IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
HDS FARMS, L.L.C. **Facility ID #59458**	NO. 2009-AFO-47
Sioux County, Iowa	

TO: Harold Dekkers, Registered Agent
HDS Farms, L.L.C.
1958 420th Street
Hawarden, Iowa 51203

Phil Oliphant, Facility Contact
HDS Farms, L.L.C.
18 Court Square
Pocahontas, Iowa 50574

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and HDS Farms, L.L.C. (HDS Farms) for the purpose of resolving environmental violations at the HDS Farms' facility located near Hawarden, Iowa. 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:
Brandon Miner, 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
Windsor Heights, Iowa 50324
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, 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.

III. STATEMENT OF FACTS

1. HDS Farms is a confined animal feeding operation located near Hawarden, Iowa in Sioux County (SW ¼ of Section 29, Washington Township, Sioux County). The facility is known as HDS Farms, Site 2 in the DNR's records. The most recent manure management plan indicates the facility is a 1,334 head farrow-nursery operation with outside concrete manure storage.

2. On August 19, 2009, DNR Field Office 3 received a complaint regarding the concrete manure storage basin at HDS Farms. The complainant stated the basin was exceeding the freeboard requirement and was within inches of overflowing.

3. On August 25, 2009, Brandon Miner, DNR Field Office 3 environmental specialist, investigated the complaint. Mr. Miner noted that the freeboard for the unroofed formed storage structure had exceeded the one foot freeboard requirement and the liquid level was within an inch or less of the top of the concrete pit. Mr. Miner also noted evidence of a recent manure discharge from the concrete pit. He observed that manure had overflowed from the pit to an area of grass to the east of the concrete pit. Mr. Miner observed dead grass and manure still pooled in the area.

4. On September 1, 2009, DNR Field Office 3 issued a Notice of Violation letter to Phil Oliphant, the facility contact. The letter cited the facility for failure to maintain the required freeboard, failure to contain manure, and failure to report a manure release. The letter informed the facility contact that the matter was being referred for further enforcement.

5. On October 5, 2009, DNR Field Office 3 received a complaint regarding the concrete manure storage basin at HDS Farms. The complainant stated the basin was exceeding the freeboard requirement and was within inches of overflowing.

6. On October 6, 2009, Mr. Miner investigated the complaint. Mr. Miner noted that the freeboard for the unroofed formed storage structure had exceeded the one foot freeboard requirement and the liquid level was within inches of the top of the concrete pit.

7. On October 13, 2009, DNR Field Office 3 issued a Notice of Violation letter to Mr. Oliphant. The letter cited the facility for failure to maintain the required freeboard requirement. The letter informed the facility this violation would be included in the referral to the DNR's legal department.

8. The HDS Farms facility was formerly operated under the name of Grand Pork 2 and the facility had similar violations as those stated in this administrative consent order in the past. The president of Grand Pork was Harold Dekkers and Mr. Oliphant was the facility contact. On September 25, 2007, DNR Field Office 3 performed an inspection at Grand Pork 2 and noted that the freeboard for the unroofed formed storage structure had exceeded the one foot freeboard requirement and the liquid level was within one or two inches from the top of the concrete pit. On October 7, 2007, DNR Field Office 3 issued a Notice of Violation letter to Mr. Oliphant for the freeboard violation. The letter informed Mr. Oliphant future violations may result in further enforcement by the DNR. On September 29, 2006, DNR Field Office 3 performed an inspection at Grand Pork 2 and noted that the freeboard for the unroofed formed storage structure had exceeded the one foot freeboard requirement and the liquid level was within six or seven inches from the top of the concrete pit. On October 2, 2006, DNR Field Office 3 issued a Notice of Violation letter to Mr. Oliphant for the freeboard violation. The letter informed Mr. Oliphant future violations may result in further enforcement by the DNR.

9. Harold Dekkers, HDS Farms' registered agent, also owns two other animal feeding operations in Sioux County, HPD Pork (DNR ID#63055) and HDS Farms, LLC, Site 1 (DNR ID #59459). Both of these facilities have an enforcement history with the DNR. HDS Farms, LLC, Site 1 was issued a Notice of Violation letter on October 25, 2006 for missing information on the manure application records. An additional Notice of Violation letter was issued on August 31, 2007 for the improper disposal of dead hogs. HPD Pork was issued a Notice of Violation letter on September 1, 2008 for missing information on the manure application records. Additionally, this facility was issued an Administrative Order on July 9, 2004. Administrative Order No. 2004-AFO-73 was issued for the facility's failure to submit a manure management plan. The order also included a $3,000.00 administrative penalty.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. On August 25, 2009, Mr. Miner observed evidence of a manure discharge from the concrete pit at HDS Farms. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.2(3) further requires that one foot of freeboard be maintained in unroofed formed manure storage structures. On August 25, 2009 and on October 6, 2009, Mr. Miner observed less than one foot freeboard in the unroofed

formed manure storage structure at HDS Farms. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and HDS Farms agrees to do the following:

1. HDS Farms shall operate and maintain the animal feeding operation structures in compliance with all applicable DNR regulations; and

2. HDS Farms shall pay an administrative penalty of $6,000.00, 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 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 $6,000.00. The administrative penalty is determined as follows:

Economic Benefit – HDS Farms has saved time and money by not building extra manure storage at the facility or in the alternative not hiring a custom manure applicator to either transfer manure to another pit or to land apply the manure. Therefore, $1,000.00 is being assessed for this factor.

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. HDS Farms' failure to properly contain the manure between periods of manure application threatens the integrity of the water quality and animal feeding operation programs. Therefore, $3,000.00 is being assessed for this factor.

Culpability – HDS Farms 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. The facility has received two previous Notice of Violation letters in the past for

the freeboard violations and Mr. Dekkers' other two facilities have received Notice of Violation letters and an Administrative Order for past environmental violations. Therefore, $2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of HDS Farms. For that reason HDS Farms waives its 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.

RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 24 day of Nov., 2009.

Harold Dekkers
HDS Farms LLC
HDS FARMS, L.L.C.

Dated this 12th day of November, 2009.

Facility #59458; Kelli Book, DNR Field Office 3, EPA,VIII.D.1.a, VIII.D.2.a, and VIII.D.2.d

RECEIVED
NOV 16 2009