

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
)
 SULTANY TRUCKING LLC) **Order No. 2020-WPCB-1648**
 and SULTANY FARMS LLC)
)
 Proceeding under the)
 Missouri Clean Water Law)

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

**CERTIFIED MAIL # 7012 2920 0002 0662 7172
RETURN RECEIPT REQUESTED**

**TO: Michael Sultany and Katie Sultany
SULTANY TRUCKING LLC
SULTANY FARMS LLC
14455 Interurban Road
Platte City, MO 64079**

You are hereby notified that on this date the Missouri Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to SULTANY TRUCKING LLC and SULTANY FARMS LLC (together, Respondents), pursuant to the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056.3 and 644.079.1 RSMo.

Failure to comply with this Order is, by itself, a violation of the MCWL, Section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to \$10,000 per day for each day or part thereof of non-compliance, a surcharge of 15 percent of the penalty described herein, 10 percent interest on any amounts owed, attorney fees and costs, and any other remedy authorized by law, including but not limited to Sections 644.056, 644.076, 644.079, and 644.096 RSMo.

FINDINGS OF FACT

1. The Respondents are both active Limited Liability Corporations registered with the Missouri Secretary of State with Michael J Sultany and Katie L Sultany as organizers.

Michael Sultany is listed as the registered agent for both Respondents.

2. The Respondents operate, use, and maintain an unpermitted composting or waste disposal operation (facility) located at 14422 Interurban Road in Platte County, Missouri on property owned by Hunt Midwest Properties, L.L.C. Respondent SULTANY TRUCKING LLC leases the property from Hunt Midwest Properties, L.L.C. and, through its owners and employees, delivers material to the facility, and Respondent SULTANY FARMS LLC, through its owners and employees, conducts the operations at the facility. The facility consisted of approximately 500 tons of stockpiled biosolids material as of September 20, 2018, with an unknown number of stormwater outfalls. The receiving stream for this composting operation is an unnamed tributary to Todd Creek.

3. Todd Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

4. Composting processes produce leachate, which is water that has percolated through a solid and leached out some of the constituents, as water moves through the compost pile and exits the bottom of the pile. Compost wastewater may include process water, wash water, leachate, and comingled stormwater. Compost material and compost wastewater are water contaminants as the term is defined by Section 644.016(24), RSMo.

5. The composting operation operated and maintained by the Respondents is a point source as the term is defined by Section 644.016(16), RSMo.

6. Persons who operate or maintain a water contaminant or point source which discharges to waters of the State are required to obtain a Missouri State Operating Permit from the Department pursuant to 10 CSR 20-6.010(7)(A), unless exempt. Persons who operate or maintain a stormwater point source are required to obtain an operating permit from the Department pursuant to 10 CSR 20-6.200(1)(A), unless exempt. Composting activities at the Respondents' facility produce wastewater that is discharged through a regulated water contaminant point source and thus, regulatory exemptions do not apply. The Respondents' facility does not qualify for a no-discharge regulatory exemption because staff observed discharge and responded to concerns of discharge from the facility. The Respondents' facility does not qualify for the agricultural stormwater discharge exemption pursuant to Section 644.059, RSMo, because the observed discharges did not occur from the application of irrigation water or standard farming industry practices, and instead occurred from the exposure of Respondents' large stockpiles of biosolids material to stormwater. Furthermore, as described below, the Respondents' discharge resulted in degradation of water quality, rendering such waters harmful to wildlife and fish.

7. Operating, using, or maintaining a water contaminant point source in the State of Missouri that is subject to standards, rules, or regulations promulgated pursuant to the provisions of Sections 644.006 to 644.141, RSMo, without an operating permit is a violation of Section 644.051.2, 644.076.1, and 644.082, RSMo. To date, the Department has not received an application for a permit from either of the Respondents.

8. Water contaminants that result in the formation of putrescent, unsightly, or harmful bottom deposits in the receiving stream violate general criteria for water quality standards as defined by 10 CSR 20-7.031(4)(A).

9. Water contaminants, sediment, or other substances in sufficient amounts to cause unsightly color or turbidity, offensive odor, or prevent full maintenance of beneficial uses violate general criteria for water quality standards as defined by 10 CSR 20-7.031(4)(C).

10. Waters of the State must maintain a level of water quality at their confluences to downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, as defined by 10 CSR 20-7.031(4)(E).

11. Water contaminants that cause or contribute to turbidity, or color that will cause substantial visible contrast with the natural appearance of the stream or lake or interfere with beneficial uses, violates specific criteria for water quality standards as defined by 10 CSR 20-7.031(5)(G).

