

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

**IN THE MATTER OF:**

**DALE REICKS  
dba REICKS VIEW FARMS;  
Chickasaw County, Iowa**

**ADMINISTRATIVE CONSENT ORDER**

**NO. 2009-WW-19**

**TO: Reicks View Farms  
c/o Dale Reicks  
1020 Pembroke Ave.  
Lawler, IA 52154**

**I. SUMMARY**

Pursuant to this Administrative Consent Order (Order), Reicks View Farms shall pay an administrative penalty in the amount of \$3,500 to resolve past violations related to the operation of a wastewater disposal system.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Sue Miller  
Field Office #1  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Ph: 712-243-1934

**Relating to this Order:**

Jon C. Tack  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue an order to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated 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. Dale Reicks d/b/a Reicks View Farms ("ReicksView") owns and operates two livestock truck washing facilities and a 1.2 million gallon holding tank for the collection and storage of wastewater from the truck washing facilities. The facilities are located on County Road B22

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approx. ¼ mile east of Jerico in Section 34, Township 97 N, Range 12 W, Chickasaw County, Iowa. The wastewater holding tank was constructed pursuant to Department construction permit no. 07-70-S, issued on September 29, 2006. Prior to May 1, 2008, Reicks View had not applied for or otherwise obtained a required Iowa operating permit for the disposal of the wastewater contained in the holding tank.

2. Pursuant to construction permit no. 07-70-S, Reicks View was to build a lift station as a part of the wastewater collection and storage system. The lift station was not constructed. Instead, the system was redesigned to allow wastewater to gravity flow to the tank rather than use a mechanical lift station, which is can be more likely to experience electrical or mechanical failure, which may cause a release of wastewater. This modification was orally approved by the Department. However, technically, to remove the requirement for the lift station from the permit, Reicks View's design engineer should have submitted revised plans and a request for an amendment to the construction permit. However, in light of the oral approval, this fact is not being considered in the assessment of the penalty contained herein.

3. Reicks View began use of the 1.2 million gallon holding tank in February of 2007.

4. On October 23, 2007, Reicks View land-applied 647,933 gallons of wastewater from the wastewater collection and storage facility. No samples were collected to determine the nitrogen application rate.

5. On November 28, 2007, Reicks View land-applied approximately 600,000 additional gallons of wastewater from the wastewater collection and storage facility. No samples were collected to determine the nitrogen application rate.

6. On May 1, 2008, following a wet spring and over 7 inches of rain in late April in the area of the tank, the Department received a complaint alleging that the holding tank at Reicks View was overflowing.

7. At approximately 12:30 p.m. on May 1, 2008, the Department investigated the complaint in regard to the holding tank at Reicks View. Also present was Ken Rasing, Chickasaw County Sanitarian. The holding tank was visually observed. Two gravity lines convey wastewater from the two truck washing units to the tank. It was observed that the lift station originally required by the construction permit but later eliminated as orally approved by the Department had not been installed. The top of the tank walls were only slightly higher than the surrounding ground and on the east side of the tank the ground was level with the tank wall. It was observed that the tank was full to the rim and overflowing in several places. Pools of water on the ground around the perimeter of the tank were field tested and found to contain ammonia. The Department also tested water from the groundwater monitoring system and found no ammonia in the water samples, indicating that no ammonia had reached the groundwater.

Dale Reicks and Mark Kipp of Reicks View were contacted by telephone. Mr. Reicks indicated that he was unaware that the holding tank was full. Mr. Reicks further reported that

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wastewater from the holding tank had been land applied in 2007. Upon arrival, Mr. Reicks provided a land application report that disclosed that wastewater was land-applied to an adjacent 65-acre field on October 23, 2007 and November 28, 2007. Mr. Reicks was informed that he was not authorized to discharge wastewater from the holding tank without an Iowa operating permit. Mr. Reicks indicated that he had assumed the engineer that designed the tank and submitted the construction permit application for the tank had already obtained any other required permits to operate the tank. Mr. Reicks was given oral permission to land-apply wastewater. At approximately 2:50 p.m. on May 1, 2008, Mr. Reicks began land application of wastewater from the holding tank. At approximately 3:50 p.m. on that date, Mr. Kipp collected a sample of the wastewater being land applied for the purpose of testing and analysis of total Kjeldahl nitrogen, ammonia nitrogen, nitrate and nitrite. By 4:00 p.m. on that date, the wastewater level in the holding tank had been lowered approximately 4 inches. At approximately 11:30 p.m., Dale Reicks ceased the land application of wastewater due to wet conditions caused by rain.

