

IN THE IOWA DISTRICT COURT FOR HOWARD COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)
)
Plaintiff,)
)
vs.)
)
KENNETH MOELLERS,)
)
Defendant.)

LAW NO. LACV015754

**CONSENT ORDER, JUDGMENT
AND DECREE**

2009 DEC 21 AM 9:15
CLERK OF DISTRICT COURT
HOWARD COUNTY IOWA

NOW on this 21 day of December, 2009, the Court is presented with the Plaintiff's Petition at Law seeking civil penalties and injunctive relief pursuant to Iowa Code sections 455B.191(1), 459.603 and 459A.502. The Court having read the Petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and subject matter of this action and the parties consent to the entry of this Consent Order, Judgment and Decree.
2. The defendant admits the violations alleged in the Petition. Defendant further states, and plaintiff acknowledges, that he has undertaken remedial measures at the sites referenced in the Petition, including but not limited to, constructing concrete tanks for manure storage.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Kenneth Moellers shall pay a civil penalty of Sixty Thousand and no/100 Dollars (\$60,000.00) for the violations alleged in the petition and admitted herein, within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to

Iowa Code section 535.3(1) on any unpaid balance. Payment of the civil penalty and any interest shall be made payable to the State of Iowa and forwarded to Assistant Attorney General Timothy Benton at the address below.

2. Defendant Kenneth Moellers is permanently enjoined from further violations of Iowa Code sections 455B.186(1), 459.312(1)“a”(1) and (2), 459.312(5) and 459A.401(1); 567 Iowa Admin. Code 61.3(2)“b”, 61.3(2)“d”, 65.7(1)“b”(1) and (2), 65.16(1)“b”(1) and (2), 65.16(5), 65.101(1), 65.101(6)(a), 65.101(6)(b), and 65.101(9).

3. Defendant shall also comply with the following terms:

A. Within sixty (60) days of the entry of this Consent Order, Judgment and Decree, submit the following to the Iowa Department of Natural Resources (DNR) for the facility located at 24343 - 110th Street (Hayek Farm):

1. a completed NPDES permit application with a nutrient management plan; and

2. a complete construction permit application for all proposed buildings and manure storage structures at the site in which livestock will be confined, as built approval of all manure storage structures built without a construction permit, and further comply with the requirements related to the application set out in the letter from DNR officials to the defendant dated June 24, 2009, a copy of which is attached hereto and by this reference made a part thereof.

B. Within sixty (60) days of the entry of this Consent Order, Judgment and Decree, submit the following to the DNR for the facility located at 23542 - 110th Street (dairy operation):

1. an application for as-built approval meeting the requirements of 567 Iowa Admin. Code 65.15 for the confinement building expansion constructed in 2008;

2. a construction permit application for the proposed manure storage structures at the site and the sand separator system; and

3. a manure management plan for the land application of manure from the confinement feeding operation buildings.

C. The following applies to the construction and operation of manure storage structures at the dairy operation: the defendant shall begin and complete as much construction as possible of one (1) proposed manure storage structure by January 1, 2010, and complete construction of the structure by June 1, 2010, and complete construction of the sand separator system no later than January 1, 2011. No later than January 1, 2012, the defendant shall either permanently close the earthen manure storage basin under DNR supervision, or submit an application for as-built approval meeting the requirements of 567 Iowa Admin. Code 65.15 to the DNR for the earthen manure storage basin. The defendant further agrees that the DNR shall inspect the earthen manure storage basin on a quarterly basis providing 24 hour advance notice of the inspection to the defendant.

D. By January 1, 2011, defendant shall construct a concrete basin for the west section of the Yankee Avenue site not currently served by a concrete basin. The new basin must be capable of holding a minimum of 180 days of manure.

E. All land application of manure from defendant's operations shall be conducted by a certified manure applicator. Defendant shall be certified as a confinement site manure applicator within ninety (90) days of the entry of this Consent Order, Judgment and Decree, and shall maintain that certification for as long as he owns the facilities referenced in this case. Defendant shall insure that all manure from his facilities is land applied in accordance with the applicable nutrient management plan, manure management plan, DNR rules, and the terms of this Decree.

F. Prior to the first land application from any of defendant's operations after the entry of this Decree, an emergency response plan shall be developed and submitted to DNR Field Office No. 1 for each site referenced in the Amended and Substituted Petition. The emergency response plan shall identify procedures and contacts for responding to, for example, spills and/or discharges of manure from the facility or land application sites. Copies of the emergency response plan shall be maintained at the 23542 - 110th Street (dairy operation) facility, and provided to any persons involved in land applying manure.

G. Land application of manure, including solids from defendant's operations, shall not be on frozen or snow-covered ground, except as provided in Senate File 432, 83rd G.A., 1st Sess. (Iowa 2009). All manure management plans and nutrient management plans shall designate fields where manure will be applied in cases of an emergency.

H. All manure not covered under a DNR approved manure management plan or nutrient management plan shall be land applied according to agronomic rates or as outlined in the NRCS approved CNMP. Any manure spills shall be reported to the Manchester Field Office at (563) 927-2640, or DNR 24-hour number (515) 281-8694, within six (6) hours. Any manure discharges into a water of the state must also be reported to the DNR within six (6) hours.

I. All sand, bedding and manure stockpiled at any of the defendant's operations shall be managed to prevent any runoff to a water of the State. The defendant shall maintain the grass filter below the open feedlot at the dairy operation to prevent runoff of stockpiled materials to a water of the State.

J. Within sixty (60) days of the entry of this Consent Order, Judgment and Decree, defendant shall furnish in writing to DNR Field Office 1 a written report stating the animal type and maximum animal unit capacity of each and every confinement building and open lot involved in his operations. Defendant shall obtain the appropriate permits prior to any change in the animal unit capacity of these buildings or open lots. The defendant shall maintain records of the number of head of animals at each site in which animals are kept in an open lot.

4. The Court retains jurisdiction of this matter to ensure compliance with the terms of this Order.

5. The costs of this action are taxed to the defendant in the amount of \$ 716.50 (Clerk to enter).



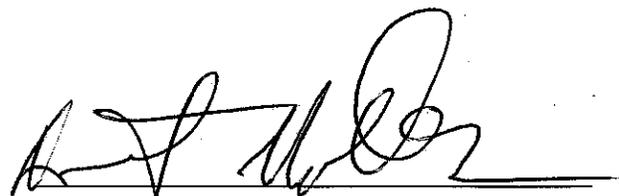
JUDGE, First Judicial District of Iowa

Approved as to form:

IOWA DEPARTMENT OF NATURAL
RESOURCES



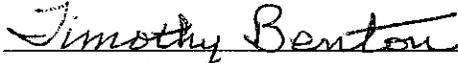
RICHARD A. LEOPOLD
Director



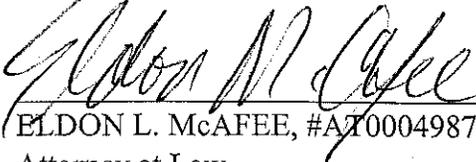
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Defendant

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