12. Water contaminants that cause or contribute to solids in excess of a level that interfere with beneficial uses, adversely alter the composition of the benthos, interfere with the spawning of fish or development of their eggs, or adversely change the physical or chemical nature of the stream bottom violate specific criteria for water quality standards as defined by 10 CSR 20-7.031(5)(H).

13. Water contaminants that cause the Dissolved Oxygen (DO) in the receiving stream to be lower than 5 mg/L violate the specific criteria for water quality standards as defined by 10 CSR 20-7.031(5)(J).

14. On September 20, 2018, Department staff conducted an inspection at the facility. Department staff observed piles of starch, industrial byproduct sludge, lime, and sawdust. Michael Sultany explained to Department staff how the starch is mixed with the industrial byproduct sludge to thicken the product, how lime is mixed with the starch/sludge mixture to reduce the odor, and how sawdust is used in the composting process for thickening. Department

staff observed the active composting area with Michael Sultany. Michael Sultany stated to Department staff that the lighter colored piles on the western side of the production area were less mature compost, whereas the darker piles on the remainder of the area had matured for one to two years. Department staff discussed with Michael Sultany types of Best Management Practices (BMPs) to contain the material at the site, including earthen berms, catch basins, and roofed storage. Michael Sultany suggested to Department staff that the new compost material be pushed north and that he install large concrete blocks on the southern side of the production area to contain stormwater. Samples collected in the receiving stream by Department staff showed DO values in the tributary to Todd Creek and downstream of the confluence with Todd Creek to be below the minimum water quality criterion. Exhibit 1 contains a list of in-stream sample results collected by Department staff. Department staff also observed the tributary to Todd Creek was abnormally black in color, and observed septic pools and compost runoff in a separate stormwater ditch. Department staff observed black water from the stormwater ditch entering the unnamed tributary to Todd Creek which then discharged into Todd Creek.

15. On September 27, 2018, Department staff spoke with Michael Sultany over the phone about steps to contain the material at the site and recover as much of the material already in the creek as possible, including consolidating the material and constructing earthen berms to contain runoff.

16. On October 3, 2018, Department staff conducted a follow-up inspection at the facility. Michael Sultany had not consolidated the material northward nor constructed earthen berms to contain runoff. Department staff spoke with Michael Sultany, and Michael Sultany stated he would create a berm of agricultural lime and push the compost material north. Department staff recommended that Michael Sultany not use lime and instead construct berms of

soil and use silt fencing or hay bales for extra protection against runoff. Michael Sultany said to Department staff that he would have two earth berms up by 6 p.m. that evening. Department staff collected in-stream samples from the tributary to Todd Creek which showed violations of the minimum DO criterion required by water quality standards. Exhibit 1 contains a list of in-stream sample results collected by Department staff. Department staff also observed black sludge within one foot of entering Todd Creek and detected a strong septic odor in Todd Creek immediately downstream of the confluence with the unnamed tributary.

17. On October 4, 2018, Department staff called Michael Sultany, who said he was still in the process of constructing the berms and was using a vacuum truck to remove materials from the tributary to Todd Creek. Department staff emphasized to Michael Sultany the importance of the BMPs in preventing any future runoff.

18. On October 5, 2018, Department staff conducted a follow-up inspection at the facility. Department staff observed several earthen berms, a lime berm, and a makeshift catch basin that did not appear to be an adequate long-term stormwater structure. Department staff collected in-stream samples from the tributary to Todd Creek which showed violations of the minimum DO criterion required by water quality standards. Exhibit 1 contains a list of in-stream sample results collected by Department staff.

19. On October 9, 2018, Department staff conducted a follow-up inspection at the facility to assess the state of the receiving streams following a rainfall event. Department staff observed breached soil berms, that the lime berm was draining down the stormwater ditch, and that the detention basin was inundated with stormwater. Department staff spoke with Michael Sultany and recommended that he contact an erosion control contractor to assess the area and determine more permanent solutions than repairing the berms and pumping standing water.

Department staff observed the water in the tributary to Todd Creek to be black in color.

Department staff observed the black water entering into Todd Creek which resulted in a clearly visible mixing zone. Department staff observed black runoff from a compost stockpiling area entering into a stormwater ditch which leads to the tributary of Todd Creek.

20. On October 18, 2018, Department staff conducted a site visit and later that day called Michael Sultany to discuss the findings of the site visit. Department staff reminded Michael Sultany that it was imperative that he ensure that no additional water quality violations occur, and Michael Sultany said he understood. Department staff discussed required actions with Michael Sultany, and emailed Michael Sultany a list of required actions the next day that included moving compost material away from the stormwater ditch, installing BMPs (such as earthen berms and large concrete blocks) near the drainage ditch to prevent discharge of compost wastewater, and obtaining an operating permit if the composting operation is to continue. The email contained links to permit applications.

