IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
DONALD BURKEN, SR.; DONALD BURKEN, JR.; AND L&M HOGS, L.L.C. Facility #63582 Clinton, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO-18 NO. 2008-WW-20 NO. 2008-SW-11 NO. 2008-AQ-13

TO: Donald Burken Sr., Registered Agent
L&M Hogs, L.L.C.
4157 200th Street
Clinton, Iowa 52732

Donald Burken, Jr.
4293 Highway 136
Clinton, Iowa 52732

I. SUMMARY

This administrative consent order is entered into between Donald Burken, Sr., Donald Burken, Jr., and L&M Hogs, L.L.C. and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding several violations of DNR regulations at the Burkens' facilities in Clinton, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Ryan Stouder, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to: 1) 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 or Iowa Code Chapter 459, Subchapter III, and Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto; 2) Iowa Code sections 455B.134(9) and 455B.138(1) 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), and the rules promulgated or permits issued pursuant to that part; 3) Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste); and 4) Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10.

III. STATEMENT OF FACTS

1. While Donald Burken, Sr. and Donald Burken, Jr. of L&M Hogs, LLC agree to comply with the requirements contained herein, they make no admission as to the Statement of Facts (Section III) and Conclusions of Law (Section IV) and hereby deny the same.

2. Donald Burken, Sr. and Donald Burken, Jr. own and operate at least two animal feeding operations in Clinton County, Iowa. Donald Burken, Sr. is the listed property owner of a confined animal feeding operation located at 4157 200th Street in Clinton, Iowa (NE ¼, Section 29, Clinton County) (hereinafter referred to as the Section 29 facility). The Section 29 facility has a Manure Management Plan (MMP) filed under the name L&M Hogs, L.L.C. and Mr. Burken, Sr. is the registered agent of L&M Hogs, L.L.C. Donald Burken, Jr. is the listed property owner for a confined animal feeding operation and an open lot operation located at 4293 Highway 136 in Clinton, Iowa (Section 28, Clinton County) (hereinafter referred to as the Section 28 confined animal feeding operation and the Section 28 open lot). The Section 28 confined animal feeding operation also has a MMP filed under the name L&M Hogs, L.L.C.

3. On March 2, 2005, Mr. Burken, Sr. submitted a MMP application and construction design statement for the Section 29 facility. The facility has an animal capacity of 2,400 finishers. On March 9, 2005, DNR Field Office 6 sent Mr. Burken, Sr. a letter regarding the confined animal feeding operation construction requirements, including the requirements for a storm water permit.

4. On June 8, 2005, DNR Field Office 6 received a complaint regarding the separation distance between the Section 29 facility and a neighbor and a creek. On June 16, 2005, Ryan Stouder, DNR Field Office 6, investigated the complaint. Mr. Stouder determined the facility met the separation distance requirements. However, Mr. Stouder noted that there were no storm water controls in place. On June 29, 2005, Mr. Stouder spoke with Mr. Burken, Sr., who stated he had not obtained a storm water permit prior to beginning construction. On June 29, 2005, a Notice of Violation letter was issued to L&M Hogs, L.L.C. for failing to have a storm water permit.

5. On July 5, 2005, DNR Field Office 6 received a complaint alleging that on July 3, 2005, Mr. Burken, Sr. had hauled and land applied manure in violation of required separation distances. On July 7, 2005, Josh Sobaski, DNR Field Office 6, investigated the complaint at the Section 29 facility. During the investigation, Mr. Sobaski, observed that surface application of manure had occurred within 50 feet of a designated water source. Additionally, solid animal manure was surface applied within 200 feet of a drinking water well and none of the exceptions to this limit applied in this circumstance. On July 15, 2005, DNR issued a Notice of Violation letter to Don Burken, Sr. regarding violations related to land application separation distances.

6. On August 2, 2005, DNR issued NPDES General Permit #2 to Don Burken, Sr. The letter reminded Mr. Burken that he needed to have a pollution prevention plan in place at the facility.

7. On August 23, 2005, Mr. Stouder returned to the Section 29 facility to follow-up on the storm water permit violations. During the investigation, it was determined that this facility was not in compliance with its NPDES General Permit #2. The facility did not have erosion controls in place and the pollution prevention plan had not been submitted. On August 30, 2005, a Notice of Violation letter was issued to L&M Hog, L.L.C., for failure to comply with the requirements of its storm water permit.

