

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: WELLHAUSEN FARMS, INC. IOWA FACILITY ID# 73-56421 PAGE COUNTY, IOWA	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO- 26
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TO: Wellhausen Farms, Inc.
c/o Keith A. Wellhausen, Reg. Agent
2311 Maple
Clarinda, IA. 51632

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Wellhausen Farms, Inc. and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of the Iowa NPDES Permit for Iowa Facility ID #73-56421. In the interest of avoiding litigation, the parties have agreed 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
1401 Sunnyside Lane
Atlantic, IA 50022
Ph: (712) 243-1934
Fax: (712) 243-6251

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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ISSUED TO: WELLHAUSEN FARMS, INC.

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 459A 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.

III. STATEMENT OF FACTS

1. Wellhausen Farms, Inc. (Wellhausen Farms) owns and operates a cattle open feedlot operation located in the NW1/4 of Section 18, T68N, R37W (Harlan Township), Page County, Iowa. The operation consists of a 2,750 head capacity open feedlot, eight solids settling basins and nine stand alone vegetative treatment area channels (VTAs).

2. Iowa NPDES Permit for Iowa Facility ID #73-56421 (hereinafter, "Permit") was issued on April 10, 2007, with an expiration date of April 9, 2009. The Permit authorized the use of an alternative technology (AT) system, consisting of eight solids settling basins and nine VTAs. The Permit requires monitoring and reporting for all systems and expressly provides 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), includes 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."

3. Department Field Office #4 (FO4) reminded Wellhausen Farms by letter dated July 5, 2007, that all monitoring and reporting requirements in the Permit must be satisfied.

4. By letter dated August 4, 2008, the Department advised Wellhausen Farms that a recent inspection confirmed that expansion of the operation was still under construction and provided a listing and explanation of many of the operational, monitoring and reporting requirements in the Permit. Subsequently the Department reviewed the operational, sampling, monitoring and reporting efforts by Wellhausen Farms. Areas that did not meet the requirements of the Permit included: results of baseline (prior to use of the VTAs) shallow and deep soil sampling; installation of up and down gradient monitoring wells prior to use of the VTAs, and subsequent baseline and quarterly monitoring of the wells and reporting of the results; and installation of

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sampling and flow monitoring equipment at the outlets of the VTAs to enable accurate measuring and sampling of discharges from the VTAs and to report discharge information in quarterly and annual reports.

5. On September 18, 2008, the Department received Wellhausen Farms' application for renewal of the Permit.

6. By letter dated December 8, 2008, Wellhausen Farms' engineer notified the Department that construction of the AT system was complete.

7. By letter dated February 9, 2009, FO4 provided Wellhausen Farms with the report of its inspection of the operation on December 30, 2008. The inspection report indicated a continuation of the monitoring and reporting deficiencies identified during the inspection summarized in paragraph 4, above.

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 65.104(10)"b"(1 & 2) provides that renewal of an NPDES permit involving use of an AT system is "contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system...If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system." The foregoing facts reveal that monitoring and reporting of the non pilot portions to date is insufficient to enable the Department to determine whether the AT system is providing an equivalent level of performance. Therefore, contemporaneous with the issuance of this Order, the Department intends to renew the Permit with modifications for a 3 year period to allow an

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additional period of operation with all required monitoring and reporting so the Department may determine whether the AT system is providing an equivalent level of performance to that provided by a containment system.

567 IAC 65.104(11) provides that the Department may modify, suspend, refuse to renew or revoke in whole or part any NPDES permit for cause. Cause for modification, suspension or revocation of a permit includes, among other things, violation of any term or condition of the permit. By entering into this Order, Wellhausen Farms acknowledges its understanding that the Department may require installation of a conventional runoff containment system or refuse to renew the Permit when considering the next NPDES Permit renewal application if the monitoring and reporting, or the lack thereof, fails to demonstrate that the AT system is meeting the equivalent performance standard.

V. ORDER

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

1. Comply with all conditions, including all monitoring and reporting requirements, of the Permit as modified and renewed by the Department.
2. Wellhausen Farms agrees and is hereby ordered to pay a stipulated penalty in the amount of \$500 per violation per day, or part thereof, for failure to comply with paragraph 1, 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. Wellhausen Farms has enjoyed financial savings by failing to comply with all monitoring and reporting requirements in the Permit. However, the Department is assessing an amount for this factor only in the event of noncompliance with the requirements set

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forth in V. ORDER, paragraph 1, 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 Wellhausen Farms' actions encourage others to disregard conditions of NPDES permits. Further, the environment is threatened in that the lack of complete monitoring records prevents the Department from determining whether the operation is providing an equivalent level of performance. However, as part of a good faith attempt by the Department and Wellhausen Farms 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, above. The stipulated penalties agreed upon and ordered in this matter include consideration of the gravity of the violation.

c. Culpability. Inasmuch as Wellhausen Farms has undertaken to operate its open feedlot pursuant to the Permit it has the concomitant responsibility to comply with all the terms and conditions of the Permit. Wellhausen Farms' 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 Wellhausen Farms 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, above. The stipulated penalties agreed upon and ordered in this matter include consideration of Wellhausen Farms' 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 Wellhausen Farms. By signature to this Order, all rights to appeal this Order are waived by Wellhausen Farms.

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, paragraph 1 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

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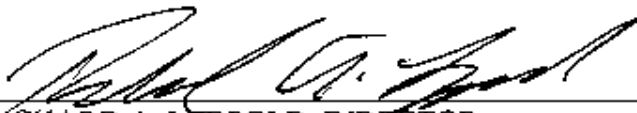
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but not limited to all violations described in Division IV of this Order. The Department reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of
July, 2009.

Wellhausen Farms Inc


WELLHAUSEN FARMS, INC.

Dated this 26 day of
JUNE, 2009.

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