

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:**

**Dale Brinker**

**Proceeding under the  
Missouri Clean Water Law**

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JUL 02 2018 )  
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Water Protection Program )  
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**Order No. 2018-WPCB-1552**

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**ABATEMENT ORDER ON CONSENT**

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**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT**

The issuing of this Abatement Order on Consent (AOC) No. 2018-WPCB-1552, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Mr. Dale Brinker (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, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Additional enforcement action 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 Respondent of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover 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 Class II Animal Feeding Operation (AFO) located in the SW ¼, NW ¼, Section 6, Township 49 North, Range 8 West, in Callaway County, Missouri. The AFO consist of two finishing operations buildings, which each house approximately 1000 head of swine over 55 pounds.

2. On December 2, 2017, Department staff conducted an investigation in response to an Environmental Concern reported to the Department by the Respondent on that same day. During the investigation the Respondent informed staff that the recycle pump was inadvertently turned on while cleaning a production barn on November 30, 2017, and the discharge from the clean-out was discovered on the morning of December 2, 2017. Department staff followed the path of the process wastewater north towards the lagoon behind a production building and observed the water in the drainage way was dark in color. The process wastewater entered a tributary to the South Fork Salt River.

3. On December 2 and 3, 2017, Missouri Department of Conservation (MDC) staff conducted a fish kill investigation and observed that the discharge impacted approximately 2.5 miles of the tributary to the South Fork Salt River and the South Fork Salt River and counted 330 dead aquatic organisms. This count equates to an environmental impact cost of \$774.42, which is included in the investigative cost recovery total. The costs and expenses incurred by the Department totaled \$3,272.71. This includes but not limited to, water sampling and analysis, travel expenses, and the environmental impact cost associated with the fish kill.

4. The South Fork Salt River and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.

5. The 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 the violation, sustained by it because of any violation.

### **STATEMENT OF VIOLATIONS**

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

6. Discharged water contaminants into a tributary to South Folk Salt River, waters of the state, which reduced the quality of waters of the state below water quality standards established by the Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo; and

7. Caused pollution of to a tributary to South Folk Salt River, waters of the state, or placed or caused or permitted to be placed, a water contaminant, animal waste from a Class II AFO, in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

### **AGREEMENT**

8. The Department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in the Statement of Violations, without the Respondent admitting to the validity or accuracy of such claims.

9. 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 Respondent under this AOC.

10. The Respondent, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of \$4,000. The Department and Respondent further agree that \$1,500 of the civil penalty shall be suspended as described in Paragraph 11 of this AOC. The payment in the amount of \$2,500 shall be made payable to "Callaway County Treasurer, as custodian of the Callaway County School Fund." The checks and signed copy of the AOC shall be delivered to:

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

11. The suspended penalty described in Paragraph 10 in the amount of \$1,500 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 the AOC. Upon determination that the respondent has failed to meet the terms of this AOC, including the requirements of Paragraph 13, 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 10.

12. The Respondent is ordered and agrees to pay the state's investigative costs and damages in the amount of \$3,272.71 in the form of a separate check made payable to the "State of Missouri." The check in the amount of \$3,272.71 is due and payable upon the Respondent's execution of this AOC and shall be delivered to the address provided in Paragraph 10 of this AOC.

13. The Respondent is ordered and agrees to install an automatic timer on the recharge pump with a maximum run time of one hour. Two visual alarms will be installed alerting the recharge pump is running. Additionally, the Respondent agrees to maintain an Operation and Maintenance log on site to document facility maintenance activities. Within 60 days of the effective date of this AOC the Respondent is ordered and agrees to submit documentation to the Department showing installation of the pump control switch system with automatic timer and visual alarms and provide copy of a blank Operation and Maintenance log sheet.

14. The Respondent is ordered and agrees to operate and maintain the AFO at all times in compliance with the MCWL.

15. The Respondent is ordered and agrees to report all future discharges of animal waste within 24 hours of discovery.

#### **SUBMISSIONS**

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

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

#### **OTHER PROVISIONS**

17. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail 1) identifying the deadline that will not be completed; 2) identifying the reason for failing to meet the deadline; and 3) proposing an extension to the

deadline. Within five days of notifying the Department, the Respondent shall submit to the Department for review and approval a written request containing the same basic provisions of 1, 2, and 3 listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Respondent's right to request an extension and may be grounds for the Department to deny the Respondent an extension.

18. Should the Respondent fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraph 13, 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	\$50 per day
31 to 90 days	\$100 per day
91 days and above	\$250 per day

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

19. Compliance with this AOC resolves only the specific violations described herein, and this AOC 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 AOC resolve any future violations of this AOC or any law or regulation. Consistent with 10 CSR 20-3.010(5), this AOC

shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

20. 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 for any non-compliance 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.

21. 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.

22. 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 its records.

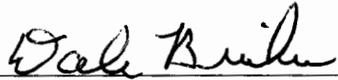
23. The Respondent shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

#### **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.

**SIGNATORY AUTHORITY**

Agreed to and Ordered on this 19 day of JUNE, 2018

  
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Dale Brinker

Agreed to and Ordered on this 16th day of July, 2018

  
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DEPARTMENT OF NATURAL RESOURCES  
Chris Wieberg, Director  
Water Protection Program

c: Ms. Irene Crawford, Director, Northeast Regional Office  
General Counsel's Office  
Accounting Program