21. On October 22, 2018, Department staff conducted a site visit and took pictures of sludge deposits in the tributary to Todd Creek, breached berms, failed hay bale BMPs, the silt-filled detention basin, and runoff leaving the site.

22. On October 23, 2018, Department staff emailed Michael Sultany to summarize the October 22, 2018, site visit and list required actions to cease the discharge of compost runoff. Department staff informed Michael Sultany that he must remove compost material nearest to the stormwater drainage ditch, prioritizing the drainage ditch and lowland landscape for immediate removal of sludge removal, install structures (earthen berms, large concrete blocks, etc.) near the stormwater drainage ditch to prevent the discharge of compost wastewater, and obtain an

operating permit if the compost operation is to continue. The email contained links to permit applications.

23. On October 30, 2018, Department staff conducted a site visit to assess the site for improvement. Department staff observed a soil berm in progress that had not yet been compacted, less sludge material near the stormwater drainage ditch, and a significant amount of residual sludge material still in the drainage ditch. Department staff also observed sludge material that had been placed on a hillside on the property near 144th Street that drained to the tributary of Todd Creek. Department staff spoke with Michael Sultany over the phone and sent him a follow-up email later that day stating that placing sludge material on the hillside is not appropriate agricultural land application and that all required actions in the October 23, 2018, email were to be completed by November 2, 2018.

24. On November 2, 2018, Department staff conducted a follow-up inspection at the facility to assess the receiving streams. Department staff observed sludge deposits on the creek bed of the tributary to Todd Creek along with a septic odor. Department staff observed that the soil berm seen during the October 30, 2018, site visit had been compacted, but noted that the berm should be built taller. No improvements were observed to the stormwater drainage ditch and the flooded area at the bottom of the hillside. Department staff concluded that there was still a high risk that pollution to waters of the State could occur after moderate rainfall.

25. On May 6, 2019, Department staff conducted an odor concern investigation for the Air Pollution Control Program. Department staff observed that the amount of waste on site was reduced. Photos were taken of remaining compost piles, breaches in earth berms, improper straw bale BMPs, and water entering the stormwater ditch that leads to a tributary of Todd Creek.

26. As of the date of this Order, the Department has not received notification from the Respondents that all of the compost material has been removed from the site.

27. The MCWL, Section 644.096, RSMo, authorizes 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.

28. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein related to the tributary to Todd Creek had at least a minor potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the MCWL and its implementing regulations. The violations referenced herein related to Todd Creek had at least a moderate potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the MCWL and its implementing regulations. Using the gravity-based matrix, the base penalty for the violations related to the tributary to Todd Creek falls within a range of \$1,501 to \$2,500, and the base penalty for the violations related to Todd Creek falls within the range of \$4,501 to \$5,500. Due to the Respondents' history of non-compliance, the Respondents' lack of urgency in resolving the violations, and how pollution events occurred after significant assistance by the Department, the base penalty for the violations related to the tributary to Todd Creek was increased by \$166.50. Due to the Respondents' failure to obtain a permit and pay annual permit fees, an economic benefit of \$200 was applied to the administrative penalty amount. Since the Department documented ten occurrences of violations of the MCWL related to the tributary to Todd Creek and two occurrences of violations of the

MCWL related to Todd Creek, an administrative penalty in the amount of \$31,865.00 is justified.

29. This Order is necessary to compel compliance and to prevent or eliminate threats to human health or the environment.

STATEMENT OF VIOLATIONS

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

30. The facility discharged water contaminants, compost wastewater runoff, 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; 10 CSR 20-7.031(5)(G), (H), (J); and 10 CSR 20-7.031(4)(A), (C), (E), and (J) (see Paragraphs 14, 16, 18, 19, 21, 23, and 24);

31. Operated, used, or maintained a water contaminant source which intermittently discharges to waters of the State without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A) (see Paragraphs 6, 7, 14, and 25); and

32. Caused pollution of Todd Creek and its tributary, waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo (see Paragraphs 14 through 25).

CORRECTIVE ACTIONS

Pursuant to Section 644.056.3, RSMo, the Department hereby orders the Respondents to complete each of the following corrective actions:

33. The Respondents are ordered to pay to the Department, the State's investigative costs and damages in the amount of \$4,070.04 in the form of a check made payable to the "State of Missouri." The check shall be delivered or mailed to:

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

34. Immediately upon the effective date of this Order, the Respondents are ordered to install and maintain adequate BMPs for any fertilizer, composting material, or other material stockpile that exists on the property to ensure that no further stormwater runoff from fertilizer, composting material, or other such contaminant is introduced into waters of the State.

