

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 James Roslien)
 Roslien Farms, LLC) **Order No. 2016-WPCB-1393**
 Serve:)
)
 James Roslien)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1393, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because James Roslien (Respondent) violated 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 the Respondents 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.

FINDINGS OF FACT

1. The Respondent owns and operates a swine operation, which is a Class IC Concentrated Animal Feeding Operation (CAFO), located at 13429 Route YY in Madison, Missouri. The operation consists of six confinement barns for 2,400 animals units and two lagoons. The production buildings contain shallow pits that are flushed to the lagoons using recycled lagoon water. The receiving stream for the operation is a tributary to the Elk Fork Salt River.
2. Missouri State Operating Permit (MSOP) No. MO-GS10365 was issued to the Respondent on March 29, 2013, and expires on January 27, 2018. The MSOP authorizes the operation of a no-discharge CAFO waste management system.
3. Elk Fork Salt River and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.
4. Agricultural wastes are a water contaminant as the term is defined in Section 644.016(24), RSMo.
5. On March 31, 2015, department staff conducted a routine compliance inspection of the operation and met with the Respondent. During the inspection, staff observed that both lagoons had zero inches of available freeboard. Staff observed that soil was placed in the spillway of the north lagoon to prevent the discharge of effluent from the lagoon. Staff further observed that the north lagoon had an inaccurate depth marker. Staff observed that the south lagoon lacked a depth marker. Staff observed that the compost areas of the operation lacked structures to divert stormwater away from the compost areas, along with pooled leachate near the compost areas. Staff requested to view the records required by Special Requirements and

Standard Conditions No. 7 of MSOP No. MO-GS10365. The Respondent stated that the records were not kept on-site.

6. On April 29, 2015, the department issued a Letter of Warning to the Respondent for the violations documented during the March 31, 2015, inspection.

7. On June 9, 2015, department staff conducted a routine compliance inspection of the operation. Staff observed that both lagoons had zero inches of available freeboard. Staff observed that soil was placed in the spillway of the north lagoon to prevent the discharge of effluent from the lagoon. Staff observed swine effluent within the emergency spillways of both the north and south lagoon, but the effluent was not observed to be leaving the emergency spillways. Staff further observed that the north lagoon had an inaccurate depth marker and that the south lagoon lacked a depth marker. Staff observed that the compost areas of the operation lacked structures to divert stormwater away from the compost areas, along with pooled leachate near the compost areas. Staff requested to view the records required by Special Requirements and Standard Conditions No. 6, 7, and 8 of MSOP No. MO-GS10365. The Respondent stated that the records were full of mold and had too much damage to be legible.

8. On June 29, 2015, department staff conducted a follow-up inspection of the operation. Staff observed that the north lagoon had approximately six to eight inches of available freeboard. Staff observed that effluent was discharging across the northeast berm of the south lagoon and into the tributary to the Elk Fork Salt River. Staff observed that area where the discharge was entering the tributary was very dark brown in color. Upstream of the entry point, staff observed that the tributary was clear and odorless. Approximately 15 yards downstream of the entry point, staff observed that the tributary was dark brown and had a strong

manure odor. Staff collected samples from the tributary approximately 20 yards upstream of the point of entry, approximately 15 yards downstream of the point of entry, and approximately 1,000 yards downstream of the point of entry at the Highway YY road crossing. Analysis of the sample collected upstream of the point of entry indicated that the ammonia concentration fell below the acute criteria value for Ammonia as Nitrogen. Analysis of the sample collected approximately 15 yards downstream of the point of entry indicated that the Ammonia concentration exceeded the acute criteria for Ammonia as Nitrogen (3.8 mg/L) with a value of 213 mg/L. Analysis of the sample collected at the Highway YY road crossing indicated that Ammonia concentration exceeded the acute criteria for Ammonia as Nitrogen (10.1 mg/L) with a value of 76.2 mg/L.

9. On June 30, 2015, department staff conducted another follow-up inspection of the operation. Staff observed that dirt was placed on the top of the northeast corner of the south lagoon to raise the berm. Staff further observed that effluent was no longer discharging from the south lagoon. Staff observed that the water within the tributary had a slight brown discoloration towards the middle of the stream channel. Staff traveled to the Highway YY road crossing and observed that the water in the tributary had a light brown color all throughout the stream channel. Staff instructed the Respondent to construct an earthen dam at the Highway YY road crossing of the tributary to further clean out the tributary. The Respondent stated that the operation was land applying. Staff drove around the irrigation field with the Respondent and staff did not observe any effluent runoff occurring.

10. On July 9, 2015, department staff conducted another follow-up inspection of the operation. Staff observed that the water within the tributary at the Highway YY road crossing

appeared clear. Staff observed that a dam was constructed and appeared to be eroded away on the east side due to recent rainfall. Staff observed that the south lagoon had approximately two inches of available freeboard in the emergency spillway. Staff observed that dirt was still built up on top of the northeast corner of the south lagoon and that the effluent was approximately 0.25 inches away from discharging over the lagoon berm.

11. On August 6, 2015, the department issued Notice of Violation No. NER2015062411043984 for the violations documented during the June 9, 2015, inspection, and the June 29, June 30, and July 9, 2015, follow-up inspections.

12. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,000.00 per day per violation.

