

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

IN THE MATTER OF:

STEVE FRICK
Facility ID # 64773
Osceola County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2009-AFO- 33

TO: Steve Frick
4982 200th Street
Sibley, Iowa 51249

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Steve Frick for the purpose of resolving violations pertaining to manure retention, manure management plan (MMP) recordkeeping, and manure applicator certification. 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:

Tom Roos, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of 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

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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: STEVE FRICK

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. Steve Frick owns and operates an animal feeding operation located at 4893 200th Street, Sibley, Iowa (the NE ¼ of the NE ¼ of Section 32, West Holman Township, Osceola County, Iowa). The facility consists of 2,400 head of wean to finish hogs and 525 head of grow to finish hogs.

2. On March 28, 2009, Mr. Frick reported an approximate 5,000 gallon manure spill at his facility. Tom Roos, DNR Field Office 3 environmental specialist, was notified of the spill by DNR's Emergency Response Unit. Mr. Frick informed Mr. Roos he was in the process of hauling a load of manure to the field and when he returned he discovered a hose had broken on the recirculation pump used for the pit agitation which led to the spill. Mr. Frick stated that most of the manure was contained in the yard surrounding the building and that there were no intakes or streams nearby that the manure could enter. Mr. Roos requested that Mr. Frick clean up the spill and that he would visit the facility on March 30, 2009.

3. On March 30, 2009, Mr. Roos and Jennifer Christian, DNR Field Office 3 environmental specialist, visited Mr. Frick's facility. They noted that most of the manure had been contained at the facility; however, they noted that manure had entered the field surrounding the site. Ms. Christian asked Mr. Frick for the application records for the day of the spill and where the manure was being applied. Mr. Frick stated that the application records had not been completed, but that the manure was being applied to a field in Section 6, Gilman Township, Osceola County. During a review of Mr. Frick's MMP, the field office personnel determined that the field was not included in the MMP. The field office personnel asked for Mr. Frick's manure applicator certification and he stated that his certification had expired March 1, 2009.

4. On April 17, 2009, Mr. Frick was issued a Notice of Violation letter that detailed the discharge, recordkeeping, and certification violations discovered by DNR Field Office 3 on March 30, 2009. The letter informed Mr. Frick the matter was being referred for further enforcement.

5. On May 31, 2006, DNR and Mr. Frick entered into Administrative Consent Order No. 2007-AFO-14 to resolve construction permit violations in connection with construction of a new building at the facility. A penalty of \$5,000.00 was agreed upon in the order and Mr. Frick paid the penalty on June 20, 2007.

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: STEVE FRICK

animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.2(3) states that the minimum level of waste control for a confinement feeding operation shall be the retention of all wastes between periods of application. Mr. Frick failed to properly retain manure between periods of land application. On March 28, 2009, Mr. Frick had a manure spill at his site due to a hose failure on the recirculation pump used for manure agitation in the below building pit. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.17(18)"a" states that the MMP shall identify each farm where the manure will be applied, the number of acres that will available for the application of manure from the confinement feeding operation, and the basis under which the land is available. Mr. Frick was applying manure from his facility to a field that was not listed as being available for application in his MMP. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.17(13)"d" states that manure application records shall be maintained by the owner of a confinement feeding operation who is required to submit a MMP. The records shall include: 1) methods of application when manure from the confinement feeding operation was applied; 2) date(s) when the manure from the confinement feeding operation was applied; (3) location of the field where the manure from the confinement feeding operation was applied, including the number of acres; and (4) the manure application rate. At the time of DNR Field Office 3's visit on March 30, 2009, Mr. Frick had not completed the manure application records. The above-mentioned facts indicate a violation of this provision.

5. 567 IAC 65.19(1) requires that a commercial manure service, a commercial manure service representative, or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Mr. Frick informed field office personnel on March 30, 2009 that his certification had expired on March 1, 2009. Therefore, Mr. Frick was not certified when he applied manure.

V. ORDER

THEREFORE, the DNR orders and Mr. Frick agrees to do the following:

1. Mr. Frick shall be properly certified prior to applying manure;
2. Mr. Frick shall maintain proper MMP records in the future; and
3. Mr. Frick shall pay an administrative penalty of \$4,100.00 in accordance with the following payment schedule. If any of the payments are not made in accordance with the payment schedule the remainder of the penalty shall be due immediately.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: STEVE FRICK

\$190.00 due August 15, 2009;	\$170.00 due August 15, 2010;
\$170.00 due September 15, 2009;	\$170.00 due September 15, 2010;
\$170.00 due October 15, 2009;	\$170.00 due October 15, 2010;
\$170.00 due November 15, 2009;	\$170.00 due November 15, 2010;
\$170.00 due December 15, 2009;	\$170.00 due December 15, 2010;
\$170.00 due January 15, 2010;	\$170.00 due January 15, 2011;
\$170.00 due February 15, 2010;	\$170.00 due February 15, 2011;
\$170.00 due March 15, 2010;	\$170.00 due March 15, 2011;
\$170.00 due April 15, 2010;	\$170.00 due April 15, 2011;
\$170.00 due May 15, 2010;	\$170.00 due May 15, 2011;
\$170.00 due June 15, 2010;	\$170.00 due June 15, 2011;
\$170.00 due July 15, 2010;	\$170.0 due July 15, 2011.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes 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 this chapter, 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 of \$4,100.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Frick has saved time and money by not being properly certified. This has allowed Mr. Frick a minimal economic benefit; therefore, no economic benefit is being assessed.

Gravity – 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 manure applicator certification program was initiated to educate manure applicators on how to properly apply manure and how to properly respond to a manure spill. Applying manure without the proper training and certification increases the risk of a manure application or spill degrading the environment. Additionally, the MMP recordkeeping requirements are in place to ensure proper manure application at correct manure application rates. The violations noted in this administrative consent order threaten the integrity of the regulatory program because compliance with the regulations is required of all animal confinement operations in the state. Therefore, \$1,750.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: STEVE FRICK

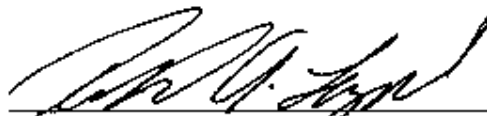
Culpability – Mr. Frick has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Frick has been a certified manure applicator in the past and he is aware of the certification and MMP requirements. Mr. Frick left the pumping equipment unsupervised and should have been aware of the risks of equipment failure. Therefore, \$2,350.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Steve Frick. For that reason Mr. Frick waives his rights to appeal this administrative consent order or any part thereof.

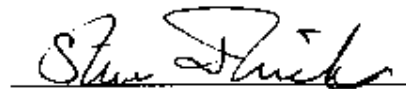
VIII. NONCOMPLIANCE

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 21 day of
August, 2009.



STEVE FRICK

Dated this 10th day of
August, 2009.

Facility #64773; Kelli Book, DNR Field Office 3 – Tom Roos, EPA, VIII.C.3, VIII.D.1.a, VIII.D.4