in the amount of one-thousand four-hundred thirty-six dollars and ninety-four cents (\$1,436.94).
- H. Section 644.096, RSMo, authorizes 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 Section 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 the State because of the violation.
- I. Section 644.076.1, RSMo, makes it unlawful to violate the Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CONCLUSIONS OF LAW

Violations of the Law and its implementing regulations alleged herein and found to have been committed by Mr. Bray at the CAFO are as follows:

1. On February 18, 2011, operated, used, or maintained a water contaminant source, a discharge of animal waste from the facility property, which discharged to an unnamed tributary to East Fork Drywood Creek, waters of the state, without a Permit in violation of Sections 644.051.2 and 644.076.1, RSMo and 10 CSR 20-6.010(1)(A) and (5)(A).
2. On February 18, 2011, and March 22, 2011, caused pollution of East Fork Drywood Creek and an unnamed tributary to Comstock 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), 644.076.1, RSMo, and 10 CSR 20-7.031(3).

3. On February 18, 2011, 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(3) and (4).

IV. AGREEMENT

- A. The Department and Mr. Bray desire to amicably resolve all claims that might be brought against Mr. Bray for the violations alleged above in Section III, Conclusions of Law, without Mr. Bray admitting the validity or accuracy of such claims.
- B. 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 Mr. Bray under this AOC. If Mr. Bray sells or otherwise transfers the facility, then Mr. Bray shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of Mr. Bray under this AOC in writing. In such event, Mr. Bray shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. Mr. Bray, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, shall, without admitting liability or fault, pay a civil penalty in the amount of one-thousand dollars and zero cents (\$1,000.00). The civil penalty shall be paid in five (5) monthly installments of two hundred dollars (\$200.00) each. The payments shall be in the form of certified checks or cashier's checks made payable to "*Barton County School Treasurer, as custodian of the Barton County School Fund.*" The first penalty payment in the amount of two hundred dollars (\$200.00) is due and payable sixty (60) days of the effective date of this AOC. The remaining eight hundred dollars (\$800.00) will be paid in four (4) consecutive 30 day intervals following the first payment and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176
- D. Mr. Bray shall pay the state's investigative costs in the amount one-thousand four-hundred thirty-six dollars and ninety-four cents (\$1,436.94) in the form of a certified check or cashier's check made payable to the "*State of Missouri.*" The check in the amount of one-thousand four-hundred thirty-six dollars and ninety-four cents (\$1,436.94) is due and payable within thirty (30) days of the effective

date of this AOC by Mr. Bray. The check shall be delivered to:

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

- E. Mr. Bray shall verbally notify the Department within twenty-four (24) hours from the time Mr. Bray becomes aware of any discharge from the lagoon and submit a written response to the Department's Southwest Regional Office at 2040 W. Woodland, Springfield, MO 65807 within five (5) days from the time Mr. Bray becomes aware of the discharge explaining the corrective actions taken to resolve the discharge and prevent future discharges.
- F. Mr. Bray shall follow the Department's guidelines for CAFO Best Management Practices including but not limited to continuous monitoring of fields and land application equipment during land application of swine wastes, maintaining the swine waste levels in the storage lagoon between the minimum and maximum operating levels, and only land applying when soil conditions are appropriate.
- G. Mr. Bray shall follow the guidelines established in the Department approved Nutrient Management Plan for Mr. Bray's CAFO, First Class Swine, including but not limited to monitoring and recording the depth of swine waste within the lagoon weekly. These records are to be made available upon request by the Department.
- H. Within thirty (30) days of the effective date of this AOC, Mr. Bray shall update his Nutrient Management Plan, Table 3-3, to include the Southwest Regional Office telephone number as the primary emergency contact during business hours.
- I. Mr. Bray shall pump down lagoon to lowest operating level between October 1st and October 31st of each year.
- J. Mr. Bray shall notify the Department within seven (7) days of the date that the lagoon's level reaches four (4) inches below the upper operating level with information that identifies the lagoon, the lagoon level in inches below the emergency spillway and actions taken to reduce the lagoon levels.
- K. Should Mr. Bray fail to meet the terms of this AOC, including the terms set out in Paragraphs C through J, Mr. Bray shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
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1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

- L. Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Barton County Treasurer, as custodian of the Barton County School Fund.*" Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

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

- M. No portion of the stipulated penalties paid pursuant to this AOC may be used to reduce Mr. Bray's federal or state tax obligation.
- N. Nothing in this AOC forgives Mr. Bray 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.
- O. 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.
- P. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to Mr. Bray for his records.
- Q. Mr. Bray shall comply with the Law, Chapter 644, RSMo, and its implementing regulations at all times in the future.

V. **RIGHT OF APPEAL**

By signing this AOC No. 2011-WPCB-1150, Mr. Bray waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 640.130.5, 640.131.3, 644.056.3, and 644.079.2, RSMo, and 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), 10 CSR 60-6.070, or any other source of law. AOC No. 2011-WPCB-1150 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the

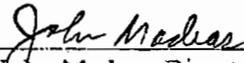
Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

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

Ms. Laura Guinn
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 5th day of March, 2012



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

Agreed to and Ordered this 23 day of February, 2012



Patrick Bray, Owner
First Class Swine

Copies of the foregoing served by certified mail to:

Mr. Patrick Bray CERTIFIED MAIL #
First Class Swine
480 NW 80th Lane
Lamar, MO 64759

c. Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII

901 North Fifth Street
Kansas City, KS 66101

Ms. Cindy Davies
Southwest Regional Office
2040 W. Woodland
Springfield, MO 65807

Refaat Mefrakis, P.E., Chief
NPDES Permits & Engineering Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
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Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
1288 State Highway HH
Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice-Chair
Missouri Clean Water Commission
Drury University
900 N. Benton
Springfield, MO 65802

Mr. John Cowherd, Commissioner
Missouri Clean Water Commission
1303 Deer Lane
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Mr. Jan C. Tupper, Commissioner
Missouri Clean Water Commission
2827 South Michigan
Joplin, MO 64804

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
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Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
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**Mr. Dennis Wood, Commissioner
Missouri Clean Water Commission
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Kimberling City, MO 65686**