

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

<b>IN THE MATTER OF:</b>  <b>ONKEN FEEDLOTS L.L.P.</b>  <b>IOWA FACILITY ID# 14-56237</b> <b>CARROLL COUNTY, IOWA</b>	<b>ADMINISTRATIVE CONSENT</b> <b>ORDER</b> <b>NO. 2009-AFO- 41</b>
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**TO: Onken Feedlots L.L.P.**  
**c/o Joseph E. Halbur, Reg. Agent**  
**621 N. Clark St.**  
**Carroll, IA. 51401**

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Onken Feedlots L.L.P. and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of the Iowa NPDES Permit for Iowa Facility ID #14-56237. 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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### 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. Onken Feedlots L.L.P. (Onken Feedlots) owns and operates a cattle open feedlot operation located in the SE1/4 of Section 21 and the NE1/4 of Section 28, T85N, R34W (Sheridan Township), Carroll County, Iowa. The operation consists of a 4,200 head capacity open feedlot, two solids settling basins, one vegetative infiltration basin (VIB) and two vegetative treatment areas (VTAs).

2. Iowa NPDES Permit for Iowa Facility ID #14-56237 (hereinafter, "Permit") was issued on May 23, 2007, with an expiration date of May 22, 2009. The Permit authorized the use of an alternative technology (AT) system, consisting of two solids settling basins, one VIB and two 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 Onken Feedlots by letter dated August 15, 2007, that all monitoring and reporting requirements in the Permit must be satisfied.

4. By letter dated July 16, 2008, FO4 advised Onken Feedlots that a visit to the operation on June 19, 2008, revealed evidence of a release of manure. While acknowledging that the AT system was still under construction Onken Feedlots was reminded that releases are not allowed during construction and directed to comply with release reporting requirements.

5. By letter dated July 28, 2008, the Department advised Onken Feedlots that a recent inspection confirmed that the AT system was still under construction and provided a listing and

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explanation of many of the operational, monitoring and reporting requirements that must be completed prior to the use of the AT system. Items that needed to be completed included: results of baseline (prior to use of the VIB and VTAs) shallow and deep soil sampling; proper closure of the monitoring well inside the south VTA and installation of a new monitoring well for the south VTA; installation of sampling and flow monitoring equipment at the outlet of the VTAs to enable accurate measuring and sampling of discharges from the VTAs and to modify the existing solids settling basin (north system) to provide complete emptying by gravity drainage or pumping within 7 days.

6. On November 26, 2008, the Department received Onken Feedlots' application for renewal of the Permit

7. On June 22, 2009, the Department visited Onken Feedlots upon receiving the Engineer's certification of completion. Most items from the July 28, 2008, inspection letter were completed. Items that were still deficient or yet to be completed prior to use of the AT system were: submittal of results of baseline shallow and deep soil samples from the VIB and VTAs; submittal of quarterly monitoring well sampling results; established vegetation over entire VIB and VTAs; and minor modifications to monitoring and sampling equipment at the outlet of the VTAs.

### 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

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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 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, Onken Feedlots 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 Onken Feedlots 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. Onken Feedlots 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:

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a. Economic Benefit. Onken Feedlots has enjoyed financial gain by operating prior to completion of its AT system. However, the Department is assessing an amount for this factor 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 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 Onken Feedlots' actions encourage others to disregard conditions of NPDES permits. However, as part of a good faith attempt by the Department and Onken Feedlots 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 Onken Feedlots 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. Onken Feedlots' 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 Onken Feedlots 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 Onken Feedlots' 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 Onken Feedlots. By signature to this Order, all rights to appeal this Order are waived by Onken Feedlots.

### 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

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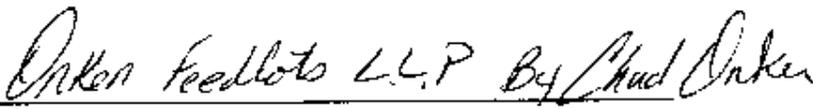
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the facts described in Division III of this Order and all violations related to those facts, including but not limited to all violations described in Division IV of this Order. The Department reserves the right to issue a new administrative order with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

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of  
October, 2009.

  
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ONKEN FEEDLOTS L.L.P.

Dated this 12<sup>th</sup> day of  
August, 2009.

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