

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

Larry Hendrix

**Proceeding under the
Missouri Clean Water Law**

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Order No. 2014-WPCB-1313

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

SERVE BY UNITED POSTAL SERVICE NEXT DAY AIR

CERTIFIED MAIL # 7013 2250 0002 2840 1283
RETURN RECEIPT REQUESTED

TO: Larry Hendrix
9301 County Road 1048
Auxvasse, MO 65231

NOTICE IS HEREBY GIVEN that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties (order) to Mr. Larry Hendrix, under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079 RSMo. Mr. Hendrix, may be referred to as the respondent for purposes of this order.

Failure to comply with this order is, by itself, a violation of the MCWL under Section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to \$10,000.00 per day for each day or part thereof

of non-compliance, a surcharge of 15% of the penalty described herein, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to Sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. Respondent owns and operates a Class 1C Confined Animal Feeding Operation (CAFO) located in the SW ¼, SE ¼, Section 3, Township 49 North, Range 8 West in the city of Auxvasse, Callaway County, Missouri. The CAFO is designed to handle 5,560 hogs over 55 pounds, or 2,224 animal units. The CAFO consists of one finishing building served by a single cell anaerobic lagoon and four finishing buildings served by a separate single cell anaerobic lagoon.

2. On August 1, 1996, the Department issued Missouri State Operating Permit (MSOP) No. MO-G010130 to the respondent. The MSOP issued August 1, 1996, expired by its own terms on February 15, 2001.

3. The MSOP issued August 1, 1996, General Requirements No. 3 states “a construction permit or construction letter of approval is required prior to the installation or modification of the waste handling facilities or expansion of the animal feeding operations”.

4. The MSOP issued August 1, 1996, reporting requirements states “an annual report shall be submitted by the 28th day of January for the pervious calendar year. The first report is due on the next annual report date after permit issuance including partial report periods.”

5. On August 12, 1998, correspondence was sent to the respondent regarding a July 28, 1998, inspection of the CAFO by Department staff. Violations noted failure to submit the annual monitoring report for 1997 and the need to notify the department in writing of completed construction of additional buildings not listed on the MSOP. Respondent was

required to submit the annual report by August 14, 1998. To date, the Department has not received the annual report for 1997.

6. Following an inspection of the CAFO conducted on September 11, 2001, the Department sent an inspection report to the respondent on September 21, 2001, informing him that MSOP No. MO-G010130 expired and that he had failed to apply for renewal, failed to submit Annual Operation and Maintenance Reports for 1999 and 2000. In this report the Department requested that the respondent submit a renewal application and the missing reports to the Department by October 22, 2001. To date the Department did not receive the missing reports but did receive the application on November 14, 2002.

7. On October 24, 2002, the Department issued Notice of Violation (NOV) No. 2126JC to the respondent for failure to submit the 1999, 2000, and 2001 Annual Reports.

8. On November 27, 2002, the Department renewed MSOP No. MO-G010130, which expired by its own terms on February 22, 2006. Among other requirements MSOP No. MO-G010130 required the respondent to submit Annual Monitoring Reports to the Department, including the information required by the MSOP and “an annual report shall be submitted by the 28th day of January for the previous calendar year. The first report is due on the next annual report date after permit issuance including partial report periods.”

9. On June 28, 2004, the Department sent a letter to the respondent requesting his 2002, and 2003 Annual Reports. To date the Department has not received the 2002 and 2003 Annual Reports.

10. Following an inspection of the CAFO conducted on June 2, 2005, the Department issued NOV No. WO0175NE to the respondent for failure to submit Annual Reports for 1999

through 2004. The Department requested submittal of the missing reports by July 20, 2005, but did not receive the missing reports.

11. Following an inspection of the CAFO conducted on January 14, 2009, the Department issued NOV No. NER200901221485148 to the respondent for failure to submit annual reports for 2006 and 2007 and failure to apply for renewal of No. MO-G010130.

12. On January 23, 2009, the Department received an application from the respondent for the MSOP which expired on February 22, 2006. On March 20, 2009, the Department renewed MSOP No. MO-G010130 which expired by its own terms on February 23, 2011. MSOP No. MO-G01030 required the respondent to keep rainfall records that include daily precipitation amounts and submit monitoring reports annually on the 28th day of January for the previous calendar year. The annual report was to include a copy of monitoring results and other records required by the MSOP. The 2010 Annual Report due to the Department January 28, 2011, was received by the Department on February 8, 2013.

13. On July 10, 2012, the Department renewed MSOP No. MO-G010130 which expired by its own terms on February 23, 2013.

14. The MSOP issued to respondent on July 10, 2012, requires an annual report to be submitted by the 15th day of February for the previous calendar year. The annual report is to include: the number and type of animals confined at the operation; the estimated amount of manure, litter, and process wastewater generated; the estimated amount of manure, litter and process wastewater transferred to other persons; the total number of acres for land application covered by the Nutrient Management Plan (NMP); the total number of acres under control of the operation that were used for land application; a statement indicating whether the current NMP was developed or approved by a certified nutrient management planner; crops planted and

expected yields, the amount and nutrient content of the manure, litter and process wastewater applied to the land application area and the results of any soil testing; and the date, time, location, duration, and estimated volume of any emergency or unauthorized discharges to waters of the state.