8. On September 7, 2005, DNR Field Office 6 received a complaint that Mr. Burken, Sr., was land applying manure in violation of separation distance requirements. On September 9, 2005, Mr. Stouder and Mr. Sobaski conducted an investigation of the complaint at the Section 29 facility. During the investigation Mr. Sobaski observed land applied, solid animal manure, within 50 feet of a designated water source. Additionally, Mr. Stouder found that several deficiencies remained on the facility's compliance with its storm water permit. There were no storm water controls in place and the pollution prevention plan had not been completed. On September 12, 2005, a Notice of Violation letter was issued to Mr. Burken, Sr., for violation of the separation distance requirements when land applying manure, and a Notice of Violation letter was issued to L&M Hogs, L.L.C., for violating its storm water permit.

9. On November 21, 2005, DNR Field Office 6 received a complaint alleging that Mr. Burken, Sr., was violating the separation distances requirement for land-application of manure. On November 30, 2005, Mr. Stouder investigated the complaint at the Section 29 facility. During the investigation, Mr. Stouder did not find evidence of violation of the separation distance requirements; however, he did observe 3 dead hogs located in a water source approximately 500 feet west of the Section 29 facility. On December 6, 2005, a Notice of Violation letter was issued to L&M Hogs, L.L.C., for improper disposal of dead animals.

10. On May 25, 2006, DNR Field Office 6 received a complaint regarding manure runoff from the open feedlot at the Section 28 facility. On June 14, 2006, Mr. Stouder investigated the complaint and observed that manure solid deposits from the Section 28 open

feedlot had migrated into a grassy waterway which led into a tributary of Mills Creek. On June 21, 2006, Mr. Burken, Jr., was sent a Notice of Violation letter requiring him to take remedial actions to eliminate the conditions that were causing pollution to the waters of the state.

11. On November 1, 2006, Mr. Stouder conducted a follow-up visit to the Section 28 open feedlot regarding the remediation requirements set forth in the June 21, 2006 Notice of Violation letter. Mr. Stouder found that Mr. Burken, Jr., had not complied with the remediation requirements. On November 20, 2006, Mr. Burken, Jr., was issued a Notice of Violation letter for failure to take required remedial actions in response to manure runoff at the Section 28 open feedlot.

12. On November 9, 2006, DNR Field Office 6, received a complaint alleging that Mr. Burken, Sr., had hauled and land applied manure in violation of the separation distances requirement at his Section 29 facility. On November 15, 2006, while investigating the complaint, Mr. Stouder found that manure had been land applied in violation of the required separation distances. On November 27, 2006, Mr. Burken, Sr., was issued a Notice of Violation letter for the November 15, 2006 violation of separation distance requirements during land application of manure.

13. On November 21, 2006, DNR Field Office 6 received another complaint alleging a separation distance violation for land application of manure at the Section 29 facility. On December 1, 2006, Mr. Stouder investigated the complaint at the Section 29 facility. During this investigation, manure was found land applied to a soybean field within the Section 29 facility. This application was in violation of the required separation distance to a designated area. On December 20, 2006, a Notice of Violation letter was issued to Mr. Burken, Sr., for this violation.

14. On March 23, 2007, DNR Field Office 6 received a complaint regarding manure runoff from the Section 28 open feedlot. On March 29, 2007, Mr. Stouder investigated the complaint and observed manure solids deposited throughout the grassy waterway that led to a tributary of Mills Creek. Mr. Stouder spoke to Mr. Burken, Sr. on the telephone at the time of the investigation. Mr. Burken, Sr. stated that cattle manure had left the feedlot and impacted the water source down gradient. On April 27, 2007, Mr. Burken, Jr., was issued a Notice of Violation letter for violations associated with manure runoff and required to take remedial actions to eliminate the conditions causing the pollution.

15. On May 15, 2007, DNR Field Office 6 received a complaint regarding storm water runoff from a new 1200 head of swine animal feeding operation at the Section 28 facility. On May 22, 2007, Mr. Sobaski, conducted an investigation and found that more than 1 acre of ground had been disturbed by construction activities, no erosion controls were in place, and no storm water permits had been obtained. On May 24, 2007, a Notice of Violation letter was issued to Mr. Burken, Sr., for failure to obtain coverage under an NPDES permit. On June 27, 2007, a Notice of Violation letter was issued to Mr. Burken, Sr.,

for continued failure to obtain the proper storm water NPDES permit for the Section 28 CAFO. On July 10, 2007, DNR issued NPDES General Permit #2 to L&M Hogs.

