

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

IN THE MATTER OF: PUCK CUSTOM ENTERPRISES, INC. Manning, Iowa Certified Commercial Manure Service No. 1284CMSR	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO- 01
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**TO: Puck Custom Enterprises, Inc.
c/o Ben D. Puck, President &
Registered Agent
1130 100th Street
Manning, IA 51455**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Puck Custom Enterprises, Inc. and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to manure application and control. 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:

Ryan Young, Field Office No. 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 5022
Ph: 712-243-1934

Relating to legal matters

Randy Clark, Attorney II
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319-0034

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ISSUED TO: PUCK CUSTOM ENTERPRISES, INC.**

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code subsection 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 459, subchapter III, and the rules adopted or permits issued pursuant thereto; and Iowa Code sections 455B.109 and 459.103(3), and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Puck Custom Enterprises, Inc. (Puck Custom) is a certified commercial manure service headquartered out of the Manning, Iowa area. Puck Custom contracts with owners or operators of animal feeding operations, including confinement feeding operations, to land apply animal manure produced in the operations.

2. On December 20, 2007, Department Field Office #4 (FO4) investigated complaints that manure had been applied near a stream. FO4 staff observed that manure had been applied to snow covered ground along the south side of an unnamed Indian Creek tributary in Section 28, Clay Township (T78N, R37W), Shelby County, Iowa (land application field). The manure had not been injected or incorporated into the soil on the day it was applied and had been applied within 200 feet of the unnamed tributary. At one location the manure had been applied within 20 feet of the stream bank. A grass buffer strip along the unnamed tributary was less than 50 feet in width in some locations adjacent to the land application field. FO4 staff also observed that manure was flowing into the unnamed tributary at several locations adjacent to the land application field.

During the investigation FO4 staff met with Rick Andersen, owner of the nearby swine confinement feeding operation, the reported source of the manure. Mr. Andersen acknowledged that Puck Custom had been retained to land-apply manure and stated that the Puck Custom employee had assured him that the manure could be applied "that close to the stream." When FO4 staff recounted their observations via telephone to Puck Custom President Ben Puck he stated that the applicator was a "newer employee."

3. Puck Custom has a history of manure application violations. On October 22, 2003, FO4 issued a notice of violation to Puck Custom for surface applying manure without incorporation within 750 feet of a residence in Shelby County. This notice of violation included a copy of a Department fact sheet entitled "Separation Distances for Land Application of Manure." On October 13, 2004, FO4 issued a notice of violation to Puck Custom for surface applying manure within 200 feet of Turkey Creek in Cass County. The notice of violation included a directive that Puck Custom comply with separation distance requirements pertaining to the application of manure.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. A permit has not been issued for this facility; thus, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC chapter 65.

3. Iowa Code section 459.314 and 567 IAC 65.3(3) require that manure be applied at least 200 feet from a "designated area", which by definition includes a water source. These provisions also provide for an exemption from this requirement if the manure is incorporated on the same date the manure is applied or if an area of permanent vegetation exists for 50 feet surrounding the designated area. The above facts establish non-compliance with this requirement and the absence of any of the above-described exempt conditions at the time of the violation.

4. Iowa Code subsection 459.311(2) and 567 IAC 65.2(7) require that all manure removed from an animal feeding operation or its manure control facility be land applied in a manner which will not cause surface or groundwater pollution. Pursuant to 567 IAC 65.19(8)"b," a commercial manure service is required to comply with these and all other minimum manure control requirements. The foregoing facts establish that these provisions were violated.

V. ORDER

THEREFORE, the Department hereby orders and Puck Custom consents to comply with the following provisions:

1. Immediately and hereafter comply with the above-referenced statutes and rules pertaining to manure application separation distances and minimum manure control requirements, as well as any other requirements applicable to manure handling and disposal.

2. Pay a penalty of \$9,000.00 to the Department within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws, regardless of

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fault; more severe criminal sanctions are also provided for negligent and intentional violations.

2. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$10,000.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. The Department has no evidence that any financial savings resulted from this incident. Therefore, no amount is assessed for this factor.

b. Gravity of the Violations. 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. Multiple rule or statutory provisions were violated including discharge to water of the state, failure to maintain the minimum manure controls, and violation of manure application separation distance requirements. Due to the three above-cited violations, \$4,500.00 is assessed for this factor.

c. Culpability. A certified commercial manure service is charged with the professional responsibility of knowing and understanding the separation distance requirements and the surface water pollution prohibitions summarized in Division IV, paragraphs 1, 3 and 4, above. Further, Puck Custom was previously cited for manure application violations. Due to the three above-cited violations, \$4,500.00 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 Puck Custom. By signature to this Order, all rights to appeal this Order are waived by Puck Custom.

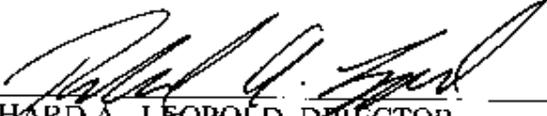
VIII. NONCOMPLIANCE

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 and 459.603. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

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ISSUED TO: PUCK CUSTOM ENTERPRISES, INC.

 (PRES)
BEN PUCK, PRESIDENT
PUCK CUSTOM ENTERPRISES, INC.

Dated this 22 day of
December, 2008.


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of
Jan., 2008.⁹

Field Office 4; Randy Clark; Ken Hossenius; Gene Tinker; EPA; VIII.D.1.a, D.2.b