

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Wayne D. Bonacker;)
 Bonacker Farms, Inc.; and)
 Environmental Recycling Facility LLC) **Order No. 2019-WPCB-1545**
)
 Proceeding under the)
 Missouri Clean Water Law)
)

ABATEMENT ORDER ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2019-WPCB-1545, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Mr. Wayne D. Bonacker, Bonacker Farms, Inc., and Environmental Recycling Facility LLC (together, Respondents) 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 Section 644.076.1, RSMo. Litigation 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 Respondents of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo. This AOC supersedes Administrative Order No. 2019-WPCB-1583 (AO No. 1583) issued on April 19, 2019. Upon the effective date of this AOC, AO No. 1583 shall become null and void.

FINDINGS OF FACT

1. The Respondents own and operate a composting business, which operates as Bonacker Farms, Inc. and also as Environmental Recycling Facility LLC, located at 4211 Highway W, House Springs, Jefferson County, Missouri. Jefferson County records identify "Mr. Wayne D. Bonacker et al." as the owner of the property where the composting business is located. The Respondents manufacture compost for sale to the public. The manufactured compost consists primarily of tree trimmings, leaves, grass (yard waste), ground decking, and lumber scraps from new construction. Domestic septage was historically incorporated into the composting process, but the Respondents have discontinued that practice. The Respondents also accept domestic septage from various haulers for land application.

2. On December 13, 2012, the Department issued Missouri State Operating Permit No. MO-G821123 (Land Application Permit) to Mr. Bonacker as the owner and continuing authority. The Land Application Permit authorizes Mr. Bonacker to land apply domestic septage onto grassland, cropland, or timberland subject to the conditions and requirements contained in the permit.

3. On December 17, 2012, the Department issued Permit No. MO-G920002 (Composting Permit) to Mr. Bonacker as the owner and continuing authority. The Composting Permit authorizes Mr. Bonacker to operate a no-discharge composting operation subject to the conditions and requirements contained in the permit.

4. On July 1, 2019, Permit Nos. MO-G821123 and MO-G920002 (together, the Permits) were re-issued to Mr. Bonacker. The Land Application Permit is set to expire by its own terms on January 24, 2023, and the Composting Permit is set to expire by its own terms on November 30, 2022.

5. Domestic septage is a water contaminant as the term is defined by Section 644.016(24), RSMo.

6. Compost wastewater is any liquid that ponds, flows laterally from the base of the compost pile, or collects in an under-drainage system as defined by the Composting Permit. Stormwater that has been allowed to comingle with compost wastewater, as defined, is considered compost wastewater.

7. Big River and its tributaries are waters of the state as defined by Section 644.016(27), RSMo.

8. The Land Application Permit required Mr. Bonacker and Bonacker Farms, Inc. to maintain daily records for lime stabilization treatment, site locations, site owners, dates, and amount of land application at each site including the total gallons per acre per year applied, and submit annual reports summarizing land application records to the Department by January 28th each year. The Land Application Permit required septage to be lime stabilized with 50 pounds of lime per 1,000 gallons of septage 30 minutes before land applying in order to reduce pathogens and vectors. The Department did not receive the annual report that was due January 28, 2017. During a site visit on October 30, 2017, Mr. Bonacker stated lime is not added to the septage by the haulers.

9. The Composting Permit required Mr. Bonacker and Bonacker Farms, Inc. to maintain and submit annual operating reports to the Department by January 28th each year. The Department did not receive annual reports that were due on January 28, 2016, or January 28, 2017. The Composting Permit required Mr. Bonacker to follow the requirements of 40 CFR Part 503, Standards for the Use or Disposal of Sewage Sludge, and if the compost is sold to the

public, to undergo at least one of the processes to further reduce pathogens found in 40 CFR Part 503, Appendix B.

10. The Permits require all records and reports to be made available for inspection by the Department during normal working hours, and copies of such records and reports provided upon request by the Department. The Respondents did not provide the required records and reports when requested by the Department during site inspections on February 9, March 31, 2017, or the site visit on October 30, 2017.

11. During site inspections on February 9, March 31, and October 30, 2017, Department staff observed septage discharging from tank trucks into a pit filled with raw materials used to make compost and liquids pooling in the field below the pit. During the February 9, 2017, inspection, a representative of the Respondents stated any excess water from the compost mixing pit is drained to the fields south of the pit. During the October 30, 2017, site visit, Mr. Bonacker stated the liquid would filter through the wall of the pit to the area immediately below the pit.

12. On March 31, 2017, Department staff observed miscellaneous materials in the compost solids including clumps of drywall, insulation material, and other trash.

13. On March 30, and October 30, 2017, Department staff observed the stormwater retention basin on site did not have the minimum and maximum operating water levels marked as required by the Composting Permit.

