

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

IN THE MATTER OF:

PHILLIP BUSH
Facility ID #66323 - Cherokee County

ADMINISTRATIVE CONSENT
ORDER
NO. 2010-AFO-09

TO: Phillip Bush
979 530th Street
Cleghorn, Iowa 51014

This administrative consent order is entered into between Phillip Bush and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding animal feeding operation violations at Mr. Bush's animal feeding operation located in Section 29, Sheridan Township, Cherokee County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Cindy Martens, DNR Field Office #3
Iowa Department of Natural Resources
1900 Grand Avenue
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to appeal rights:

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, Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to 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, 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PHILLIP BUSH

III. STATEMENT OF FACTS

1. On December 23, 2009, Cindy Martens, DNR Field Office 3 environmental specialist senior, left a telephone message for Mr. Bush regarding his hog confinement facility located in Section 29, Sheridan Township, Cherokee County, Iowa.

2. On January 4, 2010, Mr. Bush returned Ms. Martens' telephone call. Mr. Bush stated that his facility was constructed in 1997. The facility has a capacity of 2,000 finishers (800 animal units). The facility does not have a manure management plan (MMP).

3. On January 5, 2010, a Notice of Violation letter was issued to Mr. Bush for failing to have a MMP for his facility. The Notice of Violation letter informed Mr. Bush the matter was being referred for further enforcement. Mr. Bush was also required to submit the MMP and appropriate fees.

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. Iowa Code section 459.312(1)"a"(1) and 567 IAC 65.16(1)"b" require that the owner of a confinement feeding operation constructed or expanded after May 31, 1985, other than a small feeding operation, shall submit a MMP to the DNR. Iowa Code section 459.102(47) defines a "small animal feeding operation" as an operation with an animal unit capacity of five hundred or fewer animal units. This requirement became effective May 12, 1999. Mr. Bush's facility was constructed in 1997 and has an animal unit capacity of 800 animal units. Mr. Bush failed to submit a MMP in 1999 when it became a requirement and continues to operate the facility without a MMP. Mr. Bush has operated without a MMP for over ten years. The above facts indicate a violation of this provision.

3. 567 IAC 65.17(1)"d" requires that a person who submitted an original MMP prior to April 2, 2002, shall submit a phosphorus index with the first MMP update on or after August 25, 2008. Since Mr. Bush's original MMP should have been submitted in 1999, his first phosphorus index should have already been submitted. The above facts indicate a violation of this provision.

4. Iowa Code section 459.503 and 567 IAC 65.16(6) require all persons required to submit a MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Mr. Bush's indemnity fee is \$80.00. The indemnity fee was due when the MMP should have been filed and Mr. Bush has delayed payment of this fee for over ten years.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PHILLIP BUSH

5. 567 IAC 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The compliance fee is fifteen cents per animal unit. Mr. Bush should have filed seven updated MMPs and fees. Mr. Bush's annual compliance fee is \$120.00.

6. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR a MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP.

V. ORDER

THEREFORE, the DNR orders and Phillip Bush agrees to do the following:

1. Phillip Bush shall submit a complete MMP with a phosphorus index to DNR Field Office 3 for his animal confinement feeding operation located in Section 29, Sheridan Township in Cherokee County within 60 days of the date the Director signs this administrative consent order;
2. Phillip Bush shall pay the filing fee of \$250.00 and the indemnity fee of \$80.00 at the time of the filing of the MMP;
3. Phillip Bush shall pay past annual compliance fees for the following years 2009, 2008, 2007, 2006, 2005, 2004, and 2003, for a total of \$840.00. The past compliance fees shall be submitted within 30 days of the date the Director signs this administrative consent order; and
4. Phillip Bush shall pay a penalty of \$4,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize 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 these rules, 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 \$4,500.00. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PHILLIP BUSH

Economic Benefit – The failure of Phillip Bush to comply with the animal feeding operation regulations has allowed him to achieve an economic benefit. Mr. Bush has achieved an economic benefit by delaying the payment of the compliance fees, filing fee, indemnity fee and preparation costs for the MMP. Mr. Bush should have filed seven annual updates, \$840.00 in annual compliance fees. These payments have been delayed and Mr. Bush has been able to achieve an economic benefit from delaying the payment of the fees. Mr. Bush was able to delay preparation costs for the MMP as well as delaying paying the indemnity fee of \$80.00 since 1999. Mr. Bush has also been able to avoid the cost of MMP recordkeeping and possible operating restrictions since 1999. Mr. Bush gained an economic benefit over producers who have timely filed MMPs. The economic benefit received by Mr. Bush is estimated to be \$2,000.00.

Gravity – Mr. Bush's failure to obtain a MMP threatens the integrity of the animal feeding operation program. The MMP is a crucial aspect of the DNR's animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. Mr. Bush's operation is a large operation to be operating without the required MMP. Mr. Bush's operation has 800 animal units and if the manure is not contained or applied properly it could cause environmental harm. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. The animal feeding operations area of agriculture is a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. Additionally, the MMP requirements have been in place since 1999 and Mr. Bush continues to operate out of compliance. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Phillip Bush. For that reason, Phillip Bush waives the right 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PHILLIP BUSH

administrative order or referral to the Attorney General to obtain injunctive relief
and civil penalties pursuant to Iowa Code section 455B.191.


PHILLIP BUSH

Dated this 23 day of
Feb, 2010.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 3 day of
March, 2010.

#66323; Field Office 3; Kelli Book; Gene Tinker; VIII C 1