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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IOWA DNR
FIELD OFFICE 3

IN THE MATTER OF:

**GUSE FAMILY FARM
CORPORATION**
Facility #60324

Emmet County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO- 54

TO: Bruce Guse, Registered Agent
Guse Family Farm Corporation
2015 490th Avenue
Ringsted, Iowa 50578

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Guse Family Farm Corporation (Guse Family Farm) for the purpose of resolving construction permit violations at that Guse Family Farm animal feeding operation located at 2015 490th Avenue, Ringsted, 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
Gateway Mall North – 1900 North Grand
Spencer, Iowa 51301
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.475(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division

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III, Part 1, Iowa Code chapter 459 and 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. Guse Family Farm owns and operates an animal feeding operation located 2015 490the Avenue, Ringsted, Iowa. The facility consists of a hog confinement operation that houses 7,000 head of finishing hogs (2,800 animal units). The hog confinement operation was constructed in 1997.

2. On July 19, 2010, Brandon Miner, DNR Field Office 3 environmental specialist, conducted an earthen basin inspection at the facility. During the inspection, Mr. Miner observed two cattle confinement hoop buildings to the north of the residence. Mr. Miner noted that there were no cattle listed in the facility's current manure management plan (MMP).

3. On July 20, 2010, Mr. Miner spoke with Bruce Guse, Guse Family Farm representative. Mr. Guse stated the two hoop buildings were constructed in 2008 and housed a total of 500 head of cattle. Mr. Guse stated the hoop buildings were under the same ownership and management as the hog operation.

4. On July 29, 2010, DNR Field Office 3 issued a Notice of Violation letter to Guse Family Farm for the construction permit violation discovered by Mr. Miner. The letter explained that since the hog confinement feeding operation contained greater than 1,000 animal units and the hoop buildings were located within 2,500 feet of the hog confinement buildings that the cattle hoop buildings and hog confinement buildings were considered one facility. The letter went on to state that the construction of the hoop buildings was considered an expansion of the existing operation and would have required a construction permit. The letter required Guse Family Farm to submit a revised Phosphorus MMP with the appropriate indemnity fee, past compliance fees, and verification of county receipt. The letter also required Guse Family Farm to submit as-built construction documents of the hoop buildings and an aerial photograph or an engineering drawing that demonstrates compliance with separation distances. The letter also informed the facility the matter was being referred for further enforcement.

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.

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2. 567 IAC 65.7(1-2) states that an animal feeding operation is required to obtain a construction permit when constructing, installing, or modifying a confinement building or a formed manure storage structure at a confinement feeding operation if, after construction, installation, or expansion, the animal unit capacity of the operation is 1,000 animal units or more. The operation contained greater than 1,000 animal units, therefore the construction of the hoop buildings at the Guse Family Farm facility was an expansion of the existing operation and required a construction permit. The above facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Guse Family Farm agrees to do the following:

1. If Guse Family Farm has not already done so, Guse Family Farm shall submit a revised Phosphorus Index MMP to DNR Field Office 3 within 60 days of the date the Director signs this administrative consent order. The revised MMP shall include the existing hog confinement and the new cattle confinement buildings;
2. If Guse Family Farm has not already done so, Guse Family Farm shall submit the additional indemnity fee of \$50.00 (500 x 0.10) for the cattle buildings. The additional indemnity fee shall be submitted to DNR Field Office 3 within 60 days of the date the Director signs this administrative consent order;
3. If Guse Family Farm has not already done so, Guse Family Farm shall submit the additional compliance fees for years 2008-2010 of \$225.00 for the additional animal units from the cattle buildings (500 x 0.15 = \$75.00 for each year). The additional compliance fees shall be submitted to DNR Field Office 3 within 60 days of the date the Director signs this administrative consent order;
4. If Guse Family Farm has not already done so, Guse Family Farm shall submit as-built construction documentation of the cattle buildings and proof that the buildings comply with the separation distances. The information shall be submitted to the DNR animal feeding permit program within 60 days of the date the Director signs this administrative consent order; and
5. Guse Family Farm shall pay a penalty of \$3,000.00 in accordance with the following payment plan:

\$1,500.00 due October 15, 2010

\$1,500.00 due October 15, 2011

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

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that where the violator received an economic benefit through the violation, the DNR shall take an enforcement action which includes penalties that will at least offset the economic value. Guse Family Farm was able to delay the costs associated with the construction permit application. The operation was also able to delay the payment of a portion of the indemnity fee and compliance fees for a period of three years. Additionally Guse Family Farm was able to avoid possible costs related to any restrictions or requirements the construction permit would have included. It is estimated the economic benefit gained by Guse Family Farm was at least \$500.00 and that amount is 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. DNR Field Office 3 determined that Guse Family Farm failed to obtain a construction permit prior to the construction of the cattle confinement buildings. Failure to obtain the construction permit prohibited the DNR from reviewing the plan prior to construction to ensure compliance with the regulations. Failing to obtain a construction permit threatens the integrity of the animal feeding program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Guse Family Farm 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. Therefore, \$1,000.00 is assessed for this factor.

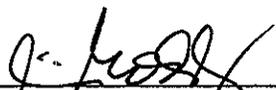
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Guse Family Farm. For that reason Guse Family Farm waives the right to appeal this administrative consent order or any part thereof.

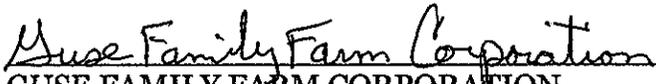
VIII. NONCOMPLIANCE

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



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 21 day of
October, 2010.



GUSE FAMILY FARM CORPORATION

Dated this 14 day of
October, 2010.

Facility #60324; Kelli Book, Brandon Miner (DNR Field Office 3), EPA, VIII.A.1