

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

IN THE MATTER OF:

**RICK RENKEN
Facility #58192**

ADMINISTRATIVE CONSENT ORDER
NO. 2009-AFO-20

TO: Rick Renken
14336 Iris Avenue
LeMars, Iowa 51031

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Rick Renken for the purpose of resolving the failure to timely submit a Manure Management Plan (MMP) update and fees for 2009 for Mr. Renken's facility. 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:

Cindy Martens, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51031-2200
Phone: 712/262-4177

Relating to Legal Requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
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 Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Rick Renken owns and operates a 4,000 head (1,600 animal units) grow to finish hog animal confinement facility. The facility is located in the NW quarter of Section 28, Grant Township, Plymouth County, Iowa.

2. On August 1, 2008 and December 5, 2008, DNR Field Office 3 sent notices of the MMP update submittal requirements to Mr. Renken. Mr. Renken's 2009 MMP update and fees were due February 1, 2009.

3. On February 11, 2009, DNR Field Office 3 sent a Notice of Violation letter to Mr. Renken for failing to submit the MMP update and fees by February 1, 2009. The letter required Mr. Renken to submit the information by February 28, 2009 in order to avoid further compliance actions.

4. On April 1, 2009, DNR Field Office 3 sent a Notice of Referral letter to Mr. Renken. Mr. Renken failed to submit the MMP update and fees. The letter informed Mr. Renken the matter was being referred for formal enforcement action.

5. Mr. Renken has demonstrated a long history of failing to timely submit the MMP update and compliance fees for his facility. On February 12, 2008, Mr. Renken was issued a Notice of Violation letter for failing to submit the 2008 MMP update and fees by February 1, 2008. Mr. Renken submitted the MMP update and fees on March 4, 2008. On February 8, 2007, Mr. Renken was issued a Notice of Violation letter for failing to submit the 2007 MMP update and fees by February 1, 2007. Mr. Renken submitted the MMP update and fees on February 28, 2007. On March 10, 2005, Mr. Renken was issued a Notice of Violation letter for failing to submit the 2005 MMP update and fees by February 1, 2005. This Notice of Violation letter resulted in the issuance of Administrative Order No. 2005-AFO-13. The order included a \$750.00 penalty for Mr. Renken's failure to submit the 2005 MMP update and fees by February 1, 2005. On March 11, 2004, Mr. Renken was issued a Notice of Violation letter for failing to submit the 2004 MMP update and fees by February 1, 2004. Additionally, Mr. Renken was issued a Notice of Violation letter on March 10, 2006, for failing to maintain required manure application records.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to submit an updated MMP on an annual basis to the DNR. The updated MMP must reflect all amendments made during the period of time since the previous MMP submission. The owner of the animal feeding operation shall also submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. Mr.

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Renken's 2009 MMP update was due February 1, 2009. To date, he has not submitted the MMP update for 2009. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 65.16(3)"c" also states that an annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany the annual MMP update submitted to the DNR for approval. Mr. Renken's compliance fee is \$240.00. To date, he has not submitted the annual compliance fee for 2009. The above-mentioned facts indicate a violation of this provision.

V. ORDER

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

1. Mr. Renken shall submit the 2009 MMP update to DNR Field Office 3 within 60 days from the date the Director signs this administrative consent order;
2. Mr. Renken shall pay the compliance fee of \$240.00 to DNR Field Office 3 within 60 days from the date the Director signs this administrative consent order; and
3. Mr. Renken shall pay an administrative penalty of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

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 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 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 \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Renken's failure to timely submit the 2009 MMP update and compliance fees has allowed him to save time and money. He has gained an economic benefit from the delay in the submittal and payment of fees. \$250.00 is assessed for this factor.

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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 MMP update is a crucial aspect of the DNR's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. Mr. Renken's facility has a capacity of 1,600 animal units and environmental harm is likely to occur if the manure is not applied properly. Additionally, the DNR field office has expended labor and expenses in informing Mr. Renken of the requirements. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Mr. Renken 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. DNR Field Office 3 sent Mr. Renken at least three notices of the 2009 submittal requirements. Additionally, Mr. Renken has submitted untimely MMP updates and fees in 2008, 2007, 2005, and 2004. Each year he was issued a Notice of Violation letter explaining the violations. In 2005, Mr. Renken was issued an Administrative Order for failing to submit the MMP update and fees by the deadline. Mr. Renken has continuously violated the MMP update requirements and the repeated violations of the requirements demonstrate a blatant disregard for the requirements. Therefore, \$1,750.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

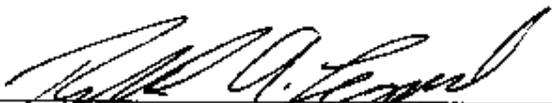
This administrative consent order is entered into knowingly and with the consent of Mr. Renken. For that reason Mr. Renken waives his rights to appeal this administrative consent order or any part thereof.

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.

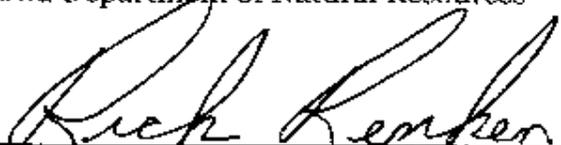
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RECEIVED
MAY 22 2009
IOWA DNR
FIELD OFFICE 3



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 3 day of
June, 2009.



RICK RENKEN

Dated this 20 day of
MAY, 2009.

Facility #58192; Kelli Book, DNR Field Office 3, EPA, VIII.C.2

RECEIVED
JUN 11 2009