

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

HUFco, LLC
MITCHELL COUNTY, IOWA
ID #S 60931 & 57901

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2007-AFO- 37
NO. 2007-SW- 15
NO. 2007-AQ- 28

TO: Hufco, LLC
c/o Charles G. Brown, Reg. Agent
301 E. Lincoln Highway
DeKalb, IL 60115

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Hufco, LLC and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to air quality, solid waste, and manure application and control. 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:

Carl Berg
IDNR Field Office #2
2300 15th Street SW
Mason City, IA 50401
Ph: (641) 424-4073
Fax: (641) 424-9342

Relating to legal requirements:

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

Payment of penalty to:

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

II. JURISDICTION

This Order is issued pursuant to Iowa Code subsections 455B.134(9), 455B.138(1), 455B.175(1) and 455B.307(2) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division II (Air Quality), Division III, Part 1 (Water Quality), Division IV, Part 1 (Solid Waste) or Iowa Code Chapter 459,

21199 NOV27'07 AM10:27

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: HUFECO, LLC**

Subchapter III (Water Quality-Animal Confinement Operations), and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Hufco, LLC (hereinafter, Hufco) owns a swine nursery and finisher confinement operation located in the NW¼ of Section 31, T100N, R17W (Union Township), Mitchell County, Iowa (hereinafter, Jen Rae Pork). In addition to shallow below-building pits, manure is stored in three uncovered, concrete manure storage structures.

Hufco also owns a swine finisher confinement operation located in the NW¼ of Section 4, T98N, R15W (Douglas Township), Mitchell County, Iowa (hereinafter, Mosher Ridge). Manure is stored in deep below-building pits.

2. On September 7, 2005, Department Field Office #2 (FO2) staff conducted a manure management plan (MMP) inspection at Mosher Ridge. Manure application records for 2002, 2003 and 2004 were not maintained at the operation.

3. On April 28, 2006, FO2 staff conducted an MMP inspection at Jen Rae Pork. Neither a current MMP nor manure application records were maintained at the facility.

4. On August 2, 2006, FO2 investigated a complaint concerning "black water" between the confinement buildings at Jen Rae Pork. Approximately 1,000 gallons of manure had flowed from a two inch hole in the wall of a shallow below building pit and was pooled between confinement buildings near a truck loading ramp. In addition, one of the three uncovered concrete manure storage structures had only six inches of freeboard and evidence that a burn barrel had been used to burn trade wastes was observed. A follow-up inspection on October 10, 2006 revealed compliance with these requirements: clean-up of the pooled manure; maintaining no less than one foot of freeboard; removal of the burn barrel.

5. A follow-up MMP inspection at Jen Rae Pork by FO2 staff on November 2, 2006, revealed that a current MMP was not available for inspection. FO2 staff also observed leachate flowing from a dead animal compost pile that was not adequately covered. A pile of tires, appliances, furniture and other waste was observed in a filter strip on Hufco property approximately 200 feet east of the facility.

During another follow-up inspection on December 20, 2006, FO2 staff did find an MMP but it lacked required P-index summary sheets and RUSLE 2 information. While the compost pile had been improved, leachate was still leaving the site and a carcass was only partially covered. Hufco representatives at the facility explained that an order for wood chips to cover the compost pile had been delayed but delivery was expected yet that week.

6. On December 20, 2006, FO2 staff conducted a follow-up MMP inspection at Mosher Ridge. The MMP was inconsistent regarding the proper manure application rate and it had not been updated. Manure application records were incomplete.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: HUFECO, LLC**

7. By letter to FO2 dated December 21, 2006, Hufco's representative, South Central Management Services outlined efforts being made to comply with MMP and solid waste requirements. By letter dated January 17, 2007, Hufco confirmed that South Central Management Services has the responsibility to ensure that all MMP and solid waste requirements are met.

8. On February 20, 2007, FO2 staff conducted a follow-up inspection at Jen Rae Pork, resulting in the following observations and requirements:

Manure contaminated liquid was discharging from a hose extending from a pit fan at the south confinement building. The liquid was flowing to an adjacent lawn and did not reach water of the state. By letter dated March 7, 2007, FO2 required Hufco to: redirect the hose to the confinement building pits immediately or to cease the discharge; and submit by March 15, 2007 a diagram and explanation regarding the source of the liquid discharging from the hose.

Waste from a toilet and gray water from a washing machine were being discharged to a confinement building pit. By letter dated March 7, 2007, FO2 directed Hufco to contact the county sanitarian and to bring this "human sanitary waste" into compliance with Iowa law by June 15, 2007.

Discussions with Hufco personnel regarding the MMPs for both Jen Rae Pork and Mosher Ridge revealed that required phosphorous index information had not been submitted despite a previously-required compliance deadline of February 15, 2007. By letter dated March 7, 2007, FO2 directed Hufco to provide this information immediately.

Additional bulking agent had been added to the compost pile but more is required to comply with the requirement that all carcasses have 12 inches of cover at all times. By letter dated March 7, 2007, FO2 informed Hufco of this requirement and recommended that the compost site be roofed to avoid future leachate runoff violations.

Some material from the solid waste pile in the filter strip had been taken to a landfill. By letter dated March 7, 2007, FO2 directed Hufco to complete the removal and landfill disposal process by May 1, 2007.