8. On May 2, 2008, the Department contacted Mr. Kipp by telephone. Mr. Kipp reported that the wastewater level in the holding tank had been lowered approximately two feet. Mr. Kipp emailed a photograph to the Department verifying the lowering of the wastewater level. Mr. Kipp also reported that land application of wastewater would resume once the ground had dried out.

9. On June 20, 2008, the Department issued Emergency Administrative Order No. 2008-WW-22. The emergency order was not appealed. The effect of this order was to authorize wastewater disposal, subject to the terms of the order, until such time as an Iowa Operating Permit can be obtained by Mr. Reicks. The Emergency Administrative Order did not include the assessment of any penalty.

10. Subsequent to the issuance of the Emergency Administrative Order, the Department determined that it had sufficient information to review and issue a permit, without the need for further application.

11. Subsequent to the date of the overflow, Mr. Reicks increased the size of the protective berm around the holding tank.

#### **IV. CONCLUSIONS OF LAW**

The following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems.

2. Pursuant to 567 IAC 64.2(1), no person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the Director. Though Reicks View obtained verbal

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approval from the Department to eliminate the mechanical lift station originally proposed and to replace it with an environmentally safer gravity flow system, technically Reicks View should have sought a modification of Department permit No. 07-70-S after receiving verbal approval of the modification, but failed to do so. Because of the verbal approval, the Department does not assert that this violation should be considered in the penalty determination set forth below.

3. Pursuant to 567 IAC 64.3(1), 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, except as provided otherwise in 64.3(1) or 567 IAC chapter 65. For the periods in question, Dale Reicks does not qualify for any exception noted in rule 64.3(1) or 567 IAC chapter 65 and is therefore in violation of this provision.

**V. ORDER**

The Department hereby orders and Dale Reicks agrees that he shall pay an administrative penalty in the amount of \$3,500.00 within 30 days of the date the Director signs this Order. Further, Dale Reicks shall take the following actions with respect to the black sampling port riser to the south-southwest of the holding tank within 30 days of the date the Director signs this Order and shall certify the same to Field Office #1: (a) dig a trench around the base of the riser and pack the base with bentonite and (b) install a removable cap on the top of the riser.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the 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 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Reicks View has achieved an economic benefit based upon the failure to obtain an operating permit, failure to perform testing on effluent prior to land application, and inadequate monitoring and disposal of wastewater. Based upon these considerations, \$1,000 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. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Wastewater discharge permits are designed to ensure that wastewater is disposed of in

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a manner that will not harm human health and the environment. The failure to obtain the required permit removed these safeguards. Based upon these considerations, \$1,500 is assessed for this factor.

c. Culpability. As the owner and operator of a wastewater disposal system, Reicks View had a duty to be aware of applicable permit requirements. While Reicks View reasonably assumed the same design engineer that obtained the construction permit would have obtained the operating permit for the system, the ultimate obligation to obtain the permit remains with Reicks View. Even without a permit, the discharge of wastewater from the system could have been avoided through proper monitoring and maintenance of the wastewater system. Based upon these considerations, \$1,000 is assessed for this factor.

**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 Dale Reicks d/b/a Reicks View Farms. By signature to this Order, all rights to appeal this Order are waived.

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VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.175 and 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of  
May, 2009

  
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DALE REICKS  
d/b/a REICKS VIEW FARMS

Dated this 7<sup>th</sup> day of  
May, 2009

Field Office #1; Jon Tack; Bob Palla ; I.B.1; I.C.1