

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

HOLZ BROTHERS, INC.

**IOWA FACILITY ID# 56814
GREENE COUNTY, IOWA**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2009-AFO- 35

TO: Holz Brothers, Inc.
c/o Howard J. Holz, Reg. Agent
1502 W. Ave.
Grand Junction, IA 50107

I. SUMMARY

In the interest of avoiding litigation, the parties have agreed to the provisions set forth below. This Administrative Consent Order (Order) is entered into between Holz Brothers, Inc. (Holz) and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations set forth herein. In the interest of avoiding litigation, Holz and the Department agree to the provisions set forth below.

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

Relating to technical requirements:

Alison Manz
IDNR Field Office #4
1400 Sunnyside Lane
Atlantic, IA 50022
Ph: (712) 243-1934

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

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue an order addressing any violation of Iowa Code chapter 459, subchapter III, Iowa Code chapter 459A, and the rules adopted or permits issued pursuant thereto, and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Holz owns and operates a cattle open feedlot operation located in the NE¼ of Section 15, T83N, R29W (Junction Township), Greene County, Iowa. The operation consists of an existing 1,500 head capacity open feedlot with a planned expansion to 4,000 head capacity including three solids settling basins followed by three stand alone vegetative treatment areas (VTAs), each composed of two channels.

2. Following applications by Holz for construction and NPDES permits on May 3, 2006, Department Field Office #4 (FO4) staff conducted a site survey on August 22, 2006. It appeared that a manure control structure at the south side of the feedlot had been allowed to overflow into an adjoining row crop field and then into a nearby roadside ditch. At least one tile line intake was observed in the roadside ditch. By FO4 letter dated August 31, 2006, Holz was directed to remove this intake. During an inspection by FO4 staff during December, 2006, it was observed that the above-referenced tile intake had been closed; however, another tile intake was observed due to reduced wintertime vegetation and this intake was pointed out to a Holz official.

3. Iowa NPDES Permit for Iowa Facility ID#56814 (hereinafter, "Permit") was issued on June 27, 2007, with an expiration date of June 26, 2009. The Permit authorized the use of an alternative technology (AT) system, consisting of three solids settling basins followed by three stand alone VTAs, each composed of two channels. The Permit required monitoring and reporting for all systems and expressly provided in Section I(D), "The Permittee is responsible for the compliance with all requirements set forth in this conditional non-pilot AT NPDES Permit for the entire operation." Also, the Permit, in Section I(D), included an explanation of the importance of monitoring and reporting in determining whether the AT system will be authorized at the end of the two year term of the Permit: "The review and evaluation of the second year actual monitoring results will determine whether the system meets the equivalent performance standard of IDNR's rules {567 IAC 65.100 (definition of "alternative technology settled open feedlot effluent control system") and 65.104(10)"b"}". At the end of the second year from the effective date of this conditional permit, which coincides with the expiration date of this conditional permit, the IDNR will inform the Permittee as to whether the Permittee can continue operating under AT program or whether the Permittee must construct and operate conventional manure control systems."

4. By letter dated July 30, 2008, the Department advised Holz that a recent inspection confirmed that the AT system was still under construction and provided a listing and explanation of many of the operational, monitoring and reporting requirements that must be completed prior

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to the use of the AT system. Items that needed to be completed included: installation of up gradient and down gradient monitoring wells; results of baseline (prior to use of the VTAs) samples from all monitoring wells; results of baseline (prior to use of the VTAs) shallow and deep soil sampling; results of samples from tile monitoring points located down gradient of each VTA; installation of sampling and flow monitoring equipment at the outlet of the VTAs to enable accurate measuring and sampling of all discharges from the VTAs. This letter also reminded Holz of various monitoring and reporting requirements when the AT system became operational.

5. By letter dated October 24, 2008, the Department reminded Holz of the need to apply for renewal of the Permit at least 180 days prior to expiration. The Department has not received a renewal application.

6. By letter dated February 25, 2009, the Department summarized a December 10, 2008 meeting at the feedlot. None of the required items listed in the July 30, 2008, inspection letter had been completed; only one solids settling basin and one VTA had been constructed. Holz officials stated that 900-1,100 head of cattle were being maintained at the feedlot and that the capacity is approximately 1,200 head; rather than expanding to 4,000 head as previously proposed. They stated they want to stay below 1,000 head in the future to avoid NPDES permit requirements.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.303, authorizes an open feedlot operation to use an AT system for open feedlot effluent control, requires that the AT system provide an equivalent level of open feedlot effluent control as would be achieved by using a settled open feedlot effluent basin and requires the Department to adopt rules establishing requirements for the construction and operation of AT systems. The Department has adopted rules regarding AT systems at 567 IAC chapter 65, Division II, specified in part below.