14. On April 26, 2017, the Department issued Notice of Violation No. SL170145 to Mr. Bonacker based on the violations documented during the February 9 and March 31, 2017, inspections.

15. On April 19, 2019, the Department issued AO No. 1583 to the Respondents for violations of the MCWL. The Respondents did not appeal the Order which became final on May 19, 2019. AO No. 1583 ordered the Respondents to: i) comply with all record keeping requirements contained in the Permits; ii) lime stabilize all septage prior to land application; iii) immediately cease accepting septage, biosolids, or another form of domestic sewage until a storage basin is designed and constructed per Department approved engineered plans; iv) immediately cease distribution of compost until sufficient documentation is provided to the Department that demonstrates that the compost meets the requirements of 40 CFR 503; v) by May 19, 2019, cease conveying stormwater that has come in contact with compost materials; vi) by May 19, 2019, retain a professional engineer registered in the State of Missouri; vii) by June 18, 2019, submit to the Department a Facility Plan which includes a construction schedule; viii) upon approval of the Facility Plan, implement the Facility Plan and consult with Department engineers regarding all applicable applications, permits, and fee requirements; ix) within 30 days of approval of the Facility Plan, submit an application for a site-specific permit, or other applicable general permit; x) within 60 days of completing construction, submit to the Department a Statement of Work Completed Form, signed and sealed by a professional engineer; and xi) by June 18, 2019, pay the administrative penalty.

16. On May 2, 2019, Department staff met with Mr. Bonacker, a representative of the Respondents, and an engineer working on behalf of the Respondents to discuss AO No. 1583 and what was necessary to resolve the outstanding compliance issues. During the meeting Department staff and Mr. Bonacker agreed that an AOC would be negotiated to replace AO No. 1583, but until the AOC was fully executed, AO No. 1583 would still be effective and fully enforceable.

17. On June 17, 2019, the Department received correspondence from the Respondents in response to the May 2, 2019, meeting. The correspondence stated: i) the Respondents agree and understand the importance of record keeping and agree that all current and future reports will be submitted accurately and timely; ii) the Respondents do not accept any treated lumber, drywall, or any other waste products that cannot be composted or are not permitted under the Composting Permit; iii) the Respondents agree that detailed records for demonstrating compliance with 40 CFR Part 503 were not being kept; however, the Respondents have ceased incorporating septage into the composting process and are no longer keeping these records; iv) the Respondents are now only using green waste in the composting process and store it in a storage barn; v) the Respondents agree that the Big River flooded in 2017 and breached the basin; however, since the 2017 flood, the basin berm was built up and the Respondents plan to build the berms on the new basin higher to prevent flood water from breaching the basin in the future; vi) the Respondents will be installing an operating level indicator in the basin for monitoring water levels; vii) the Respondents have retained a professional engineer and construction company to reconstruct a holding basin for land application and will begin construction once the plan is approved by the Department; viii) the Respondents agree to cease conveying stormwater that has come into contact with compost materials and the basin; ix) the Respondents will apply for a site-specific permit and are collecting information for the site-specific permit; x) the Respondents agree and intend to meet all deadlines that have not otherwise been negotiated for time extension; xi) the Respondents agree to pay a portion of the assessed administrative penalty; and xii) the Respondents agree to comply with the MCWL, Chapter 644, RSMo, and its regulations from this point to the future.

STATEMENT OF VIOLATIONS

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

18. Failed to maintain and submit annual operating reports as required by the Composting Permit and failure to submit land application records as required by the Land Disturbance Permit, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
19. Failed to comply with 40 CFR Part 503 and the Process for Further Reducing Pathogens, including maintaining accurate and detailed records of temperature monitoring and other records to demonstrate compliance with 40 CFR Part 503, as required by the Composting Permit Requirement No. 6, in violation of Sections 644.051.1(3) and 644.076.1, RSMo, and 10 CSR 20-6.200(6)(D);
20. Failed to obtain a construction permit from the Department for the installation or modification of an earthen storage structure to hold, contain, store, or treat domestic wastewater, in violation of Section 644.051.3, RSMo;
21. Operated, used, or maintained a water contaminant point source, earthen basin containing domestic wastewater, and compost facility, without a permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A);
22. Failed to provide a base for the composting area which complies with the permeability limitations of 10 CSR 20-8.020(13)(A)4, as required by the Composting Permit, in violation of Section 644.076.1, RSMo;
23. Placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution of Big River, waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo; and

24. Failed to clearly mark the minimum and maximum operating water levels for the stormwater storage basin as required by the Composting Permit, in violation of Section 644.076.1, RSMo.

AGREEMENT

25. The Department and the Respondents desire to amicably resolve all claims that may be brought against the Respondents for violations alleged above in Statement of Violations.

