

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

IN THE MATTER OF:

CPJM, LLC

SERVE:

Dr. Mac Wilt
CPJM, LLC

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No. 2014-WPCB-1293

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2014-WPCB-1293, by the Missouri Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because CPJM, LLC is 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 CPJM 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. CPJM, LLC owns and operates an unpermitted Class II concentrated animal feeding operation (CAFO) located in the eastern half of Section 6, Township 53 North, Range 27 West, in Ray County, Missouri. The CAFO is a no-discharge operation consisting of two (2) confinement buildings and a single-cell anaerobic lagoon to collect process waste. The facility is designed to handle 1,920 hogs over 55 pounds, or approximately 770 animal units. The waste is piped from the buildings to the lagoon for storage until it is disposed of via land-application. The receiving stream is a tributary of East Fork Crooked River. The CAFO is slightly more than two miles from East Fork Crooked River, the closest classified stream.
- B. East Fork Crooked River and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- C. Agricultural wastes are water contaminants as the term is defined in Section 644.016(24), RSMo.

- D. On August 29, 2013, the Department received a report of an environmental concern, stating that hog waste was entering a creek near the CPJM property.
- E. In response to the concern, on August 30, 2013, Department staff performed an investigation on and near the CPJM property. The inspector observed dried hog waste on the ground between the production barns and a pond immediately southeast of the barns, forming a path between the barns and the pond. Staff further observed an eroded "cut" present in the southeast berm of the pond, and evidence of past discharge of process wastewater through the cut. The level of wastewater in the pond at the time of the inspection was approximately two inches below the cut.
- F. The lagoon used for storage of process waste prior to land application is located approximately 0.25 miles south of the pond referenced above, and at the north end of an active land-application field. At the time of the inspection, several pieces of land-application equipment, including a tractor, pump, traveling gun, and hoses, were present near the lagoon. Department staff observed that the berm of this lagoon had deep-rooted vegetation growing on it, and there was a depression in the berm by which process waste could escape the lagoon when waste levels were high.
- G. Areas containing process waste were present between the active land application field and a stream (a tributary of East Fork Crooked River) to its southeast. Department staff also observed pools with dark water, and with floating foam and solids, in the stream. The inspector reported an odor of manure in these areas.
- H. During the investigation, Department staff took water quality measurements and collected grab samples of water for laboratory analysis. Sampling locations included: (1) a site on the receiving stream upstream of the land-application area; (2) a site on the receiving stream at the downstream corner of the land application area; and (3) a site on the receiving stream approximately 1.2 miles downstream of the land application area. The dissolved oxygen concentration and pH level were much lower at Site 2, in the waste-affected area, as compared to the unaffected areas at Sites 1 and 3. The conductivity level in the affected area was markedly greater than in unaffected areas, a further indication of contamination. The Ammonia as N concentration in the affected area (109 milligrams per liter [mg/L]) was dramatically greater than the upstream (0.42 mg/L) and far downstream (0.32 mg/L) sites, and exceeded the level (48.8 mg/L) considered acutely toxic in waters containing a warm-water fishery.
- I. Based upon the violations documented by Department staff during the August 30, 2013 inspection, the Department issued Notice of Violation (NOV) No. KC2013100410341123 to CPJM on December 9, 2013.
- J. The letter that accompanied the NOV required CPJM to store and land apply waste so that there is no discharge from the facility, submit a written statement including photographic documentation to the Department describing cleanup activities, and submit a written report to the Department explaining how these circumstances will be prevented in the future.

- K. On January 2, 2014, CPJM sent a letter to the Department summarizing their clean-up activities completed to date, including photographic documentation, and outlining the additional clean-up activities and operational procedure changes that they planned to implement in the future.
- L. 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 violation, sustained by it because of any violation.
- M. The Department dispatched employees to investigate the August 2013 swine effluent spill. In doing so, the Department incurred costs and expenses, including but not limited to, water sampling and analysis, photographs, and travel expenses. These costs incurred by the Department total one thousand, eight hundred seventy-four dollars and twenty-seven cents (\$1,874.27).
- N. 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 CPJM are as follows:

1. On or about August 30, 2013, discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards, general and specific criteria, as established by the Missouri Clean Water Commission, in violation of Sections 644.051(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.
2. On or about August 30, 2013, caused pollution of the unnamed tributary of East Fork Crooked River, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where they are reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.
3. Failed to operate and maintain facilities to comply with the MCWL, in violation of Sections 644.051.1(3) and 644.076.1.

IV. AGREEMENT

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

- C. CPJM, 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 four thousand dollars and no cents (\$4,000.00). The payment shall be in the form of a certified or cashier's check made payable to "Ray County School Treasurer, as custodian of the Ray County School Fund". The check and signed copy of the AOC shall be delivered to:

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

- D. CPJM agrees to pay the state's investigative costs in the amount of one thousand eight hundred seventy-four dollars and twenty-seven cents (\$1,874.27) in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in this amount is due and payable upon execution of this AOC by CPJM. The check and signed copy of the AOC shall be delivered to:

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

- April 28
- E. Within thirty (30) days of the effective date of this AOC, CPJM shall submit a document to the Department that: (1) outlines the steps taken by the company to remove the previous discharges of process waste; and (2) describes the procedures that the company will follow to prevent future spills.
- May 28
- F. Within sixty (60) days of the effective date of this AOC, CPJM shall develop and submit to the Department for review and approval a Nutrient Management Plan for the CAFO.
- G. Within fifteen (15) days of receipt of the Department's comments on the Nutrient Management Plan, CPJM will respond to and adequately address the comments to the Department's satisfaction.
- H. Upon Department approval, CPJM will immediately begin implementation of the plan.
- I. Nothing in this AOC forgives CPJM 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 expressed or implied, oral or written, except those expressly set forth herein. The terms of this

AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally

- J. 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.
- 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 CPJM for its records.
- L. CPJM 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, CPJM 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:

Mr. Sam McCord
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 11th day of April, 2014



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

Agreed to and Ordered this 1st day of April, 2014



Dr. Mac Wilt, Registered Agent
CPJM, LLC

Copies of the foregoing served by certified mail to:

Dr. Mac Wilt, Registered Agent

CERTIFIED MAIL #7012 2920 0002 0668 1457

CPJM, LLC

25010 Business Highway 24

Paris, MO 65275

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