

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

Cedar Ridge Aviation, LLC

**Proceeding under the
Missouri Clean Water Law**

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Order No. 2018-WPCB-1549

RECEIVED
MAY - 9 2019
Water Protection Program

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2018-WPCB-1549, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Cedar Ridge Aviation, LLC (Respondent) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 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 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 is an aviation company located in Knox City, Texas, and is owned and operated by its President, Mr. Dustin Johnson. The Respondent was contracted by MFA Incorporated (MFA) to apply agricultural chemicals in Lafayette County, Missouri.
2. Dyer Rock Creek and its tributaries are "waters of the state" as the term is defined by Section 644.016(27), RSMo.
3. Agricultural chemicals are "Pollution" as the term is defined in Section 644.016(17), RSMo.
4. Agricultural chemicals are "water contaminants" as the term is defined in Section 644.016(24), RSMo.
5. On July 17, 2015, at approximately 0645 hours, a vehicle and trailer owned by the Respondent were involved in a single vehicle accident in which both the truck and trailer slid off Highway NN in Lafayette County, Missouri near Dyer Rock Creek. The Respondent was transporting agricultural chemicals (Quilt Xcel Fungicide (Azoxystrobin 13.5 percent), Mustang Maxx Insecticide (Zeta-cypermethrin), and CropKarb) owned by MFA. Approximately 63 gallons of CropKarb, 8 gallons of Mustang Max Insecticide and 21 gallons of Quilt Xcel Fungicide were released to Dyer Rock Creek and resulted in a fish kill. The Department's Environmental Emergency Response Unit responded to the incident on July 17, 2015. Upon arrival, Department staff immediately consulted with representatives of the Respondent, Missouri Department of Conservation (MDC) staff, Missouri State Highway Patrol officers, and MFA. The local MFA crew used two backhoes to install three dams in the creek containing the spill at 0745 hours. Staff observed dead and dying fish in Dyer Rock Creek upstream of the third dam. MDC staff observed that the contamination had impacted approximately 1,725 feet of the

receiving stream, but were unable to estimate the number of fish, crayfish, and tadpoles killed because of the human health hazard presented by the chemicals in the creek.

6. The MCWL Section 644.096, RSMo, authorizes the state, or any political subdivision or agency to recover actual damages, including 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.

7. The Department dispatched employees to investigate an environmental concern on July 17, 2015, in doing so, the Department has incurred costs including but not limited to, water sampling and analysis, and travel expenses in the amount of \$5,615.69.

STATEMENT OF VIOLATIONS

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

8. Caused pollution of an unnamed tributary of the Dyer Rock Creek, waters of the state, or placed or caused or permitted to be placed water contaminants (agricultural chemicals) 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

9. 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.

10. 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.

11. The Respondent is ordered and agrees to pay the state's investigative costs and damages in the amount of \$5,615.69. The payment of the investigative costs in the amount of \$5,615.69 shall be in the form of a check made payable to the "State of Missouri." The check shall be delivered to:

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

12. 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

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

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

OTHER PROVISIONS

14. 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.

15. 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.

16. 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.

17. 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.

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 are Ordered this 3rd day of May, ~~2018~~ ²⁰¹⁹ 9th

Jeff Aune as Agent for Dustin Johnson
Dustin Johnson, President
Cedar Ridge Aviation, LLC

Agreed to and so Ordered this 13th day of MAY, ~~2018~~ 2017

Chris Wieberg
DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

- c: Ms. Diane Huffman, U.S. Environmental Protection Agency, Region 7
- Ms. Cindy Davies, Director, Southwest Regional Office
- General Counsel's Office
- Accounting Program