16. On July 26, 2007, Mr. Stouder conducted a follow up visit to the Section 28 open feedlot. No efforts had been taken to remove the manure solids or prevent manure from entering the creek. Manure solids remained in the grassed waterway which leads to the tributary of Mills Creek. During the investigation, Mr. Stouder discussed with Mr. Burken, Sr. the necessary remedial actions associated with the Section 28 open feedlot. Mr. Stouder asked Mr. Burken, Sr. to contact Natural Resources Conservation Service (NRCS) and begin remediation activities immediately.

17. On August 8, 2007, Mr. Stouder visited the Section 28 facility. He observed manure solids and liquids from the cattle and hog open lots, in a water source. Mr. Stouder collected water samples for UHL analysis. Mr. Stouder also observed untreated waste from a septic system discharging into the grassed waterway and documented a burn pile of garbage, plastic bottles, and trade waste.

18. On August 14, 2007, a Notice of Violation letter was issued to Mr. Burken, Jr., for violations of open burning, general water quality criteria, and prohibited discharge rules. A copy of the Notice of Violation letter was sent to Clinton County Sanitarian regarding the untreated septic waste.

19. On August 23, 2007, Mr. Stouder received an email from Bruce Van Laere of the NRCS, stating that the NRCS would assist the Burkens' in developing a manure control system.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.3(3) provides that land application of manure shall be separated from certain designated areas. A person shall not apply manure on land within 200 feet from a designated area. On July 15, 2005, September 12, 2005, November 27, 2006, and December 20, 2006, Mr. Burken, Sr., was issued Notice of Violation letters for failure to comply with the required separation distances during land application of manure. The above facts indicate a violation of this provision.

3. 567 IAC 65.103(4)(b) provides that if DNR determines that a settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state, the open feedlot operation shall institute necessary remedial actions within a time specified by the

DNR to eliminate the conditions warranting the determination, if the operation receives a written notification from the DNR of the need to correct the conditions. On June 21, 2006, DNR sent a Notice of Violation letter requiring Mr. Burken, Jr., to institute remedial actions to remove manure solid deposits from his open feedlot which were found in a grassed waterway that leads to a tributary of Mills Creek and to develop a manure control system to prevent this type of incident from occurring in the future. DNR gave Mr. Burken, Jr., a deadline of November 1, 2006 to implement these remedial actions. On November 20, 2006 and April 27, 2007, DNR issued Notice of Violation letters to Mr. Burken, Jr., for failure to implement the required remedial actions. The above facts indicate violations of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. On several occasions manure solid deposits from the Section 28 open feedlot were observed in a grassed waterway that leads to a tributary of Mills Creek. The above facts indicate a violation of this provision.

5. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state as defined by Iowa Code section 455B.171, except for adequately treated pollutants discharged pursuant to a permit from DNR. 567 IAC 62.1(1) provides that discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit. The Section 28 open feedlot discharged manure runoff that entered a water of the state. The above facts indicate a violation of this provision.

6. 567 IAC 64.3 provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. L&M Hogs, L.L.C. and the Burkens failed to obtain storm water permits for either the Section 28 or Section 29 facility. After obtaining a permit for the Section 29 facility, the parties still failed to comply with the permit requirements. The above facts indicate a violation of this provision.

7. 567 IAC 100.4(2)(c) provides that dead animals must disposed of at least 100 feet away from any body of surface water such as a stream, lake, pond or intermittent stream. During an inspection of the Section 29 facility on November 21, 2005, DNR personnel observed 3 dead hogs in a water source approximately 500 feet west of the facility's hog confinement. The above facts indicate a violation of this provision.

8. 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). During an August 8, 2007 visit to the Section 28 open feedlot, DNR personnel observed open burning of trade waste from a newly constructed animal feeding operation. The above facts indicate a violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DONALD BURKEN, SR.; DONALD BURKEN, JR.; AND L&M HOGS, L.L.C.

V. ORDER

THEREFORE, the DNR orders and L&M Hogs, L.L.C., and Donald Burken, Sr. and Donald Burken, Jr., agree to do the following:

1. If not already completed, L&M Hogs, L.L.C., and the Burkens shall immediately remove all solids from the ditch near the Section 28 facility by excavating and properly land applying the manure solids according to agronomic rates.

