

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103

**FILED**

Aug 29, 2024

3:15 pm

**U.S. EPA REGION 3  
HEARING CLERK**

<b>In the Matter of:</b>	:	
	:	
Scattered Acres, Inc.	:	<b>U.S. EPA Docket No. CWA-03-2024-0139DN</b>
1750 Van Reed Road	:	
Sinking Spring, PA 19608	:	
	:	<b>ADMINISTRATIVE ORDER ON CONSENT</b>
<b>Respondent.</b>	:	<b>PURSUANT TO 33 U.S.C. § 1319(a)</b>
	:	
Scattered Acres Farm	:	
900 Galen Hall Road	:	
Reinholds, PA 17569	:	
	:	
<b>Facility.</b>	:	

**I. STATUTORY AUTHORITY AND JURISDICTION**

1. This Administrative Order on Consent ("AOC" or "Order") is issued to Scattered Acres, Inc. ("Respondent") under the authority vested in the United States Environmental Protection Agency (the "EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator delegated this authority to the Regional Administrator of EPA Region 3, who further delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 3.
2. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), provides that whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the CWA, in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.
3. The EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. The EPA has consulted with the Pennsylvania Department of Environmental Protection ("PADEP") regarding this action and, subsequent to the Effective Date, the EPA will email a copy of this fully executed AOC to the appropriate PADEP representative.

**II. GENERAL PROVISIONS**

5. For the purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this AOC.

6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Order.
7. The provisions of this AOC shall apply to and be binding upon Respondent and the officers, directors, employees, contractors, agents, trustees, successors, and assigns of Respondent.
8. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and with the implementation or enforcement of this AOC, including any costs related to the resolution of any dispute arising from this AOC.
9. The EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. The EPA reserves all existing rights and remedies available to it under the CWA, 33 U.S.C. §§ 1311-1330, the regulations promulgated thereunder, and any other federal laws or regulations for which the EPA has jurisdiction, including enforcement of this AOC.
10. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Order does not constitute a waiver, suspension, or modification of the requirements of the Act, 33 U.S.C. §§ 1251-1389, or any regulations promulgated thereunder.
11. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
12. The EPA reserves all existing inspection authority otherwise available to the EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
13. The undersigned representative of Respondent certifies that they are fully authorized by Respondent to enter into the terms and conditions of this AOC and to execute and legally bind Respondent.
14. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent's knowledge and belief, this AOC

does not contain any confidential business information or personally identifiable information from Respondent.

15. Respondent certifies that, to the best of its reasonable knowledge and belief, any information or representation it has supplied or made to the EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy, or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors, and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
16. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section V (Compliance Order) of this Order is restitution, remediation, or required to come into compliance with the law.

### **III. STATUTORY AND REGULATORY BACKGROUND**

17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
18. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permits. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
19. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), in 1978, the EPA authorized the Commonwealth of Pennsylvania, through PADEP, to administer the NPDES program in Pennsylvania. In 1991, the EPA authorized Pennsylvania to issue general NPDES permits.
20. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains its authority to take enforcement action within Pennsylvania for NPDES permit violations.

21. “Pollutant” is defined as “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 40 C.F.R. § 122.2. *See also* 33 U.S.C. § 1362(6).
22. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2. *See also* 33 U.S.C. § 1362(12).
23. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
24. A “concentrated animal feeding operation (‘CAFO’)” is defined as an animal feeding operation “that is defined as a Large CAFO or Medium CAFO in accordance with [40 C.F.R. § 122.23(b)], or that is designated as a CAFO in accordance with [C.F.R. § 122.23(c)]. 40 C.F.R. § 122.23(b)(2).
25. Section 122.23(d)(1) of Chapter 40 of the Code of Federal Regulations states that a CAFO must not discharge unless the discharge is authorized by an NPDES permit. The owner or operator of a CAFO must obtain authorization under an NPDES permit by either applying for an individual NPDES permit or submitting a notice of intent for coverage under an NPDES general permit.