STATEMENT OF VIOLATIONS

The Respondent has violated the MCWL and its implementing regulations as follows:

13. Failed to operate the no-discharge facility as a no-discharge facility as required by MSOP No. MO-GS10365, in violation of Section 644.076.1, RSMo;

14. 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 or applicable subsections of 10 CSR 20-7.031;

15. Caused pollution of a tributary to the Elk Fork Salt River, waters of the state, or placed or caused or permitted to be placed a water contaminant, mortality compost piles and

swine effluent, in a location where it is reasonably certain to cause pollution to waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo;

16. Failed to lower the liquid level in the storage structure on a routine schedule prior to expected seasonal wet and winter climate periods in accordance with Special Requirements and Standard Conditions No. 2 (d)(2)(b), in violation of Section 644.076.1, RSMo.

17. Failed to maintain at least one foot of freeboard below the emergency overflow level in accordance with Special Requirements and Standard Conditions No. 2 (d)(2)(c), in violation of Section 644.076.1, RSMo;

18. Failed to provide an accurate lagoon depth level marker, in violation of Section 644.076.1, RSMo, 10 CSR 20-8.300(7)(L);

19. Failed to provide an adequate spillway, in violation of Section 644.076.1, RSMo, and 10 CSR 20-8.300(7)(F);

20. Failed to maintain records of daily inspections of water lines, weekly inspections of Best Management Practices, weekly inspections of impoundments, periodic leak inspections on land application equipment, hourly inspections of above ground irrigation pipelines, and weekly records of the depth of process wastewater in the liquid impoundments, as required by Special Requirements and Standard Conditions 6 and 7 of MSOP No. MO-GS10365, in violation of Section 644.076.1, RSMo; and

21. Failed to maintain records of expected and actual crop yields, weather conditions at the time of application and for 24 hours prior to and following the application, and dates of application equipment inspections, as required by Special Requirements and Standard Conditions 8 of MSOP No. MO-GS10365, in violation of Section 644.076.1, RSMo;

AGREEMENT

22. The department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Statement of Violations.

23. 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 as the Respondent under this AOC.

24. The Respondent, in compromise and satisfaction of the department's claims relating to the above referenced violations, agree, without admitting liability or fault, to pay a penalty in the amount of \$10,000.00. The department and the Respondent further agree that \$5,000.00 of the civil penalty shall be suspended as described in Paragraph 25 below. The payment in the amount of \$5,000.00 shall be in the form of a check made payable to the "Monroe County Treasurer, as custodian of the Monroe County School Fund" and is due and payable upon execution of this AOC by the Respondent. The check and the signed copy of this AOC shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

25. The suspended penalty described in Paragraph 24 in the amount of \$5,000.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the Respondent does not violate the terms of this AOC. Upon determination that the

Respondent has failed to meet the terms of this AOC, the department shall send a written demand for the suspended penalty to the Respondent. The Respondent shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 24.

26. The Respondent agrees and is ordered to prevent any future discharges of manure, litter, process wastewater, or mortality by-products to surface waters of the state or across property boundaries by land applying the waste onto agricultural fields at agricultural rates in accordance with MO-GS10365. If the Respondent is unable to land apply the waste due to equipment failure, the Respondent agrees and is ordered to hire a contract applicator to land apply the waste to prevent any discharges to waters of the state or across property boundaries.

27. In the event any manure, litter, process wastewater, or mortality by-products discharges to surface waters of the state or crosses property boundaries, the Respondent agrees and is ordered to report the discharge to the department as soon as practicable but no later than 24 hours after the Respondent becomes aware of the discharge.

28. In the event that a discharge event occurs within five years of the effective date of this AOC, the Respondent agrees and is ordered to submit to the department a complete application for a National Pollutant Discharge Elimination System General Permit within 30 days of the date of the discharge.

29. The Respondent agrees and is ordered to lower the liquid level of the lagoons on a routine schedule prior to expected seasonal wet and winter climate periods in accordance with Special Requirements and Standard Conditions No. 2 (d)(2)(b), in violation of Section 644.076.1, RSMo.

30. The Respondent agrees and is ordered to conduct visual inspections of the operation as described in Special Requirements and Standard Conditions No. 6 of MSOP No. MO-GS10365 and maintain the records as required by Special Requirements and Standard Conditions No. 7 and 8 of MSOP No. MO-GS10365.

31. The Respondent is ordered and agrees to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

SUBMISSIONS

32. All other documentation submitted to the department for compliance with this Order shall be submitted within the timeframes specified to:

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

OTHER PROVISIONS

33. Should the Respondent fail to meet the terms of this AOC, the Respondent 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	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a check made payable to “Monroe County Treasurer, as custodian of the Monroe County School Fund.” Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

34. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification of 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.

35. Nothing in this AOC forgives the Respondent 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 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 which are 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.

36. 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.

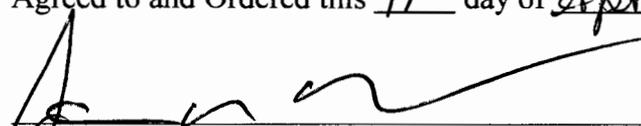
37. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the Respondent for their records.

NOTICE OF APPEAL RIGHTS

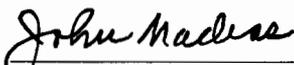
By signing this AOC, the Respondent consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATURE AUTHORITY

Agreed to and Ordered this 11th day of April, 2016


James Roslien
Roslien Farms, LLC

Agreed to and Ordered this 22nd day of April, 2016


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

Copies of the foregoing served by certified mail to:

Mr. James Roslien
Roslien Farms, LLC
13429 Route YY
Madison, MO 65263

CERTIFIED MAIL # 7012 2920 0002 0662 9589

c: Ms. Irene Crawford, Director, Northeast Regional Office
Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Operating Permit Section
Missouri Clean Water Commission
Accounting Program