26. 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 Respondents under this AOC.

27. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. The penalty contained in this AOC was calculated using the Penalty Assessment Protocol described in 10 CSR 20-3.010.

28. The Respondents, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, are ordered and agree, without admitting liability or fault, to pay an administrative penalty in the amount of \$14,400. The payment of \$14,400 shall be in the form of a check made payable to "Jefferson County Treasurer, as custodian of the Jefferson County School Fund." The check in the amount of \$14,400 is due and payable upon execution of this AOC by the Respondents. The check 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

29. The Respondents are ordered and agree to comply with all record keeping requirements contained in the Permits and the subsequent site-specific permit and maintain such records as required by the applicable permit.

30. The Respondents are ordered and agree to treat all septage by lime stabilization as required by the Land Application Permit prior to land application.

31. The Respondents are ordered and agree to immediately cease accepting septage, biosolids, and any other form of domestic sewage until the Respondents complete construction of a storage basin designed with plans signed and sealed by a professional engineer registered in the State of Missouri that meets the design criteria established in 10 CSR 20-8 or an alternative storage structure or container approved by the Department.

32. The Respondents are ordered and agree to immediately cease distribution of compost to the public which contains septage. The Respondents have discontinued the incorporation of septage into the composting process of the operation indefinitely to eliminate the obligation to provide documentation to the Department certifying that the Respondents have met the requirements of Standards for the use or Disposal of Sewage Sludge in 40 CFR Part 503, and performed one of the Processes to Further Reduce Pathogens in Appendix B of 40 CFR Part 503 before distributing compost to the public.

33. The Respondents are ordered and agree to immediately cease conveying stormwater that has come in contact with compost materials to the stormwater retention basin. The Respondents have agreed to discontinue this operation; however, if the Respondents plan to re-establish the conveyance of compost wastewater to the stormwater retention basin in the

future, the Respondents shall immediately notify the Department and consult the Department's Engineering Section staff for determination on any necessary permits, permit modifications, and associated fees.

34. Within 60 days of the effective date of this AOC, the Respondents are ordered and agree to submit to the Department for review and approval, a comprehensive Facility Plan, which includes a comprehensive construction improvements schedule.

35. Upon the Department's approval of the Facility Plan, the Respondents are ordered and agree to implement the construction improvements schedule included in the Facility Plan and incorporated herein as an enforceable condition of this AOC.

36. Upon the Department's approval of the Facility Plan, the Respondents are ordered and agree to consult with the Department's Engineering Section staff and comply with all applicable application, permit, and permit fee requirements as set forth in the 10 CSR 20-8 Minimum Design Standards.

37. Within 30 days of receiving the Department's approval of the Facility Plan, the Respondents are ordered and agree to submit to the Department a complete application for a site-specific permit to accurately cover the processes and activities conducted on site.

38. Within 30 days of submittal of the site-specific permit application, the Respondents are ordered and agree to submit two completed Request for Termination of Operating Permit forms to request the termination of both of the Permits.

39. Within 60 days of completing construction, the Respondents are ordered and agree to submit to the Department a Statement of Work Complete Form, signed, sealed, and dated by a professional engineer registered in the State of Missouri certifying that the project is complete and operable in accordance with Department-approved plans and specifications.

40. The Respondents are ordered and agree to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

41. This AOC shall terminate 90 days after upgrades to the site specified in the Department-approved construction schedule and plan are completed.

SUBMISSIONS

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

Ms. Erin Meyer Heidolph
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

43. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondents shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Respondents shall submit to the Department, for review and approval, a written request containing the same basic provisions of i, ii, and iii 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 Respondents' right to request an extension and may be grounds for the Department to deny the Respondents an extension.

44. Should the Respondents fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 29 through 39, the Respondents 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 per day
31 to 90 days	\$250 per day
91 days and above	\$500 per day

Stipulated penalties will be paid in the form of a check made payable to "Jefferson County Treasurer, as custodian of the Jefferson 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

45. 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.

46. Nothing in this AOC forgives the Respondents 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.

47. 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.


48. 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 Respondents for their records.

WAIVER OF APPEAL RIGHTS

49. By signing this AOC, the Respondents 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.

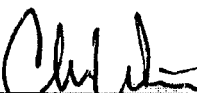
SIGNATORY AUTHORITY

Agreed to and Ordered on this 9 day of September, 2019



Wayne D. Bonacker
Bonacker Farms, Inc.
Environmental Recycling Facility LLC

Agreed to and Ordered on this 10th day of October, 2019



DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

c: Ms. Dorothy Franklin, Director, St. Louis Regional Office
Operating Permit Section
General Counsel's Office
Accounting Program