#### **IV. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

26. PADEP reissued its NPDES General Permit for Operation of Concentrated Animal Feeding Operations, General Permit, PAG-12, (the “General Permit”) for a 5-year term, effective on April 1, 2018. PADEP modified the General Permit, and its modified requirements became effective on January 1, 2021. PADEP administratively extended the General Permit for one year, and it expired on March 31, 2024.
27. PADEP reissued the General Permit for another 5-year term, effective on January 1, 2024 and expires on December 31, 2028.
28. The General Permit authorizes a permittee to operate a CAFO in accordance with the effluent limitations, monitoring and reporting requirements, best management practices (“BMPs”), and other conditions set forth in Parts A, B and C of the General Permit.
29. Scattered Acres, Inc. is, and at all times relevant to this AOC was, the owner and operator of the CAFO located at 900 Galen Hall Road, Reinholds, PA 17569 (the “Farm”).
30. Scattered Acres, Inc. is a corporation organized and existing under the laws of the

Commonwealth of Pennsylvania and is thus a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

31. Pursuant to the applicable PADEP procedures, Respondent requested coverage under the General Permit for the Farm, and PADEP approved coverage through NPDES Permit Number PAG123766 (the “Permit”), effective May 1, 2021 and expired April 21, 2024. Respondent requested coverage under the reissued General Permit for the Farm, and PADEP approved coverage through the Permit, effective April 22, 2024.
32. Pursuant to Part B.I.A of the Permit, Respondent must “comply with all conditions of [the] General Permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or denial of a permit renewal application.”
33. The Farm discharges, and at all times relevant to this AOC discharged, authorized stormwater into an unnamed tributary of Little Cocalico Creek, which leads to Cocalico Creek, which leads to Conestoga River, which leads to Susquehanna River, which is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
34. On June 23, 2022, EPA inspectors conducted a compliance evaluation inspection of the Farm, and on September 27, 2022, EPA and PADEP inspectors conducted another inspection of the Farm (collectively, the “Inspections”). The purpose of the Inspections was to determine Respondent’s compliance with the Permit.
35. On May 16, 2024, the EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer letter.
36. Based on the Inspections and review of Respondent’s subsequent responses, the EPA has identified the following violation of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311, described in the Paragraphs below.

**Count 1**

**Failure to Implement Measures and/or BMPs to Prevent the Discharge from Raw Material Storage Areas to Surface Waters**

37. The allegations in the preceding paragraphs are incorporated by reference.
38. Pursuant to Part C.VI.A of the Permit, Respondent must “implement measures and/or BMPs to prevent discharges from raw material storage areas, including feed storages, to surface waters.”

39. According to Part A.II of the Permit, the manure storage area “includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.”
40. According to Part A.II of the Permit, BMPs is defined as “schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollutant loading to surface waters of the Commonwealth [of Pennsylvania].” BMPs also include “treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”
41. During the Inspections, EPA inspectors observed stormwater pooling and discharging to the front of a composting pile. According to the Operator Map found in the Farm’s Nutrient Management Plan, there is a vegetative treatment area behind this composting pile.
42. During the Inspections, EPA inspectors did not observe any measures in relation to the composting pile to prevent or reduce stormwater from pooling in front of the compost area and draining and discharging into an Unnamed Tributary to Little Cocalico Creek.
43. On the date of the Inspections, Respondent failed to implement measures and/or BMPs to prevent discharges from raw material storage areas to surface waters.
44. On the date of the Inspections, Respondent failed to comply with Part C.VI.A of the Permit by failing implement measures and/or BMPs to prevent discharges from raw material storage areas to surface waters.
45. Respondent’s failure to comply with Part C.VI.A. of the Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

#### **V. COMPLIANCE ORDER**

THEREFORE, based on the foregoing, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct, and consents to conduct, the following activities:

46. Respondent shall take all actions necessary to comply with the Permit (or subsequent permits or permit modifications, including permit compliance schedules, issued by PADEP) at the Farm. In addition, Respondent shall construct a mortality composting building (the “Roofed Composter”) within two years of the Effective Date of this AOC.
47. Respondent shall:

- **Within 10 days of the Effective Date of this AOC:** Develop and provide to the EPA a concept plan of the Roofed Composter. The concept plan shall, at a minimum, include the dimensions of the Roofed Composter and the calculations of the amount of manure and bedding from the calf barn and mortalities it can accommodate.
  - **By January 6, 2025:** Complete and provide to the EPA the final Plan for the Roofed Composter. The plan shall, at a minimum, include the final dimensions of the roofed composter and construction specifications and calculations of the amount of manure and bedding from the calf barn and mortalities it can accommodate.
  - **By January 6, 2025:** Submit applications for the necessary permits (e.g., NPDES, Township Stormwater Plan, and Water Quality Management Permits) to construct the Roofed Composter. Provide proof of submittal of the applications to the EPA.
  - **Within 10 days of Obtaining Permits:** Provide the permits to the EPA and revise and send to the EPA the Farm's Nutrient Management Plan to include the Roofed Composter.
  - **Within 30 days of Obtaining Permits:** Begin construction of the Roofed Composter.
  - **Within 60 days of Beginning Construction:** Complete construction of Roofed Composter and provide photographs of the completed structure to the EPA.
48. Respondent shall submit a notice to the EPA within 30 days of completing a scheduled event from Paragraph 47 until all work required by this AOC has been completed.
49. If Respondent reasonably expects that any of the events in Paragraph 47 will not be completed by the given deadline, Respondent shall submit a notice to the EPA at least 10 days prior to the deadline. At a minimum the notice shall include:
- A reason for the delay in the scheduled event.
  - The new date the event is scheduled to be completed.
  - Any barriers to the timely completion of activities encountered.
  - Activities currently in progress.