35. Immediately upon the effective date of this Order, the Respondents are ordered to remediate the tributary to Todd Creek and Todd Creek. Remediation shall include, at a minimum, removal of any water contaminants as defined by Section 644.016(24), RSMo. Within 30 days of the effective date of this Order, the Respondents are ordered to submit to the Department photographic evidence of complete remediation of the tributary to Todd Creek and Todd Creek.

36. Within 30 days of the effective date of this Order, the Respondents are ordered to either submit to the Department for review and approval a complete application for a Missouri State Operating Permit, including the applicable fee and any required supporting documents, or submit to the Department a written statement disclosing the following: 1) composting operations have ceased on the property; 2) composting material, waste material, and other associated material have been removed from the site and were disposed of using authorized land application methods or were accepted for disposal at a permitted disposal site such as a sanitary landfill; 3) all locations where the material has been disposed of and copies of any written contracts with the parties that accepted the material; 4) wastewater discharges have ceased; and 5) photographic evidence that the actions in items 1 and 2 have been completed.

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

PENALTY

Pursuant to Section 644.079, RSMo and 10 CSR 20-3.010, the Department hereby orders Respondents to pay an administrative penalty for the above-referenced violations as follows:

38. The Respondents shall pay to the Department an administrative penalty in the amount of \$31,865.00. Within 60 days from the date of issuance of this Order, Respondents shall submit a check in the amount of \$31,865.00 as described below.

39. The Respondents shall make such payment by certified check or cashiers made payable to “Platte County Treasurer, as custodian of the Platte County School Fund.”

40. Such payment must be delivered or mailed to the address provided in Paragraph 33, for forwarding to the Platte County Treasurer.

SUBMISSIONS

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

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

OTHER PROVISIONS

42. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if Respondents make a written request to the Department within ten business days of this Order, and otherwise provides appropriate justification and

documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

43. Compliance with this Order resolves only the specific violations described herein, and this Order 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 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.

44. This Order shall apply to and be binding upon Respondents and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for Respondents. Any changes in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall not relieve Respondents of their obligation to comply with this Order.

45. For any plan or submittal from Respondents that is required by this Order and subject to Department approval under this Order, the Department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such Department decision shall be conveyed in writing to Respondents. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, Respondents shall submit a revised version of the plan or submittal within ten business days after receiving notice of the Department's required revisions, or within such other timeframe as the Department may specify. If the Department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and Respondents shall commence work and implement

such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

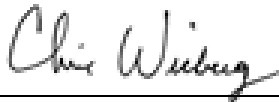
46. If you were adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020, and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
U.S. Post Office Building, Third Floor
131 West High Street, P.O. Box 1557
Jefferson City, MO 65102-1557
Phone: 573-751-2422
Fax: 573-751-5018
Website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED on this 18 day of September, 2020 by:

DEPARTMENT OF NATURAL RESOURCES



Chris Wieberg, Director
Water Protection Program

c: Karen Rouse, Director, Kansas City Regional Office
General Counsel's Office
Accounting Program

Exhibit 1: Field Samples Collected by Department Staff

September 20, 2018 Sample Locations and Results				
Parameter	Tributary at NW 144th Street	At mixing zone in Todd Creek	Upstream in Todd Creek	Downstream in Todd Creek
Dissolved Oxygen	0.76 mg/L	1.7 mg/L	7.94 mg/L	4.26 mg/L

October 3, 2018 Sample Locations and Results					
Parameter	Tributary at NW 144th Street	Tributary 25 ft. upstream of confluence	Tributary 1 ft. upstream of confluence	In Todd Creek upstream of confluence	In Todd Creek Mixing Zone
Dissolved Oxygen	1.76 mg/L	2.63 mg/L	5.68 mg/L	7.84 mg/L	7.45 mg/L

October 5, 2018 Sample Locations and Results			
Parameter	Tributary at NW 144th Street	At mixing zone in Todd Creek	Upstream in Todd Creek
Dissolved Oxygen	3.85 mg/L	7.55 mg/L	7.84 mg/L

October 9, 2018 Sample Locations and Results			
Parameter	Tributary at NW 144th Street	At mixing zone in Todd Creek	Upstream in Todd Creek
Dissolved Oxygen	8.07 mg/L	8.34 mg/L	9.62 mg/L