

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Steve Frick
Osceola County
Facility ID: 64773**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2007-AFO-14**

**TO: Steve Frick
4982 200th Street
Sibley, IA 51249**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Steve Frick and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to construction permits. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Jennifer Christian
IDNR Field Office #3
1900 N. Grand Ave.
Spencer, IA 51301
Ph: 712/262-4177

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Phone: 515/281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark

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II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, Iowa Code chapter 459, subchapter III, and the rules adopted or permits issued pursuant thereto; and Iowa Code sections 455B.109 and 459.103(3), and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Steve Frick owns a grow-to-finish swine confinement operation located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 32, T99N, R42W (West Holman Township), Osceola County, Iowa. The operation consists of a confinement building with an underlying manure storage pit (hereinafter, new confinement building). The operation has a capacity of 2,400 head or 960 animal units and is managed by ProPig, Inc. Another swine confinement building (hereinafter, adjacent confinement building), also managed by ProPig, Inc. and owned by Steve Frick's mother, Barbara Frick, is located approximately 240 feet away; this building has a capacity of 650 head (260 animal units).

2. On June 29, 2006, Field Office #3 (FO3) received a manure management plan (MMP) and construction design statement from Steve Frick regarding the proposed construction of the new confinement building, described by Mr. Frick as "new confinement feeding operation."

3. On November 7, 2006, FO3 received a complaint regarding separation distances to wells and the road right-of-way at Frick's new confinement building. FO3 staff investigated the complaint on November 8, 2006. No separation distance violations were observed but the adjacent confinement building was observed at approximately 240 feet away from the new confinement building. Mr. Frick explained that the adjacent confinement building is owned by his mother and managed by himself. When FO3 staff explained that the two buildings would likely be considered one operation which would have required a construction permit prior to construction of the new confinement building Mr. Frick explained that he did not apply for a permit because he was not aware of this requirement.

4. On November, 15, 2006, FO3 staff met with Mr. Frick and representatives of the Cooperative Elevator Association of Hartley, Mr. Frick's MMP preparer and general contractor for the new confinement building. Separation distance and construction permit requirements were discussed.

5. By letter dated November 22, 2006, FO3 notified Mr. Frick that he had violated Iowa law by failing to obtain a construction permit before constructing the new confinement building.

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6. On January 9, 2007, FO3 staff again met with Mr. Frick and representatives of the Cooperative Elevator Association of Hartley. Documents were presented by Mr. Frick indicating that swine in each confinement building are separately owned but that both confinement buildings are managed by the same company, ProPig, Inc.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 requires the Environmental Protection Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC chapter 65.

2. For purposes of water quality requirements, Iowa Code subsection 459.301(1) provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent. For purposes of determining whether two or more animal feeding operations are adjacent at least one confinement feeding operation structure must be constructed on or after May 21, 1998 and for operations with a combined animal unit capacity of 1,000 or more they must be separated by less than 2,500 feet. "Common management" is defined in 567 IAC 65.1 as "significant control by a person of the management of the day-to-day operations of each of two or more animal feeding operations." Inasmuch as the foregoing facts establish that the new confinement building was constructed in 2006, the combined animal unit capacity is 1,220, the confinement buildings are less than 2,500 feet apart, and the two confinement buildings are managed by the same entity, it is concluded that these two operations are considered one operation for water quality purposes.

3. 567 IAC 65.7(1)"b"(2) requires that a construction permit be obtained prior to constructing, installing or modifying a confinement building if, after construction, installation or expansion, the animal unit capacity of the operation is 1,000 animal units or more. The foregoing facts establish a violation of this requirement.

4. Iowa Code section 459.312(10)"e" and 567 IAC 65.17(3) require, among other things, that a manure management plan include an estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation. The foregoing facts establish that Mr. Frick must submit a new original manure management plan for the combined operation.

V. ORDER

THEREFORE, the Department hereby orders and Steve Frick consents to do the following:

1. By June 15, 2007, submit to the Department a construction approval application, and as-built plans and specifications for the new confinement building constructed in 2006. Thereafter, implement any modifications to your building as directed by the Department. The

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construction approval application must include all information and fees specified in 567 IAC 65.9 (1) (see attached copy).

2. By June 15, 2007, submit to the Department an original MMP for the combined operation, including a phosphorus index.
3. Pay a penalty of \$5,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws, regardless of fault; more severe criminal sanctions are also provided for negligent and intentional violations.

2. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$5,000.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. Mr. Frick saved time and money by proceeding with construction of the new confinement building without obtaining a construction permit. Assuming compliance with this Order, Mr. Frick will now incur some of those expenses but he enjoyed use of the building sooner than would otherwise have been possible if he had complied with the permit requirements. This value of this benefit is conservatively estimated as \$1,000.00 and that amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. A maximum of \$3,000.00 per day can be assessed for this factor for each violation, subject to the \$10,000.00 maximum for an administrative penalty. A permit is required to be obtained prior to construction to allow for review of plans and specifications pertaining to a proposed system. The purpose of this review is to determine if the facility will meet all applicable requirements. This review insures that the interests of the citizens of Iowa in clean water are protected. Construction prior to obtaining required permits or contrary to permits also threatens the integrity of the permit and water pollution control programs. For these reasons, \$2,000.00 is assessed for this factor.

c. Culpability. Mr. Frick has a duty to be aware of and comply with statutory and rule requirements pertaining to construction permits. Therefore, \$2,000.00 is assessed for this factor.

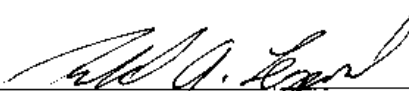
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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Mr. Frick. By signature to this Order, all rights to appeal this Order are waived by Mr. Frick.

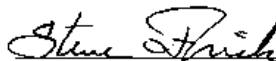
VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 459.603. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31 day of
May, 2007.



STEVE FRICK

Dated this 24th day of
May, 2007.

Field Office 3; Kandy Clark; Gene Tinker; EPA; VIII.A.1