9. On April 16, 2007, FO2 staff conducted another follow-up inspection at Jen Rae Pork resulting in the following observations: the compost pile continued to be improved but a carcass was not totally covered by the bulking agents; the toilet and washing machine had been disconnected and capped; the pit fan hose had not been disconnected or redirected but no discharge was occurring; Hufco personnel assured FO2 staff that the pit fan hose would be redirected to the pit in the next two weeks and prior to any discharge; additional material had been removed from the solid waste pile since the February 20, 2007 inspection but clean-up was not complete.

10. On October 4, 2007, FO2 staff inspected Jen Rae Pork. The compost piles did not have the required 12 inches of cover, and leachate was leaving the compost pile and pooling on the surrounding concrete. The solid waste pile had been cleaned up, and the MMP and other previously observed issues appeared to satisfy statutory and rule requirements.

IV. CONCLUSIONS OF LAW

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: HUFECO, LLC**

1. Iowa Code sections 455B.133, 455B.304 and 459.103 require the Environmental Protection Commission to adopt rules related to air quality, solid waste and animal feeding operations. The Commission has done so at 567 IAC Chapters 20-34, 65, and 100-121.

2. Iowa Code subsection 459.311(1) and 567 IAC 65.2(3) require that each confinement feeding operation retain all manure produced in the confinement enclosures between periods of manure application. The foregoing facts document that these provisions were violated.

3. 567 IAC 65.2(3)"b" and "c" require that manure be removed as necessary to maintain a freeboard of at least one foot in unroofed formed manure storage structures; and that manure be removed as needed prior to periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors) in order to assure that adequate capacity exists in the manure storage facilities. The foregoing facts establish that these requirements were violated.

4. 567 IAC 65.15(18) prohibits directing human sanitary waste to a manure storage structure. "Human sanitary waste" as defined in 567 IAC 65.1 means "wastewater derived from domestic uses including bathroom and laundry facilities generating wastewater from toilets, baths, showers, lavatories and clothes washing." The foregoing facts establish that this provision was violated.

5. 567 IAC 65.2(9) requires any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts indicate that this provision has been violated.

6. Iowa Code section 459.312(3) and 567 IAC 65.17(12) and (13) require the owner of a confinement feeding operation to maintain a current MMP and records demonstrating compliance with the MMP at the site of the operation. The above-summarized facts document that the foregoing statutory and rule provisions have been violated.

7. 567 IAC 105.6(6) requires that dead farm animals be incorporated into the composting process within 24 hours of death. An adequate base layer with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover must be maintained around carcasses at all times to control mortality leachate and odors and to prevent access by scavenging domestic and wild animals. 567 IAC 105.3(3) requires that measures be taken to prevent runoff and compost leachate from leaving the composting facility. Runoff from the composting facility must be properly managed. The above-summarized facts document that the foregoing rule provisions have been violated.

8. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The foregoing facts document noncompliance with this provision.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: HUFECO, LLC**

9. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The foregoing facts establish that this provision was violated.

V. ORDER

THEREFORE, the Department hereby orders and Hufco consents to pay an administrative penalty of \$8,500.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation of air quality laws. Iowa Code sections 455B.307, 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of solid waste and water pollution control laws.

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 \$8,500.00 is assessed. \$7,000.00 of this penalty is assessed for violations of animal agriculture requirements. 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. Hufco has saved time and money by open burning waste, by not providing adequate bulking agent for composting, by not providing proper treatment for human sanitary waste, by not removing manure in a timely manner and by failing to maintain required MMP records. It is estimated that these savings are at least \$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 that 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. The open burning of trade waste can release toxins that pollute the air and pose a risk to human health and the environment. Improper and uncontrolled disposal of solid waste near a drainage ditch has the potential to cause surface and groundwater pollution. Failure to contain manure, to maintain required freeboard, to timely report manure releases and to control leachate threaten water quality. The MMP violations threaten the integrity of the MMP and related record-keeping program. Multiple rule and statutory provisions were violated: improper open burning and solid waste disposal; improper disposal of human sanitary waste; failure to employ proper composting measures; failure to retain manure and failure to maintain the required freeboard; failure to provide notification of a release; and failure to comply with MMP requirements. For the purpose of resolving this matter, \$4,500.00 is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: HUFECO, LLC**

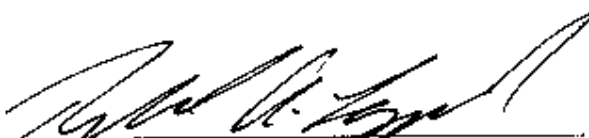
c. Culpability. Multiple violations at these facilities extending across several program areas demonstrates a serious lapse in understanding state law and management oversight. For the purpose of resolving this matter, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138, 455B.175(1) and 455B.308, 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 Hufco. By signature to this Order, all rights to appeal this Order are waived by Hufco.

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.146, 455B.191, 455B.307 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 29 day of
November, 2007.



DON HUFTALIN
HUFECO, LLC

Dated this 13 day of
Nov 2007, 2007.

Field Office 2; Randy Clark; Ken Hassenius; EPA; VI.C; VII.C.1; VIII.C.2, C.3, D.1.a, D.2.a, D.2.d