

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

<p>IN THE MATTER OF:</p> <p>AL MARTH Floyd County, Facility ID #65603</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:center">NO. 2009-AFO- 09</p>
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TO: Al Marth
211 6th Street
Rockford, IA 50468

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Al Marth for the purpose of resolving the issues surrounding the construction of a confined animal feeding operation near an agricultural drainage well. 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:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th Street, S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

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:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to 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 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.

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III. STATEMENT OF FACTS

1. In 2007, Al Marth constructed a 2,490 head confinement feeding operation. The facility is located in the SE ¼ of Section 17, Ulster Township, Floyd County, Iowa.

2. On July 16, 2008, Al Tompkins, DNR Field Office 2 environmental specialist senior, conducted an inspection of an agricultural drainage well. During the inspection, Mr. Tompkins noted that Mr. Marth's facility had recently been constructed in the vicinity of the agricultural drainage well.

3. On July 28, 2008, Dale Adams and Jeremy Klatt, DNR Field Office 2 environmental specialists, measured the distance between the agricultural drainage well and Mr. Marth's facility. It was determined the distance between the two was 675 feet.

4. On August 5, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Marth for the construction of the confinement facility too close to the agricultural drainage well. The letter required that Mr. Marth submit plans for a secondary containment barrier to DNR Field Office 2 within 30 days of receipt of the letter. The secondary containment barrier was required to be in place by October 1, 2008.

5. In October 2008, DNR Field Office 2 had several telephone conversations with Mr. Marth regarding the secondary containment. On October 16, 2008, Mr. Marth informed DNR Field Office 2 that he had received permission from the owner of the well to plug the well and re-route the drainage to a surface water.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (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 65.11(2) prohibits a confinement feeding operation from being constructed within 1,000 feet of an agricultural drainage well. Mr. Marth's facility as constructed within 1,000 feet of the agricultural drainage well. The above-facts disclose a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Marth agrees to do the following:

1. Mr. Marth shall close the agricultural drainage well within 60 days of the date the Director signs this administrative consent order. The closure shall be done by a certified well driller who will fill the casing and dismantle the cistern.

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Mr. Marth shall submit the plugging record form to DNR Field Office 2 within 10 days of plugging the well; and

2. Mr. Marth shall pay a penalty of \$500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 459.603 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 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 \$500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. Marth may have saved time and money by not including the secondary containment barrier at the time of construction of the facility; however he is now required to properly plug the well. Any economic benefit Mr. Marth received was minimal; therefore no amount is being 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. The requirement for a separation distance between a confinement facility and an agricultural drainage well is in place to protect groundwater from potential manure contamination. The construction of the confinement facility closer to the well than is allowed increases the risk that manure will contaminate the groundwater through the well. The violation threatens the integrity of the regulatory program because compliance with the separation distances is required of all confinement operations in the state. Based on the above considerations, \$400.00 is assessed for this factor.

Culpability – Mr. Marth has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his facility is subject to DNR's rules. Unpermitted sites are not surveyed by the DNR prior to construction; therefore it was Mr. Marth's responsibility to ensure all separation distances were met. Based on the above considerations, \$100.00 is assessed for this factor.


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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Marth. For that reason, Mr. Marth waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 31 day of
March, 2009.



AL MARTH

Dated this 24th day of
March, 2009.

AFO #65603; Kelli Book; Field Office 2; Gene Tinker; EPA; VIII.A.3