**VI. PROCEDURES FOR SUBMISSIONS**

50. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 C.F.R. § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

51. Unless otherwise directed in writing, Respondent shall submit any submission or written communication, including any accompanying data, relating to this AOC via email to:

Peter Gold  
[gold.peter@epa.gov](mailto:gold.peter@epa.gov)  
NPDES Enforcement  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 3

Any information submitted electronically shall be submitted in a widely recognized electronic format.

52. Respondent may assert a business confidentiality claim covering part or all the information which this AOC requires it to submit to the EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If, at the time any information is submitted to the EPA, Respondent submitting such information does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.



**VII. CERTIFICATION OF COMPLIANCE AND REQUEST FOR TERMINATION OF AOC**

53. Upon completion of all items required by this AOC, and a determination of completeness of each item, and after at least one year of implementation, Respondent shall submit to the EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:
- a. a certification that Respondent has maintained compliance with this Order for the term of this AOC; and
  - b. all necessary documentation, including photo documentation, as appropriate, to support a finding that Respondent has complied with Section V (Compliance Order) of this AOC.
54. If, following review of any Certification of Compliance and Request for Termination of this AOC, the EPA agrees that Respondent has adequately complied with all requirements of this Order, then the EPA will provide written notification of termination of this AOC.

**VIII. AOC MODIFICATIONS**

55. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to the EPA and shall be subject to review and approval by the EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this AOC shall not relieve Respondent of any obligation under this AOC and shall have no effect on the EPA's statutory or regulatory authority to enforce the terms of this AOC, in its sole and unreviewable discretion.

**IX. CHANGE OF OWNERSHIP OR OPERATION OF THE FARM**

55. Until or unless this AOC is modified or terminated, in accordance with the terms of this Order, Respondent shall remain responsible for compliance with the terms of this AOC following any transfer of ownership or operation of the Farm.
56. At least 90 days prior to any transfer of ownership or operation of the Farm, Respondent shall submit a written notification to the EPA of any such anticipated change in ownership or operation which shall include, at a minimum, a detailed summary of the anticipated change in ownership or operation, contact information for the proposed new owner or operator of the Farm, and a schedule for such anticipated change.
57. Respondent shall condition any sale or transfer of ownership or operation of the Farm, in whole or in part, upon the execution by such Prospective Third-Party Purchaser, or Transferee, of an agreement, which creates an obligation that shall survive the closing of such sale or transfer of the Farm, whereby such Prospective Third-Party Purchaser or Transferee agrees to comply with and be bound by the terms of this AOC.

**X. EFFECTIVE DATE**

58. This AOC shall become effective upon Respondent's receipt of a fully executed copy of this AOC ("Effective Date").

**FOR RESPONDENT SCATTERED ACRES, INC.**

Date: 8/20/24

By:

A handwritten signature in black ink, appearing to read "Harrison Hartman", written over a horizontal line.

Harrison Hartman, Operator  
Scattered Acres Farm

**SO ORDERED:**

**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY**

By: **KAREN  
MELVIN**  Digitally signed by KAREN  
MELVIN  
Date: 2024.08.29 08:47:41  
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*[Digital Signature and Date]*  
Karen Melvin, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103

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Reinholds, PA 17569	:
	:
<b>Facility.</b>	:

**CERTIFICATE OF SERVICE**

I certify that the foregoing Administrative Order on Consent was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the Administrative Order on Consent. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via UPS and email to:

Harrison Hartman, Operator  
Scattered Acres Farm  
900 Galen Hall Road  
Reinholds, PA 17569  
[REDACTED]

Copies served via email to:

Promy Tabassum, Esq.  
Assistant Regional Counsel  
U.S. EPA, Region 3  
[tabassum.promy@epa.gov](mailto:tabassum.promy@epa.gov)

Peter Gold  
Life Scientist  
U.S. EPA, Region 3  
[gold.peter@epa.gov](mailto:gold.peter@epa.gov)

By:

BEVIN  
ESPOSITO

[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. EPA, Region 3

Digitally signed by BEVIN  
ESPOSITO  
Date: 2024.08.29 15:18:28  
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