

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

IN THE MATTER OF: Van Bee Pork, LLC Osceola County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ- 38 NO. 2009-SW- 26
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TO: David Updegraff, Registered Agent
Van Bee Pork, LLC
505 5th Street, Suite 204
Sioux City, Iowa 51101

Tim Beeler, Owner
Van Bee Pork, LLC
11 Central Ave., NW - P.O. Box 40
LeMars, Iowa 51031

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Van Bee Pork, LLC (Van Bee Pork) for the purpose of resolving the air quality and solid waste disposal violations which occurred at several facilities owned by Van Bee Pork. 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 51301-2200
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:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BEE PORK, LLC

pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

Van Bee Pork neither admits nor denies the Statement of Facts and enters into this Administrative Consent Order for settlement purposes only.

1. On February 20, 2008, DNR Field Office 3 received a complaint alleging that Van Bee Pork was operating several animal feeding operations that had been designed to be open lots as confinement buildings. The complainant stated that Van Bee Pork was pushing manure, bedding and dead animals out of the buildings and attempting to compost them. The facilities noted by the complainant included: the Hoffman site located at 5951 240th Street in rural Melvin, Iowa; the Dangel site located at 1656 Silver Avenue in rural Allendorf, Iowa; and the Sterler site located at 2453 Redwig in rural Sibley, Iowa. These facilities are owned by Van Bee Pork and leased to Beeler Pork, Inc.

2. On March 3, 2008, Cindy Martens, DNR Field Office 3 Senior Environmental Specialist, visited the three facilities listed in the complaint. Ms. Martens first visited the Hoffman site and noted that there were two buildings with open fronts, but all the doors were closed. Ms. Martens noted that there was snow in the pens and no evidence of the hogs being in the open lot area. She noted that there was a large amount of straw and manure on the west side of the buildings and that the south building had manure running from under the building pit across the ground to a field to the west. There were many dead hogs lying around the facility. Ms. Martens then visited the Dangel site and observed that there were some hogs outside, but that most of the barns were closed. Ms. Martens noted many piles of straw and manure around the facility with many dead hogs in the outside pens. Ms. Martens spoke to a person at the facility who informed her that John Aarndt managed the facility, but the person at the facility did not know how to contact him. Ms. Martens left her business card and asked the person to have a facility contact call her. Ms. Martens then visited the Sterler site. The buildings were open for the hogs to have access to the open lots. Ms. Martens noted a dead hog outside of one of the buildings. During the visit, Kirk Nelson called Ms. Martens and informed her that he was the manager for Van Bee Pork and Tim Beeler was owner of the sites. Mr. Nelson stated that the manure and runoff from the outside lots was supposed to drain back into the shallow pits and then the shallow pits were to drain to cement tanks. The pit at the Hoffman site was never constructed. Ms. Martens informed Mr. Nelson that the facilities are considered open lots and were constructed as such and that they must be operating as open lots. Ms. Martens required that Mr. Nelson allow the hogs access to the outside at all times, to clean up the running manure and the straw and manure piles, and to properly compost or render the dead hogs. Ms. Martens stated that she would return to the sites in a few weeks.

3. On April 17, 2008, Ms. Martens returned to the sites. Ms. Martens first visited the Dangel site and observed many piles of straw mixed with manure and dead hogs.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BEE PORK, LLC

She noted the runoff had an odor and was very brown. Dead pigs remained around the facility. The doors of the buildings were open to allow the hogs access to outside lots. Ms. Martens observed a large open burn and dumping pit at the facility. She observed assorted solid waste in the burn pit including, but not limited to, aerosol cans, plastics, metals and charred baby pigs. Ms. Martens then proceeded to the Sterler site. Ms. Martens observed an open dump pit at this facility as well, but the solid waste had not been burned. The pit included construction waste, plastics, metals and glass. She noted piles of straw, manure and dead hogs located on the west side of the buildings. She also observed a discharge from the piles. The north building was closed with no outdoor access for the hogs. Ms. Martens' final stop was the Hoffman site. The buildings at this facility were open to allow access to the outside pens. Ms. Martens did observe two open burn and dump pits at the facility that included metals, construction waste, hog production items and farm waste. Ms. Martens observed dead hogs in the pens and on piles of straw. Runoff from the piles of straw and manure was all over the facility and the under building pits were full and running out.

4. On April 30, 2008, Ms. Martens met with Tim Beeler, Kirk Nelson, and Dale Patter with Stockdale Family Farms. During the meeting, Ms. Martens shared the photos from her site visits and discussed areas of concerns. Mr. Beeler stated he was aware that the facilities were to be operated as open lots but due to the harsh weather he had concerns for the younger pigs. Ms. Martens informed him that in the future he must notify the field office when the pigs will be locked inside because of the weather, but otherwise the hogs must have access to the outside at all times. Ms. Martens explained that if the facilities were going to be operated as confinements that all manure must be maintained between periods of application and that manure management plans would need to be submitted. Mr. Beeler stated he understood the requirements and stated the facilities would be operated as open lot facilities. Ms. Martens also discussed the dead hogs observed at the three facilities. Mr. Beeler stated he was aware that dead animals must be rendered or composted correctly within 24 hours of death and that he would make sure it was done in the future. Ms. Martens provided the compost requirements. Ms. Martens informed Mr. Beeler that the piles of manure, straw and compost must be stockpiled and contained in appropriate areas to minimize the runoff and leachate that is occurring at the facilities. Ms. Martens voiced concerns about groundwater contamination and a potential impact to the surface water. Mr. Beeler agreed and stated the stockpiling would be done in small appropriate areas with compacted soils or concrete as originally designed. One final issue discussed was the open dump and burning pits at the facilities. Ms. Martens explained the regulations and reminded them that the owner is ultimately responsible for the pits and if material is burned in the pits.