15. As part of a routine compliance inspection of the CAFO conducted June 26, 2012, Department staff reviewed records associated with the MSOP and noted that the respondent had failed to submit annual operation reports for 2010 and 2011 and failure to maintain records of monthly monitoring of storage structure levels and rainfall amounts on site.

16. Based on the violations documented by Department staff during the June 26, 2012, inspection, the Department issued NOV No. NER2012071108463156 to the respondent on July 12, 2012. In the inspection report associated with the NOV, the Department identified violations found during the inspection and file review, and required the respondent to submit the following by August 2, 2012,: 1) annual reports for 2010 and 2011 and 2) a written statement outlining the actions taken to correct the record-keeping deficiencies and prevent a reoccurrence in the future.

17. The MSOP issued to Mr. Hendrix by the Department on March 29, 2013, includes the requirement to submit an annual report to the Department by the 15th day of February for the previous calendar year. The annual report is to include the number and type of animals confined at the operation; the estimated amount of manure, litter, process wastewater, or mortality by-products generated in the previous twelve months; the estimated amount of manure, litter, process wastewater, or mortality by-products transferred to other persons in the previous twelve months; total number of acres for land application covered by the NMP; total number of acres under control of the operation that were used for land application; the date the soil tests were

taken that were used in the development of the NMP; the date, time, location, duration and estimated volume of any process wastewater discharges to surface waters of the state or release that crosses property boundaries.

18. The Annual Reports for 2010, 2011, and 2012 were received by the Department on February 8, 2013. The Annual Report due to the Department on February 15, 2014, was received by the Department on April 2, 2014.

19. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein had at least a minor potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the MCWL and its implementing regulations. Using the gravity-based matrix, the base penalty falls within a range of \$3,501.00 to \$4,500.00. Since the Department documented two violations of the MCWL, an administrative penalty in the amount of \$4,000.00 is justified.

20. This order is necessary to compel compliance.

STATEMENT OF VIOLATIONS

Respondents have violated the MCWL and its implementing regulations as follows:

21. Failure to submit timely Annual Reports as required by Effluent Limitations and Monitoring Requirements No. 7 of MSOP No. MO-G010130 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.

22. Failure to submit timely Annual Reports, as required in Special Requirements and Standard Conditions No. 9 of MSOP No. MO-GS10362 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.

23. Failed to maintain on-site records of weekly monitoring of the depth of process waste water in violation of Special Requirements and Standard Conditions No. 6 of MSOP No. MO-GS10362 in violation of Section 644.076.1, RSMo

24. Failure to maintain records of rainfall amounts in violation of Special Requirements and Standard Conditions No. 6 of MSOP No. MO-GS10362 in violation of Section 644.076.1, RSMo.

CORRECTIVE ACTIONS

Pursuant to Section 644.056 RSMo, the Department hereby orders the respondents to complete each of the following corrective actions:

25. Respondent is ordered to comply with all conditions and requirements contained in MSOP No. MO-GS10362 including but not limited to the Special Requirements and Standard Conditions for Inspections, Record Keeping for Production Area, Record Keeping for Land Application Area and Reporting Requirements.

26. Respondent is order to submit complete and accurate annual reports to the Department by the 15th day of February for the previous calendar year and shall submit complete and timely application for renewal of MSOP No. MO-GS10362 on or before December 27, 2017.

PENALTY

Pursuant to section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders the respondent to pay administrative penalties for the above-referenced violations as follows:

27. The respondent shall pay to the Department an administrative penalty in the amount of \$4,000.00, which shall be suspended for period of two years from the effective date of

order No. 2014-WPCB-1313 on the condition the respondent complies with the all conditions and requirements of MSOP No. MO-GS10362 and this order.

28. Such payment shall be made within ten days receipt of written demand from the Department and the check shall be made payable to: *Callaway County Collector as Custodian of the Callaway County School Fund.*

29. Such payment must be delivered to the Department of Natural Resources, c/o Accounting Program, P.O. Box 477, Jefferson City, Missouri 65102, for forwarding to the Callaway County Collector.

SUBMISSIONS

30. All other documentation submitted to the Department for compliance with this order shall be submitted within the timeframes specified to:

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

OTHER PROVISIONS

31. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if respondents make a written request to the Department within 10 business days of this order, and otherwise provides appropriate justification and/or documentation to the Department in a timely manner. Any modification of this order shall be in writing.

32. Compliance with this order resolves only the specific violations described herein, and this order shall not be construed as a waiver or modification or any other requirements of the

MCWL and regulations, or any other source of law. Nor does this order resolve any future violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

33. This order shall apply to and be binding upon respondent and any of his agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for respondent. Any changes in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall not relieve respondent of his obligation to comply with this order.

34. For any submittal from the respondent that is required by this order and subject to Department approval under this order, the Department may approve, disapprove, require revisions, or otherwise modify any such submittal. Any such Department decision shall be conveyed in writing to respondents.

NOTICE OF APPEAL RIGHTS

35. Anyone adversely affected by this decision may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. Appeal may be taken by the filing of a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
Truman State Office Building, Room 640
301 West High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.ao.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 23rd day of ^{January, 2015} ~~October, 2014~~ by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

c: Ms. Irene Crawford, Director, Northeast Regional Office
Mr. Michael Heaton, Environmental Specialist, Northeast Regional Office