2. 567 IAC 65.104(9)“d” and “h” set forth minimum monitoring and reporting requirements that must be included in NPDES permits issued to open feedlot operations with AT systems. Those requirements are set forth as conditions in Sections III, V, VI, VII and VIII of the Permit. The foregoing facts document that some of the monitoring and reporting requirements specified in the Permit were not satisfied.

3. 567 IAC 65.103(4) provides that the Department may evaluate any animal-feeding operation to determine if open feedlot effluent from the operation: is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control; is causing or may reasonably be expected to cause pollution of a water of the state; is causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist the operation is required, upon notification from the Department, to institute necessary remedial actions to eliminate the conditions. The Department concludes that one or more of the above-described conditions may reasonably be expected to occur at this facility and Holz is hereby notified that it must perform remedial measures as specified in section V(1-3), below.

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V. ORDER

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

1. At all times, confine less than 1,000 cattle and less animals than any other "large CAFO" category as defined in 567 IAC 65.100. This prohibition does not apply if Holz applies for and obtains an NPDES permit prior to confining the animals.
2. Maintain daily inventory records of animals at the operation and submit the records to Department FO4 on a quarterly basis (January-March, April-June, July-September, October-December) by the 10th day of the month following each calendar quarter, using a form provided by the Department.
3. Remove all settleable solids from open feedlot effluent prior to discharge into a water of the state as required in Iowa Code §459A.401(1) and ensure that any discharge to water of the state does not violate water quality standards as provided in 567 IAC 61.3(2).
4. Holz agrees and is hereby ordered to pay a stipulated penalty in the amount of \$300 per violation per day, or part thereof, for failure to comply with paragraphs 1 or 2, above.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.
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; 567 IAC chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with stipulated penalties. The stipulated penalty is determined as follows:
 - a. Economic Benefit. Holz has enjoyed financial gain by operating above the large CAFO threshold prior to completion of the AT system. However, the Department is assessing an amount for this factor only in the event of noncompliance with the requirements set forth in V. ORDER, paragraphs 1-2, above. The stipulated penalties agreed upon and ordered in this matter include consideration of economic benefit.
 - 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, significant civil penalties are authorized by statute. Despite the 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 integrity of the NPDES permit program is threatened in that Holz's actions encourage others to disregard conditions of NPDES permits. However, as part of a good faith attempt by the Department and Holz to achieve compliance the Department has determined that assessment of an amount under this factor is

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appropriate only in the event of noncompliance with the requirements set forth in V. ORDER, paragraph 1-2, above. The stipulated penalties agreed upon and ordered in this matter include consideration of the gravity of the violation.

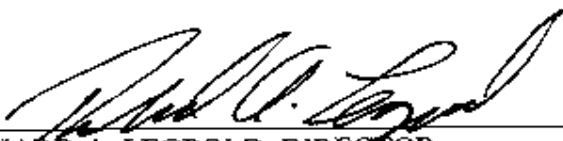
c. Culpability. Inasmuch as Holz undertook to operate its open feedlot pursuant to the Permit it had the concomitant responsibility to comply with all the terms and conditions of the Permit. Holz's failure to comply with all monitoring and reporting requirements warrants assessment of a penalty for this factor. However, as part of a good faith attempt by the Department and Holz to achieve compliance the Department has determined that assessment of an amount under this factor is appropriate only in the event of noncompliance with the requirements set forth in V. ORDER, paragraph 1-2, above. The stipulated penalties agreed upon and ordered in this matter include consideration of Holz's culpability.

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 Commission. This Order is entered into knowingly by and with the consent of Holz. By signature to this Order, all rights to appeal this Order are waived by Holz.

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, 459A.501 and 459A.502. Compliance with V. ORDER, paragraphs 1-3, of this Order constitutes full satisfaction of all requirements pertaining to the facts described in Division III of this Order and all violations related to those facts, including but not limited to all violations described in Division IV of this Order. The Department reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18 day of
Sept., 2009.

HOLZ BROTHERS, INC.

Dated this 14 day of
September, 2009.

Field Office 4; EPA; Randy Clark; Gene Tinker; Ken Hassenius; Reza Khosravi; VIII. B.1