

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

IN THE MATTER OF:

Gilts Way, LLC
Confined Animal Feeding Operation

SERVE:

Mr. Brad Bohon
Gilts Way, LLC

No. 2012-WPCB-1178

AUG 10 2012

WATER PROTECTION

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) No. 2012-WPCB-1178 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued due to violations of the Missouri Clean Water Law (Law) and its implementing regulations documented at the concentrated animal feeding operation owned by Gilts Way, LLC. 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 the Gilts Way, LLC 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, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. Gilts Way, LLC, (Gilts Way) owns and operates a Class IC concentrated animal feeding operation (CAFO), located in the SE ¼, NW ¼, Sec. 36, T44N, R20W of Pettis County. Gilts Way is a gilt development operation and has a design capacity of 2,490 swine over 55 pounds, for a total of 996 animal units (AU). The

operation consists of one (1) high rise confinement building over a concrete storage pit where manure is mixed with wood chips to create a composted dry waste material. Residual liquid is pumped out and land applied. Gilts Way operates pursuant to the requirements and conditions of Missouri State Operating Permit (Permit) MO-G010766 and is an export only operation. Gilts Way shares composters and stack sheds with a joint facility, the Twins Ranch poultry facility permitted under MO-G010587.

- B. On July 17, 2011, Mr. Brad Bohon, owner, Gilts Way, LLC, called the Missouri Department of Natural Resources' (Department's) twenty-four (24) hour spill line to report a spill from the CAFO's compost barn. Mr. Bohon stated that the spill was caused by malfunction of a controller on a Bobcat excavator causing the excavator to accidentally remove a retention board in the compost pit. Mr. Bohon further stated it took eight (8) or nine (9) minutes to manually replace the board, and that in the interim a large volume of liquid animal waste discharged from the barn. He further stated that on the previous day the barn compost pit had been partially cleaned out, and he thought this may have left an area in which a large amount of liquid manure was able to pool. According to Mr. Bohon, the discharge entered the unnamed tributary to Haw Creek (tributary), flowed about one (1) mile, and then entered Haw Creek. Mr. Bohon reported that he had erected a temporary dam at the location where the tributary enters Haw Creek to stop the flow of animal waste into Haw Creek, and then began pumping effluent out from the stream and onto a nearby grass field.
- C. Haw Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- D. Agricultural wastes are water contaminants as the term is defined in Section 644.016(23), RSMo.
- E. On July 18, 2011, Department staff conducted an inspection of Gilts Way in response to the above reported spill. Present during the inspection were Mr. Bohon, a Cargill Environmental Manager, and a Cargill Field Manager. They drove to the location where the tributary enters Haw Creek. There, Department staff observed an earthen, semi-permanent dam constructed by Mr. Bohon. The dam crossed the tributary and was preventing further discharge into Haw Creek. At the time of the inspection, a crew was pumping waste-contaminated water from the tributary and was land applying it to a nearby grass field. Staff noted in the inspection report that there was no evidence of run off from the field. Department staff requested that Mr. Bohon pump out as many pools of liquid and sludge as possible and to monitor the number of gallons of waste-contaminated water applied to the field for reporting purposes. Department staff observed and photographed dead fish and dead crayfish in Haw Creek, and then contacted the Missouri Department of Conservation (MDC) to inform them of the fish kill. Department staff also collected water samples for chemical analysis from three (3)

locations along Haw Creek. The sample collected upstream of the point where the tributary flows into Haw Creek was clear with no visible impact from the discharge. The sample collected at the mixing zone was slightly blue-gray and turbid. The sample collected downstream of the point where the tributary flows into Haw Creek was slightly gray with visible solids, dead fish, and dead crawfish. Observations document violations of Missouri Clean Water Law Water Quality Standards (WQS) general criteria for sight and toxicity to aquatic life and WQS specific criteria of turbidity, color and the presence of solids.

- F. On July 18, 2011, MDC conducted a fish kill investigation at Haw Creek. MDC staff determined the extent of the fish kill to be approximately a one (1) mile stretch of Haw Creek. MDC staff counted the number of dead fish and invertebrates found in a tenth (0.10) of a mile portion of the effected stretch of the creek, and, using the standard method, calculated that eleven thousand twenty (11,020) fish of nine (9) species and eighty (80) invertebrates, crayfish, were killed in the one (1) mile stretch of Haw Creek as a result of the CAFO discharge.
- G. On July 22, 2011, Department staff contacted the Cargill Environmental Manager by telephone to discuss the ongoing clean-up operation. The Environmental Manager stated that the pools in the tributary were pumped out and that they had started back flushing the pools.
- H. On August 3, 2011, Mr. Bohon contacted the Department by telephone. Mr. Bohon stated they had completed clean-up of the area including scraping sludge out of the tributary with a Bobcat excavator. Mr. Bohon requested the Department conduct a follow up visit to ensure the adequacy of clean-up efforts at the site.
- I. On August 5, 2011, the Department conducted a follow up inspection of Gilts Way. Department staff drove to the location where the tributary enters Haw Creek and observed that the temporary dam constructed by Mr. Bohon to stop process wastewater from entering Haw Creek from the tributary was still in place. Mr. Bohon had constructed an additional series of dams along the length of the tributary. According to Mr. Bohon, contaminated water collected from the tributary was land applied. Along the majority of the tributary, Mr. Bohon had scraped the solids out with a bobcat or backhoe. He then mixed the pre-existing soil and rock from the tributary with any residual material that remained. About one hundred (100) feet of the tributary was inaccessible, so Mr. Bohon flushed that area with water and then land applied the contaminated water. The solids removed from the tributary were placed in the facility's stack sheds to be land applied. Department staff observed a pool of water behind one of the tributary dams which appeared murky and had an odor characteristic of manure. Department staff field tested a water sample from this pool for ammonia as Nitrogen (N) and obtained a reading of 1.92 mg/L ammonia as N which is not in violation of WQS acute criteria. Department staff collected water samples from

the same three (3) locations in Haw Creek where samples were taken on July 18, 2011. Chemical analysis of these samples indicated no violation of WQS. Mr. Bohon informed Department staff that he had contacted the Natural Resources Conservation Service (NRCS) concerning construction of a berm or secondary containment on the down gradient side of the production barn to prevent any future discharges to waters of the state.

