IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
DAVID HEGLAND	NO. 2009-AFO- 39
ID# 59092 HAMILTON COUNTY, IOWA	

TO: **David Hegland**
2865 312th St.
Ellsworth, IA 50075

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 David Hegland and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations set forth herein. In the interest of avoiding litigation, David Hegland 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:
Eric Wiklund
IDNR Field Office #2
2300 15th St, S.W.
Mason City, IA 50401
Ph: (641) 424-4073

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

54137 pm 3:03 09/29/09

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 455B, Division III, Part 1, Iowa Code chapter 459, subchapter III, 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. David Hegland (Hegland) owns and operates a swine confinement operation located in the SE1/4 of the SE1/4 of Section 20, T87N, R23W (Lincoln Township), Hamilton County, Iowa. The operation has a capacity of 4,800 head and utilizes a below-building pit for manure storage.

2. On February 10, 2009, Department Field Office #2 (FO2) staff investigated a complaint that manure had been applied to frozen ground in Section 21, Lincoln Township, Hamilton County. FO2 staff observed liquid runoff from the manure application field entering a nearby drainage tile intake in the road ditch on the east side of Wilson Avenue. The runoff entering the tile intake was brown in color and emitted a strong manure odor. Laboratory analysis of samples collected from the field runoff, from the liquid entering the tile intake and from Long Dick Creek, approximately ¼ mile away, indicated high levels of ammonia nitrogen and biochemical oxygen demand. Mr. Hegland arrived during the investigation and explained that approximately 130,000 gallons of manure had been applied the previous evening and earlier that same day; he stated the manure was removed to provide better ventilation for the confinement buildings. Mr. Hegland has indicated that his employees, who are certified applicators, applied the manure and he checked with them on both days to verify that conditions were appropriate for land application. FO2 staff directed Mr. Hegland to plug the tile intake and to pump the liquid collected in the road ditch back to the confinement building. Laboratory analysis of samples collected by FO2 staff from Long Dick Creek on February 11, 2009, after the tile intake had been plugged, indicate that the stream conditions had returned to normal background levels.

3. A follow-up inspection by FO2 staff on February 13, 2009, revealed that the liquid collected in the road ditch had been removed and Mr. Hegland was allowed to unplug the tile intake.

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. Because no such permit has been issued for this facility, 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 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. The foregoing facts establish that these provisions were violated.

V. ORDER

THEREFORE, the Department hereby orders and David Hegland consents to pay an administrative penalty of $5,000.00. The penalty shall be paid to the Department in two installments. The first installment of $2,500.00 shall be paid by November 1, 2009; the second installment of $2,500.00 shall be paid by December 1, 2009.

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 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 rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an administrative Order with a penalty. The administrative penalty assessed by this Order is based upon two separate statutory or rule provisions: discharge of a pollutant to water of the State; and improper land application of manure. The administrative penalty is determined as follows:

a. Economic Benefit. Any financial savings associated with these violations were likely offset by the costs associated with recovering the polluted liquid collected in the road ditch. Therefore, no amount 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 that 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. Actual impact to the environment was documented by water quality analysis. Multiple rule and statutory provisions were violated: discharge to water of the state and improper land application of manure. For these reasons,

$1,250.00 is assessed for this factor for each of the two above-cited violations. Therefore, $2,500.00 is assessed for this factor.

c. Culpability. While Mr. Hegland's employees actually applied the manure and as certified applicators should have been fully aware of the risks associated with applying manure on frozen or snow covered ground, Mr. Hegland is ultimately responsible for his employees' actions. For this reason, $1,250.00 is assessed for this factor for each of the two above-cited violations. Therefore, $2,500.00 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 David Hegland. By signature to this Order, all rights to appeal this Order are waived by David Hegland.

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 provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order.

RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of Oct, 2009.

David Hegland
DAVID HEGLAND

Dated this 9-24 day of Sept, 2009.

#59092; Field Office 2; Randy Clark; Ken Hessenius; Gene Tinker; EPA;VIII. D.1.a