

IN THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY

FILED
2007 DEC -5 PM 2:55
CLERK OF DISTRICT COURT
PLYMOUTH COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

PLYMOUTH DAIRY FARMS, INC.,

Defendant.

LAW NO. CVCV030940

CONSENT ORDER, JUDGMENT
AND DECREE

NOW on this 5th day of December, 2007, the Court is presented with the Plaintiff's Petition at Law seeking civil penalties and injunctive relief pursuant to Iowa Code sections 455B.191 and 459.603. 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 solely for purposes of resolving the above-captioned matter.
3. By admitting these violations the defendant does not concede, nor does the defendant waive its right to contest that the violations are applicable to a habitual violator determination under Iowa Code section 459.604.
4. Defendant further states that following the violations alleged in the petition, defendant has taken corrective measures including installing a concrete manure/sand slurry separation pit to remove sand from manure before it enters the storage basin, repairing and improving manure

storage basin berms and adding spillways to direct any possible overflow from the manure solids settling basins to the manure storage basin.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Plymouth Dairy Farms, Inc., shall pay a civil penalty of Sixty-Five Thousand and no/100 Dollars (\$65,000.00) for the violations 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 Plymouth Dairy Farms, Inc., is permanently enjoined from further violations of Iowa Code sections 455B.186(1), 459.311(1), 459.312(3), 459.312(10); 567 Iowa Admin. Code 61.3(2)"b," 61.3(2)"d," 65.2(3), 65.2(3)"b," 65.2(9), 65.17(8), 65.17(12), 65.17(13), and 65.17(18).

3. Defendant shall also comply with the following terms:

- a. The defendant shall submit quarterly reports of the information referred to in subparagraphs (b) through (d) below. The quarterly reports shall be submitted to DNR Field Office No. 3. The requirements set forth in paragraphs (b) through (d) below shall expire five (5) years from the date of entry of this Consent Order, Judgment and Decree, PROVIDED that upon expiration of the five (5) year term, the defendant has submitted a written notice to DNR Field Office No. 3 requesting that the requirements be lifted, and the DNR finds both that the defendant has satisfactorily met the requirements and that the defendant has committed no further violations.
- b. The defendant shall inspect all tile outlets on any land upon which manure from the defendant's facility is applied for signs of manure discharge to a stream from the land application areas before and after each manure application. The observations shall be recorded

in the quarterly report. In the event the defendant observes discharge to a stream with odor, discoloration or other indicia that the discharge contains manure, the defendant shall immediately notify DNR Field Office No. 3 by telephone at (712) 262-4177, and take samples of the liquid discharged. The defendant shall take necessary steps to stop the discharge as directed by the DNR. Any sample results shall be included in the quarterly report.

- c. If the defendant land applies its manure using its own machinery, the defendant shall conduct weekly inspections, while in use, of its manure handling equipment. The defendant shall record any deficiencies and corrective actions taken as soon as possible in the quarterly report. Any manure laden-water generated from the cleaning of this equipment shall be collected and properly land applied.
- d. The defendant shall establish a consistent measuring device for each outside manure storage basin and keep written records of weekly freeboard measurements from each basin by January 1, 2008. The measuring device shall consist of a 4-inch thick pad of concrete anchored to the inside berm of the basin with marks corresponding to the required freeboard of two (2) feet and additional marks at six (6) inch increments. In the alternative, the measuring device may consist of six (6) inch diameter PVC pipe that is halved length-wise with the concave side placed downward. The PVC pipe must be anchored and marked as described above. If the DNR provides written notification to the defendant that the PVC pipe is not functioning properly as a consistent measuring device, defendant shall establish, within 60 days of receipt of the notification, the concrete pad as required above. The lowest elevation point in the berm of each basin shall be determined by a certified surveyor and this elevation shall be used in determining the above-required measurement marks on the concrete measurement pad or the PVC pipe. The defendant shall notify the DNR when the concrete measurement pad has been established and provide the surveying documentation of the accuracy of the measurement marks. When the manure is removed from an outside manure storage basin, the defendant shall record the freeboard at the beginning and conclusion of pumping. The defendant shall record the measurements on the quarterly report. The defendant shall immediately notify DNR Field Office No. 3

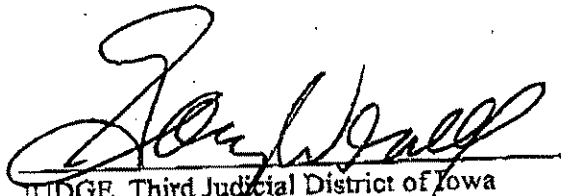
by telephone at (712) 262-4177 if the freeboard is less than the required depth. The defendant may adapt the DNR quarterly report for use by open feedlots to record the freeboard measurements. The form may be accessed at: <http://www.iowadnr.com/afo/forms/5421551.doc>.

- e. The first report submitted by the defendant shall cover the period from the entry of this Consent Order, Judgment and Decree until December 31, 2007, and shall be submitted by January 10, 2008. Thereafter, the quarterly reports shall cover the quarterly periods of January through March, April through June, July through September, and October through December, for each succeeding calendar year. The quarterly report for each period shall be submitted by the 10th day of the month following the quarter being reported.
- f. The defendant shall maintain on site a complete copy of all monitoring records for a period of five (5) years from the date they are created.

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 \$ 100⁰⁰

(Clerk to enter).


 JUDGE, Third Judicial District of Iowa

Approved as to form:

IOWA DEPARTMENT OF
NATURAL RESOURCES


 RICHARD A. LEOPOLD, Director

PLYMOUTH DAIRY FARMS, INC.


 ALAN FEUERHELM, President

cc: Tim Benton & he will mail copy to dept

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

Timothy Benton
TIMOTHY D. BENTON, AT0000843
Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg., Ground Flr.
321 E. 12th Street, Room 018
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: tbenton@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

BEVING, SWANSON & FORREST, P.C.

Eldon McAfee
ELDON McAFEE, AT0004987
Attorney at Law
321 E. Walnut Street, Suite 200
Des Moines, Iowa 50309-1048
Phone: (515) 237-1188
Fax: (515) 288-9409
ATTORNEY FOR DEFENDANT
PLYMOUTH DAIRY, INC.

R:\6\Plymouth Dairy Decree.wpd