2. L&M Hogs, L.L.C., and the Burkens shall prevent further discharge of manure solids from any open feedlot, which they own or operate, from entering waters of the state.

3. If not already completed, L&M Hogs, L.L.C., and the Burkens shall, with the assistance of a qualified agency such as the NRCS, submit a plan of action regarding the development of a manure control system within 30 days of the Director signing this administrative consent order - .

4. If not already completed, L&M Hogs, L.L.C., and the Burkens shall implement the plan of action for a manure control system within 60 days of the Director signing this administrative consent order.

5. L&M Hogs, L.L.C., and the Burkens shall comply with the separation distance requirements for land application of manure set forth in 567 IAC 65.

6. L&M Hogs, L.L.C., and the Burkens shall bury all dead animals within 24 hours of the animal's death. The dead animal must be immediately covered with 6 inches of dirt and finished with a minimum of 30 inches of dirt. No other waste may be put in the burial pits.

7. L&M Hogs, L.L.C., and the Burkens shall dispose of all farm waste in accordance with the solid waste rules found at 567 IAC 100.

8. L&M Hogs, L.L.C., and the Burkens shall immediate cease all improper solid waste disposal and open burning at all facilities. They shall recycle, salvage, or properly dispose of all solid waste at a permitted sanitary disposal project.

9. L&M Hogs, L.L.C., and the Burkens shall comply with all condition set forth under the NPDES General Permit No. 2.

10. L&M Hogs, L.L.C., and the Burkens shall pay a penalty of $4,500.00 in accordance with the following payment plan:

$500.00 due June 1, 2008;
$500.00 due July 1, 2008;
$500.00 due August 1, 2008;
$500.00 due September 1, 2008;
$500.00 due October 1, 2008;
$500.00 due November 1, 2008;
$500.00 due December 1, 2008;
$500.00 due January 1, 2009 and
$500.00 due February 1, 2009.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to $10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to $5,000.00 per day for solid waste violations. Iowa Code sections 459.603, 459.502 and 455B.191 authorize the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is $4,500.00. Donald Berken, Sr., Donald Berken, Jr., and L&M Hogs, L.L.C. are jointly and severally liable for the assessed penalty. The administrative penalty is determined in accordance with the following:

Economic Benefit Failure to implement storm water controls for both the Section 28 and Section 29 facilities and failure to comply with the separation distances for manure application have allowed L&M Hogs, L.L.C., and the Burkens to save time and money. Based on the above consideration, $1,000.00 is assessed for this factor.

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 DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Manure application too close to a well could contribute to contamination of the wells as a water source. Multiple rule or statutory provisions were violated including discharge to a water of the state, failure to comply with separation distances, failure to institute remedial measures, failure to obtain and comply with an NPDES permit, violations of water quality standards, open burning, and improper solid waste disposal. The violations threaten the integrity of the

air quality and water quality program. Additionally, a large amount of DNR staff time was expended in investigating numerous complaints and working with the Burkens. Based on the above considerations, $2,000.00 is assessed for this factor.

Culpability – All animal confinement and feedlot operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. L&M Hogs, L.L.C., and the Burkens were informed several times both in writing and in person of the need to obtain the proper storm water permits as well as requirements for proper manure application procedures. The Burkens consistently failed to act upon DNR's Notices of Violation and requests for compliance. Based on the above considerations, $1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of L&M Hogs, L.L.C., Donald J. Burken, Sr. and Donald J. Burken, Jr. For that reason, L&M Hogs, L.L.C., Mr. Burken, Sr. and Mr. Burken, Jr. waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent 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 section 455B.146 and 455B.191. Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring an enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV Conclusions of Law" of the administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DONALD BURKEN, SR.; DONALD BURKEN, JR.; AND L&M HOGS, L.L.C.

RICHARD LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 4 day of June, 2008.

L+M HOGS LLC
FOR L&M HOGS, L.L.C.

Dated this 27 day of May, 2008.

DONALD J. BURKEN, SR.

Dated this 27 day of May, 2008.

DONALD J. BURKEN, JR.

Dated this 27 day of MAY, 2008.

#63582; DNR Field Office 6; Kelli Book; Ken Hessenius; EPA; I.C.1, VI.C, VII.C.1, VIII.D.2.b, VIII.D.3.a