5. On July 10, 2008, a Notice of Violation letter was issued for the violations discovered during Ms. Martens' visits to the three facilities in March and April. Included with the Notice of Violation was the Report of Investigation that included summaries of Ms. Martens' visits to the facilities and the meeting with facility representatives. The letter informed Mr. Beeler that the facilities were being referred for further enforcement.

6. On August 13, 2008, Ms. Martens conducted compliance visits at the Croatt site (4977 130th Street in rural Sibley, Iowa), the Sterler site, the Dagele site, and the Hoffman

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BEE PORK, LLC

site. At the Hoffman site, Ms. Martens observed several hides and bones that were exposed on the composting pile. At the Croatt site, Ms. Martens observed several dead hogs in various stages of decay, and at the Sterler site, Ms. Martens observed dead hogs lying uncovered on the compost pile.

7. On August 15, 2008, DNR Field Office 3 issued a Notice of Violations letter for the improper disposal of dead hogs and open burning violations observed on August 13, 2008 at three of the facilities. The letter informed Mr. Beeler that the violations were being forwarded for further enforcement.

IV. CONCLUSIONS OF LAW

Van Bee Pork, LLC neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). During site visits by Field Office 3 in April 2008 and August 2008, Ms. Martens observed evidence of open burning of prohibited solid waste at more than one of the facilities. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. During site visits by Field Office 3, Ms. Martens observed evidence of improper solid waste disposal at several facilities owned by Van Bee Pork. The above facts demonstrate noncompliance with this provision.

5. 567 IAC 105.6(6) states that dead farm animals shall be incorporated into the composting process within 24 hours of death. An adequate base layer (from 12 to 24 inches thick, depending on the size and number of dead farm animals) with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times to control mortality leachate and odors and to prevent access by scavenging domestic and wild animals. During site visits by Field Office 3, Ms. Martens observed dead hogs that had not been appropriately incorporated into the compost pile. The above facts demonstrate noncompliance with this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BEE PORK, LLC

6. 567 IAC 100.4(2)"b" states that a private agency may dispose of dead farm animals without first having obtained a sanitary disposal project permit, provided that the disposal is in accordance with paragraph 100.4(2)"c", the rules of the department of agriculture and land steward, and (5) the dead animals are immediately covered with a minimum of 6 inches of soils and finally covered with a total minimum of 30 inches of soil. The department of agriculture and land stewardship rules state that dead animals must be disposed of within 24 hours (21 IAC 61.31). During site visits by Field Office 3, Ms. Martens observed dead hogs that had not been properly disposed of. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Van Bee Pork agrees to do the following:

1. Van Bee Pork shall ensure that the Hoffman facility, the Dagele facility and the Sterler facility are operated as open feedlots at all times and there shall be access to the outside at all times;
2. Van Bee Pork shall ensure that all open feedlot manure control requirements and regulations are complied with;
3. Van Bee Pork shall ensure that all dead animals are properly disposed of within 24 hours of the death of the animal;
4. Van Bee Pork shall ensure that all solid waste is disposed of in trash dumpsters either at the site or at other locations under the control of Van Bee Pork, and that all solid waste is appropriately disposed of at a permitted landfill; and
5. Van Bee Pork shall pay a penalty of \$1,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B. 146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BEE PORK, LLC

of an administrative consent order to Van Bee Pork with an administrative penalty of \$1,500.00. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of solid waste at the facilities has allowed Van Bee Pork to eliminate landfill fees and transportation costs. Additionally, Van Bee Pork has been able to avoid disposal fees through the improper disposal of the dead hogs. Based on the above-mentioned factors, \$200.00 is being assessed for this factor.

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 DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste and dead animals create nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Based on the above considerations, \$900.00 is being assessed for this factor.

Culpability – Van Bee Pork has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Additionally, Mr. Beeler admitted during the April 2008 meeting with DNR Field Office 3 that he was aware of the regulations for disposal of dead animals, yet during the August 2008 inspection, Ms. Martens observed dead hogs that had not been properly disposed of. Based on the above considerations, \$400.00 is assessed for this factor.

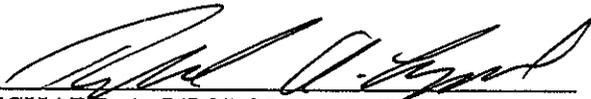
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Van Bee Pork. For that reason, Van Bee Pork waives the right to appeal this order or any part thereof.

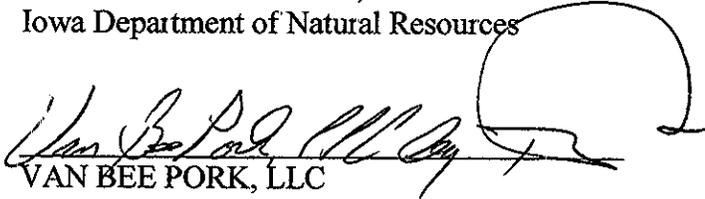
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described Section IV of 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 sections 455B.146 and 455B. 307.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BEE PORK, LLC


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 22 day of
Dec., 2009.


VAN BEE PORK, LLC

Dated this 10 day of
December, 2009.

Barb Stock (Con 10-6 Osceola County); AFO #65926, #65927, #65928; Kelli Book; Field Office 3; EPA; VI C and VII C 1.