IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
PENN AVENUE FARMS, INC. Section 14, Gowla-Goshen Township Muscatine County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-WW- 11

TO: Debra K. Simpson, Registered Agent
Penn Avenue Farms, Inc.
972 305th Street
Atalissa, Iowa 52720

Joel McKillip, President
Penn Avenue Farms, Inc.
1204 Penn Avenue Road
Atalissa, Iowa 52720

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Penn Avenue Farms, Inc. (Penn Avenue) for the purpose of resolving Penn Avenue's failure to obtain a construction prior to construction of a wastewater system. 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:
Jim Sievers, DNR Field Office 6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353-1623
Phone: 319/653-2135

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 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. Penn Avenue is a livestock hauling business located at 1204 Penn Avenue, Atalissa, Iowa (NE ¼, Section 14, Gowla-Goshen Township, Muscatine County, Iowa. The business includes truck washout facilities with cement holding tanks to contain wastewater. The wastewater is land applied to nearby crop ground. The business is located on property owned by Joel McKillip and Debra Simpson. Mr. McKillip is the president of Penn Avenue.

2. On June 1, 2011, Jim Sievers, DNR Field Office 6 environmental specialist senior, spoke to Jodee Stepleton, Muscatine County Zoning Administrator regarding a question Ms. Stepleton had regarding Penn Avenue's business.

3. On June 3, 2011, Mr. Sievers and Ms. Stepleton visited Penn Avenue and met with Mr. McKillip. Mr. McKillip showed Mr. Sievers and Ms. Stepleton a semi trailer truck wash facility that had recently been constructed but was not in operation. The wash bays were cement floors that drained to the west. On the west end of the wash bays cement tanks were constructed to store the wastewater. Mr. McKillip explained that the wastewater would be land applied to nearby crop ground. The new truck facility did not have a construction permit.

4. Mr. McKillip also showed Mr. Sievers and Ms. Stepleton another truck wash facility located to the east of the new truck wash. He stated this truck wash was constructed a few years ago and it also had cement wastewater storage tanks at the south end of the facility. Mr. McKillip explained that the wastewater had been land applied as necessary. This truck wash did not have a construction permit.

5. On June 10, 2011, DNR issued a Notice of Violation letter to Mr. McKillip for the Penn Avenue truck wash facilities. The letter explained the requirements for obtaining a construction permit prior to the construction of a truck wash facility. The letter explained that the matter was being referred for enforcement.

IV. CONCLUSIONS OF LAW

1. 567 IAC 64.2(1) states that no person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits....." Penn Avenue constructed the two truck wash facilities without first obtaining construction permits. The above-mentioned facts indicate noncompliance with this provision.

2. 567 IAC 64.3(1) states no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. Penn Avenue operated at least one of its truck wash facilities

without an operational permit. The above-mentioned facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Penn Avenue agrees to do the following:

1. If Penn Avenue has not already done so, Penn Avenue shall hire an engineer and the engineer shall contact Suresh Kumar, DNR Wastewater Construction Permit Section, within 30 days of the date the Director signs this administrative consent order;

2. Penn Avenue is required to obtain a wastewater operation permit prior to further land application of wastewater; and

3. Penn Avenue shall pay an administrative penalty of $3,000.00 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 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 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 violation is the issuance of this administrative consent order with an administrative penalty of $3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Penn Avenue's failure to obtain construction permits for its truck washes allowed Penn Avenue to save time and money. Penn Avenue has gained an economic benefit over competitors who have obtained construction and operational permits for similar facilities. Penn Avenue has been able to delay the engineering costs for the design of the truck washes. It is estimated the economic benefit is at least $1,500.00 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. The wastewater construction permit program ensures that wastewater facilities are constructed in accordance with design standards. Failure to obtain wastewater construction and operational permits threatens the integrity of the wastewater program. Therefore, $1,000.00 is assessed for this factor.

Culpability – Penn Avenue 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 permitting of truck wash facilities has been in place for at least twenty years. Therefore, $500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Penn Avenue. For that reason Penn Avenue 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.

ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 18th day of August, 2011.

PRES.
PENN AVENUE FARMS, INC.

Dated this 11 day of AUG, 2011.

Kelli Book, DNR Field Office 6, EPA, I.A.1, I.B.1