

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

IN THE MATTER OF:

Shatto Milk Company

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Mr. Robert and Ms. Barbara Shatto
Shatto Milk Company

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No. 2014-WPCB-1305

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2014-WPCB-1305, by the Missouri Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Shatto Milk Company 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 Mr. Robert (“Leroy”) and Ms. Barbara Shatto (the Shattos) 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. The Shattos own and operate the Shatto Milk Company, which is a dairy milking and processing operation that makes finished products, such as milk, cheese, and ice cream. The operation is located in the NE ¼, SE ¼, Section 5, Township 56 North, Range 31 West in the north section of Clinton County. As part of the company’s operation, process waste from the facility is collected and stored in a concrete manure storage pit and two freestall barns from which manure is collected and the wastewater flows into a lagoon. Process wastewater and sludge

is land applied pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-G822141. The receiving stream is a tributary of the Little Platte River.

- B. A tributary of the Little Platte River is 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. MSOP No. MO-G822141 was issued to Shatto Milk Company on January 28, 2013, and will expire on June 16, 2016. According to the *Monitoring, Records and Reporting Requirements* of MSOP No. MO-G822141, a discharge is a violation of the MSOP unless it is an overflow of a storage basin caused by precipitation exceeding the 1 in 10 year or the 24 hour, 25 year precipitation events. Additionally, the MSOP states that discharges to waters of the state from any other device or structure is a violation of this permit, and shall be reported to the Department no greater than 24 hours after the discharge occurs, in accordance with the Standard Conditions Part I, Section B.2.b.
- E. On May 23, 2013, the Department conducted an investigation of Shatto Milk Company after receiving an environmental concern. During the investigation, staff found that the manure pit showed evidence that manure had overtopped and flowed downhill to the east and into a tributary of the Little Platte River. Department staff observed that the manure appeared to be dry and estimated the spill occurred approximately four weeks prior to the investigation. Department staff also observed that the water quality downstream and approximately 420 feet east of the overtopped pit was diminished. Staff documented that the water in the tributary was dark in color and contained scum on the surface.
- F. During the investigation, Department staff took water quality measurements and collected grab samples of water for laboratory analysis. The Dissolved Oxygen concentration was much lower in the waste-affected areas as compared to unaffected areas. In addition, the conductivity level in the affected area was markedly greater than in unaffected areas, a further indication of contamination. Finally, the Ammonia as Nitrogen concentration in the affected area (2.1 milligrams per liter [mg/L]) was greater than the upstream (0.73 mg/L) and far downstream (0.39 mg/L) sites.
- G. Based upon the violations documented by Department staff during the May 23, 2013 investigation, the Department issued Notice of Violation (NOV) No. KC2013052914514119 to Mr. Robert Shatto on August 14, 2013. The inspection report associated with the NOV required Mr. Shatto to complete the following: clean up the excess manure and cease discharging from the holding pit; and submit to the Department, a written statement, with photographs, to show what actions have been taken to clean up any discharged manure sludge and/or process waters to prevent a reoccurrence in the future.

- H. On September 19, 2013, the Department received correspondence from Ms. Shatto, president, explaining the company has removed all the accidental discharges of manure; scheduled an irrigation company to pump the pit and lagoon with a proactive schedule; and will report any future discharges to the Department within 24 hours of their occurrence. Ms. Shatto also included photographic evidence documenting the clean-up activities at the operation.
- I. 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.
- J. The Department dispatched employees to investigate the May 23, 2013, manure 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 \$1,519.29.
- K. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to \$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 the Shattos are as follows:

1. On or about May 13, 2013, discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards, 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. Caused pollution of the unnamed tributary of Little Platte 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 as a no-discharge facility to comply with the MCWL and applicable permit conditions, in violation of Sections 644.051.1(3) and 644.076.1;
4. On May 23, 2013, operated, used, or maintained a water contaminant source, process waste from a manure pit, which discharged to a tributary of Little Platte River, waters of the state, without a MSOP, in violation of Sections 644.051.2 and 64.076.1, RSMo and 10 CSR 20-6.010(1)(A) and (5)(A); and
5. Failed to report an unauthorized discharge from the lagoon, holding pit, or irrigation system to the Department as soon as possible, or within 24 hours as required by the Monitoring Records and Reporting Requirements Section I of

MSOP No. MO-G822141, in violation of Section 644.076.1, RSMo and 10 CSR 20-6.200(6)(D)1.

IV. AGREEMENT

- A. The Department and the Shattos desire to amicably resolve all claims that may be brought against the company for violations alleged above in Section III, Citations and Conclusions of Law, without the company 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 the Shattos under this AOC.
- C. The Shattos 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 \$3,500.00. The payment shall be in the form of a certified or cashier's check made payable to "*Clinton County School Treasurer, as custodian of the Clinton County School Fund*". 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. The Shattos agree to pay the state's investigative costs in the amount of \$1,519.29 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 the company. 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
- E. Within 90 days of the effective date of this AOC, the company agrees to submit a revised Land Management Plan to the Department, for review and comment. The Land Management Plan shall include the requirements from the Department's Nutrient Management Technical Standard which details land application requirement for animal waste, including soil and manure nutrient monitoring. The Land Management Plan shall further discuss any Best Management Practices (BMPs) the Shattos will use to prevent any run-off from the operation and BMPs that will be installed in case of an emergency event. The Land Management Plan shall further describe education methods for teaching employees about the BMPs, their usage, and the necessity of inspecting the BMPs.

- F. Within 45 days of the effective date of this AOC, the Shattos agree to submit to the Department, a complete application for a Site Specific Operating Permit for the operation and a *Form H – Application to Terminate* MSOP no. MO-G822141.
- G. In the event that a discharge of manure sludge and/or process wastewater from the operation should occur, the Shattos agree to orally report the unauthorized discharge to the Department within 24 hours from the time the company becomes aware of such a discharge, by contacting the Kansas City Regional Office at (816) 251-0700 between 8:00 a.m. to 5 p.m. Monday through Friday (non-Holiday workdays), and after hours (Friday 5 p.m. to Monday 8 a.m.) contact the Department’s 24-Hour Emergency Spill Line at (573) 634-2436 to report the discharge. The Shattos further agree to provide written notification to the Department within five days from the time the Shattos become aware of the discharge and agree to take immediate action to correct each discharge.
- H. Nothing in this AOC forgives the Shattos 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 of 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. 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 the Shattos for their records.
- K. The Shattos 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 No. 2014-WPCB-1305, the Shattos consent to its terms and waive 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
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 3rd day of September, 2014



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

Agreed to and Ordered this _____ day of _____, 2014

~~Mr. Robert ("Leroy") Shatto, Owner~~


Ms. Barbara Shatto, president ~~owner~~

Copies of the foregoing served by certified mail to:

Mr. Robert Shatto, Owner CERTIFIED MAIL #
Shatto Milk Company
9406 North Highway 33
Osborn, MO 64474

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