

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

**RECEIVED**

JUN 14 2013

DAS ACCOUNTING

**IN THE MATTER OF:**

Kenny Deibel, d/b/a 4-D Farms

**SERVE:**

Mr. Kenny Deibel

No. 2013-WPCB-1239

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) number 2013-WPCB-1239, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued due to violations that occurred during a release of process wastewater from 4-D Farms in violation of 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 Mr. Kenny Deibel 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.

**II. FINDINGS OF FACT**

A. Mr. Kenny Deibel, d/b/a 4-D Farms, owns and operates a Class II Animal Feeding Operation (AFO) consisting of two nurseries with a design capacity of 8,000 swine each less than 55 pounds. The 4-D Farms AFO is located in Section 7 Township 52 North Range 20 West in Saline County and process wastes are collected in a liquid manure pit under the building that has a storage design of 383 days. Process wastes are used as fertilizer by land application to agricultural

fields. The 4-D Farms AFO and the land application area are located in the watershed of Edmondson Creek.

- B. Edmondson Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- C. Process wastes and manure generated by the 4-D Farms AFO are water contaminants as defined in Section 644.016(24), RSMo.
- D. On September 10, 2012, Department staff conducted an investigation and observed that the water in Edmondson Creek was dark in color, had an odor characteristic of swine effluent and contained dead fish. During the investigation Mr. Deibel explained to Department staff that on September 8, 2012, he land applied wastewater from the deep pit to ensure proper aeration of the nurseries. Based on observations made during the investigation, Department staff determined wastewater entered a tile drain located on the field and discharged from the tile drain's outlet into Edmondson Creek. Department staff did not observe any impacts to Edmondson Creek upstream from the tile drain outlet. Department staff collected water samples upstream and downstream of the tile drain outlet and chemical analyses of the samples documented that the samples collected downstream of the tile drain outlet violated the Missouri Clean Water Commission's Water Quality Standards (WQS) acute criteria for total Ammonia as Nitrogen by 2,823%. Ammonia as Nitrogen levels in water samples collected upstream did not violate the WQS. Department staff directed Mr. Deibel to remove the contaminated water from the creek and apply the water to nearby fields at proper application rates.
- E. On September 12, 2012, Mr. Deibel contacted the Department and stated four loads of swine effluent had been removed from the creek and land applied.
- F. On September 18, 2012, Mr. Deibel contacted the Department and informed staff that he was going to introduce freshwater to flush the creek and the flush water would also be land applied.
- G. On September 20, 2012, Department staff conducted a follow up inspection of the 4-D Farms AFO and observed that the water in Edmondson Creek was light brown in color with no odors detected. Department staff observed a track hoe had been used to dam up the creek to prevent swine waste from moving further downstream.
- H. On 15, 2012, Mr. Deibel contacted the Department and stated all cleanup efforts had been completed and that the irrigation line which runs to the land application field had been pressure tested and there were no problems with the irrigation line.
- I. On October 25, 2012, the Department issued Notice of Violation (NOV) No. NER2012091210463876 to Mr. Deibel for operating, using, or maintaining a water contaminant source, agricultural wastes from a confined feedlot operation, which discharges to waters of the state without a Missouri State Operating Permit; causing pollution to Edmondson Creek; and discharging water contaminants into waters of the state which reduced the quality of such water below WQS established by the Missouri Clean Water Commission

- J. On March 29, 2013, the Department received a letter signed by Mr. Deibel stating that he has hired a licensed applicator and will us a tank wagon to inject the process wastes.
- K. As a result of the above investigations, the Department incurred costs for staff time in the amount of one-thousand seven-hundred sixty dollars and eighty-eight cents (\$1,760.88).
- L. 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.
- M. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

### III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by Mr. Deibel at the facility are as follows:

- 1. Operated, used, or maintained a water contaminant source, process wastes from an animal feeding operation, which discharged to waters of the state without a MSOP, in violation of Sections 644.051.2, 644.076.1, and 578.215.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A);
- 2. Caused pollution to Edmondson Creek, or placed or caused or permitted to be placed a water contaminant, swine effluent, where it was reasonably certain to cause pollution of the waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo; and
- 3. 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.

### IV. AGREEMENT

- A. The Department and Mr. Deibel desire to amicably resolve all claims that may be brought against Mr. Deibel for violations alleged above in Section III, Citations and Conclusions of Law, without Mr. Deibel admitting to 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. Deibel under this AOC.

