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Water Resources
Protection Program

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Mid-States Specialty Eggs, LLC)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2018-WPCP-1532

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2018-WPCB-1532, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the Mid-States Specialty Eggs Wastewater Treatment Facility (WWTF) located in Pettis County, Missouri, is in violation of 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. 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 Mid-States Specialty Eggs, LLC (Respondent) of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action or 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 registered with the Missouri Secretary of State as a limited liability company in good standing.
2. The Respondent owns and operates an egg packing facility known as Mid-States Specialty Eggs. Eggs are imported from nearby farms and process wastewater from the operation discharges to a lagoon prior to discharge to a tributary to Shaver Creek. The estimated daily flow of industrial wastewater from the barn is 12,000 gallons per day.
3. Shaver Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.
4. Industrial wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
5. On January 26, 2017, Department staff conducted an Environmental Concern investigation at the Respondent's WWTF and observed a three cell lagoon system and a discharge pipe approximately 400 feet downhill from the third cell. The Respondent confirmed during the investigation that the facility was upgraded from a single cell lagoon to a three cell lagoon without a permit. Department staff observed the facility actively discharging milky white effluent, and noted the effluent had a strong odor. Laboratory analysis of the discharge at the outfall resulted in an Ammonia as Nitrogen level of 70.5 mg/L and Biochemical Oxygen Demand of 900 mg/L. Department staff observed milky white coloration and floating deposits in the receiving stream for approximately one mile downstream from the outfall.
6. On January 27, 2017, Department staff discussed potential options for compliance and the need for a Missouri State Operating Permit (Permit) with the Respondent. The Respondent agreed to cap the outfall pipe and contract with a company to pump and haul the

wastewater. The Respondent also stated that an engineering firm was retained and they would be contacting the Department's Kansas City Regional Office to discuss submission of an Engineering Report.

7. On March 10, 2017, the Department issued Referral Notice of Violation (RNOV) No. KC170009 to the Respondent for violations observed during the investigation.

8. On April 17, 2017, the Department received correspondence from Mr. Greg Nehring of GRAM Engineering + Design, LLC., on behalf of the Respondent, in response to the March 10, 2017, RNOV, stating that the Respondent had completed the following actions:

(i) plugged the discharge pipe for the lagoons; (ii) contracted with a company to pump and haul wastewater from the lagoons so as to prevent discharge; (iii) implemented manufacturing changes to minimize water usage; (iv) constructed a fence around the WWTF; and (v) hired an engineer to complete an Engineering Report for the WWTF.

9. 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.

10. In response to the investigative concern and inspection, the Department incurred \$1,696.19 in investigative costs and damages.

STATEMENT OF VIOLATIONS

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

11. On January 26, 2017, operated, used or maintained a water contaminant source, which intermittently discharges to a tributary to Shaver Creek, waters of the state, without a

Permit in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6010(1)(A) and (5)(A);

12. Caused pollution of the tributary to Shaver Creek, waters of the state, or caused or permitted to be placed, water contaminants, industrial wastewater, 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;

13. 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(4)(B), (C), (D), and (G); and

14. Caused or permitted construction, installation or modification of any sewer system or of any water contaminant source, point source or WWTF without first receiving a construction permit in violation of Sections 644.051.2 and 644.076.1 and 10 CSR 20-6.010(1)(A) and (4)(A).

AGREEMENT

15. 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.

16. 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.

17. 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 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 \$4,000. The payment shall be in the form of a check made payable to the "Pettis County Treasurer, as custodian of the Pettis County School Fund." The check in the amount of \$4,000 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

18. The Respondent is ordered and agrees to pay investigative costs and damages incurred by the State in the amount of \$1,696.19 in the form of a separate check made payable to the "State of Missouri." The check shall be delivered to the address provided in Paragraph 17 of this AOC.

19. In the period of time from the effective date of this AOC until the WWTF is permitted, the Respondent is ordered and agrees to pump and haul wastewater to a permitted WWTF capable of handling the load, to prevent any discharge of effluent to waters of the state and operate the existing WWTF at all times in compliance with the MCWL. All units or components of the existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.

20. Within 90 days of the effective date of this AOC, the Respondent is ordered and agrees to submit to the Department for review and approval, an Engineering Report, prepared by a professional engineer, licensed to practice in the State of Missouri, evaluating the WWTF and

describing the current treatment system and recommending an alternative wastewater treatment system that will result in compliance with the MCWL and its implementing regulations. The Engineering Report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.

21. Within 30 days of receipt of Department comments on the Engineering Report, the Respondent is ordered and agrees to respond in writing to the Department addressing all Department comments on the Engineering Report to the Department's satisfaction.

22. Within 60 days of the date the Department approves of the Engineering Report the Respondent is ordered and agrees to submit to the Department for review and approval, a construction permit application, plans and specifications and applicable fees.

23. Within 30 days of receipt of Department comments on the construction permit application, plans and specifications, the Respondent is ordered and agrees to respond in writing to the Department addressing all Department comments on the construction permit application, plans, and specifications to the Department's satisfaction.

24. Within 120 days of approval of the construction permit application, the Respondent is ordered and agrees to complete construction in accordance with Department approved plans and specifications.

25. Within 30 days of completing construction, the Respondent is ordered and agrees to submit a Statement of Work Complete to the Department.

26. 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

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

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

OTHER PROVISIONS

28. 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: 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 Respondent shall submit to the Department for review and approval a written request containing the same information. 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 extension.

29. Should the Respondent fail to meet the terms of this AOC, including the requirements set out in Paragraphs 18 through 24, 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 check made payable to "Pettis County Treasurer, as custodian of the Pettis 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

OTHER PROVISIONS

30. 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.

31. 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 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 within 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.

32. 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.

33. 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 his 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 on this 29 day of May, 2018


Mr. Dale Shrock

Agreed to and so Ordered on this 15th day of June, 2018


DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

c: Mr. Steve Sturgess, Director, Kansas City Regional Office
General Counsel's Office
Accounting Program