- J. On August 12, 2011, the Department issued Notice of Violation (NOV) No. KC2011072011465723 to Mr. Bohon for operating, using, or maintaining a water contaminant source, a composting deep pit, which discharged to an unnamed tributary to Haw Creek, waters of the state, without a Permit; causing pollution of an unnamed tributary to Haw Creek, waters of the state; and 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 resulting in a fish kill.
- K. On September 9, 2011, Mr. Bohon called the Department and stated that all work on the stream had been completed. He further stated that NRCS designed a secondary containment berm for the hog facility and construction of the berm was nearly complete, and that he was waiting for pictures of the berm to be developed.
- L. On September 15, 2011, the Department received a letter from Mr. Bohon describing actions he took to clean-up the spill and steps he has taken and will continue to take to prevent a future violation. In this letter, Mr. Bohon stated that he spent three (3) to four (4) weeks cleaning up the ditch and creek and that he worked with the NRCS office to develop a plan for construction of a secondary containment barrier and completed construction of the barrier. Mr. Bohon also explained that he installed a valve in the overflow pipe at his pond, so if there is a future release, he would have the ability to close the valve to prevent waste from leaving his property. Additionally, Mr. Bohon said he contacted several experts to assist him with improving management of his dry litter system and plans on implementing the suggestions.
- M. As a result of the above investigations, the Department incurred costs for staff time and damages in the amount of eight-thousand three-hundred fifty-nine dollars and sixty cents (\$8,359.60).
- N. 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.
- O. 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. Bohon at the CAFO are as follows:

1. On July 17, 2011, operated, used, or maintained a water contaminant source, animal effluent from a storage structure, which discharged to an unnamed tributary to Haw 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).
2. On July 17, 2011, caused pollution of an unnamed tributary of Haw Creek and Haw 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, and 10 CSR 20-7.031(3)(A)(C).
3. On July 17, 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 resulting in a fish kill, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031(3)(C)(D) and (4)(G).

IV. AGREEMENT

- A. The Department and Mr. Bohon desire to amicably resolve all claims that might be brought against Mr. Bohon for the violations alleged above in Section III, Conclusions of Law, without Mr. Bohon 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. Bohon under this AOC. If Mr. Bohon sells or otherwise transfers the facility, then Mr. Bohon shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of Mr. Bohon under this AOC in writing. In such event, Mr. Bohon shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. Mr. Bohon, 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) in the form of a certified check or cashier's check made payable to "Pettis County School Treasurer, as custodian of the Pettis County School Fund." A check in the amount of one-thousand dollars and zero cents (\$1,000.00) is due and payable upon execution of this AOC by the Mr. Bohon. The check and signed copy of the AOC shall be delivered to:

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

- D. Mr. Bohon shall pay the state's investigative costs and damages in the amount eight-thousand three-hundred fifty-nine dollars and sixty cents (\$8,359.60) in the form of a certified check or cashier's check made payable to the "*State of Missouri*." The check in the amount of eight-thousand three-hundred fifty-nine dollars and sixty cents (\$8,359.60) is due and payable upon the effective date of this AOC by Mr. Bohon. The check shall be delivered to:

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

- E. Mr. Bohon agrees to follow the Department's Nutrient Management Technical Standards and guidelines for Concentrated Animal Feeding Operation Best Management Practices.
- F. Mr. Bohon shall verbally notify the Department within twenty-four (24) hours from the time Mr. Bohon becomes aware of any discharge from the CAFO and submit a written response to the Department's Kansas City Regional Office at 500 NE Colbern Road, Lee's Summit, MO 64086-4710 within five (5) days from the time Mr. Bohon becomes aware of the discharge explaining the corrective actions taken to resolve the discharge and prevent future discharges.
- G. Mr. Bohon shall conduct weekly inspections and maintain records of the manure, litter, and process wastewater impoundments pursuant to Permit MO-G010766, Effluent Limitation and Monitoring, Section 6. b. The records shall include level in liquid impoundments as indicated by a depth marker. The records shall be kept on-site by Mr. Bohon for a period of five (5) years from the date they are created.
- H. Within sixty (60) days of the effective date of this AOC, Mr. Bohon shall submit to the Department, for review and approval, a management plan for the Gilts Way dry litter manure storage system prepared by a professional engineer licensed to practice in the State of Missouri detailing all aspects of dry litter storage. The management plan shall include a schedule for pumping leachate from the compost

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. Bohon for his records.
- Q. Mr. Bohon 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. 2012-WPCB-1178, Mr. Bohon waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC No. 2012-WPCB-1178 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 28 day of August, 2012



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

Agreed to and Ordered this 7th day of August, 2012



Brad Bohon, Owner
Gilts Way, LLC

Copies of the foregoing served by certified mail to:

Mr. Brad Bohon CERTIFIED MAIL #
Gilts Way, LLC
36308 Highway M
Mora, MO65345

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. Dorothy Franklin, Regional Director
Kansas City Regional Office
Department of Natural Resources
500 NE Colbern Rd.
Lee's Summit, MO 64086

Mr. Refaat Mefrakis, P.E., Chief
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