- C. Mr. Deibel in compromise and satisfaction of the Department claims relating to the above-referenced violations agrees, without admitting liability or fault, to pay a civil penalty in the amount of one thousand dollars and no cents (\$1,000.00). The payment shall be in the form of a certified check or cashier's check made payable to "Saline County Treasurer, as custodian of the Saline County School Fund." The check in the amount of one thousand dollars and no cents (\$1,000.00) is due and payable upon execution of this AOC by Mr. Deibel. The check and signed copies 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. Deibel shall pay the state's investigative costs in the amount of one-thousand seven-hundred sixty dollars and eighty-eight cents (\$1,760.88) 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 seven-hundred sixty dollars and eighty-eight cents (\$1,760.88) is due and payable upon execution of this AOC by Mr. Deibel. The check shall be delivered to:

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

- E. Mr. Deibel agrees and is ordered to apply process wastes generated by his AFO pursuant to the following conditions and requirements:
1. Process waste applications shall comply with all application setbacks defined in Appendix A of this AOC;
  2. No surface application of process wastes is allowed if precipitation is forecasted to occur within 24 hours of planned application;
  3. Process wastes shall not be applied on land with a slope greater than 20 percent;
  4. Process wastes shall not be surface applied to frozen, snow covered or saturated soils;
  5. Process wastes applications shall be monitored so that target application rates are met and any malfunction in the operation of the equipment is detected and corrected before any over application of manure occurs on the land-application site;
    - a) Wastewater and liquid manure applications shall be conducted so as to prevent surface runoff of wastewater and liquid manure during land application. Steps to insure no runoff occurs during land application

include:

- i) Adjusting surface application rates to meet infiltration rate and water holding capacity of the soil;
- ii) Irrigation systems shall have automatic shut-off devices in case of pressure loss and/or an operator on-site at all times during operation to monitor application equipment.
- b) All land application equipment shall be calibrated at least annually;
- c) The perimeter of all fields receiving manure shall be checked regularly during operation of land application equipment to confirm manure is not running off the field or entering waters of the state.

- F. Mr. Deibel agrees and is ordered to verbally notify the Department within twenty-four (24) hours of becoming aware of any discharge from 4-D Farms AFO and submit a written response to the Department's Northeast Regional Office at 1709 Prospect Drive, Macon, MO 63552 within five (5) days from the time Mr. Deibel becomes aware of the discharge explaining the corrective actions taken to resolve the discharge and prevent future discharges.
- G. Should Mr. Deibel fail to meet the terms of this AOC, Mr. Deibel 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	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Saline County Treasurer, as custodian of the Saline 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

- H. Nothing in this AOC forgives Mr. Deibel 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 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 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.
- I. 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.

- J. Upon full payment of the above-mentioned penalty and full compliance with all provisions of this AOC, the Department agrees to refrain from initiating or asserting against Mr. Deibel any civil or administrative suit claiming violations of the MCWL, Chapter 644, RSMo, listed in Notice of Violation No. NER2012091210463876.
- K. 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 Mr. Deibel for his records.
- L. Mr. Deibel shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, Mr. Deibel 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.

VI. CORRESPONDENCE AND DOCUMENTATION

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

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

Agreed to and Ordered this 1<sup>st</sup> day of July, 2013

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

Agreed to and Ordered this 11 day of June, 2013

Kenny Deibel  
Mr. Kenny Deibel, Owner/Operator

Copies of the foregoing served by certified mail to:

Mr. Kenny Deibel  
35575 Linwood Ave.  
Miami, MO 65344

CERTIFIED MAIL:

- c: Ms. Diane Huffman, Environmental Protection Agency
- Mr. Chris Wieberg, Chief, Operating Permits Section
- Ms. Janet Pointer, Accounting Specialist, Accounting Program
- Ms. Irene Crawford, Director, Northeast Regional Office
- Missouri Clean Water Commission

Exhibit A  
Abatement Order on Consent No. 2013-WPCB-1239

Setback Feature	Application Conditions	Setback Distance (feet)
Public or private drinking water well or other wells including un-plugged abandoned wells	All applications methods	300
Public or private drinking water lake or impoundment	All applications methods	300
Public or private drinking water intake structure	All applications methods	300
Classified waters of the state not used as a water supply as defined in 10 CSR 20-7.031(1)F	All applications methods	35
	No or insufficient vegetative buffer	100
Other public and privately owned lakes and impoundments not used as a water supply including impoundments with no outlet	Permanently vegetated buffer <sup>1</sup>	35
	Up-gradient, on or insufficient vegetative buffer	100
	Down-gradient, no or insufficient vegetative buffer	35
Other perennial streams, other intermittent streams, canals, drainage ditches and wetlands	Permanently vegetated buffer	35
	Up-gradient, on or insufficient vegetative buffer	100
	Down-gradient, no or insufficient vegetative buffer	35
Tile line inlet (if left un-plugged during application)	Permanently vegetated buffer	35
	Up-gradient, on or insufficient vegetative buffer	100
	Down-gradient, no or insufficient vegetative buffer	0
Losing stream	All applications methods	300
Cave entrance	All applications methods	300
Spring	All applications methods	300
Active sinkhole	All applications methods	300
Non-owned occupied residence	Spray irrigation only	150
Public use area including non-owned business	Spray irrigation only	150
Public road	All applications methods	50
Property boundary	All applications methods	50

<sup>1</sup> Vegetative Buffer – A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes of effectively slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.