

[Filed 12-11-06]

IN THE IOWA DISTRICT COURT FOR POCAHONTAS COUNTY

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

LAW NO. CVCV 125769

PETITION AT LAW

COMES NOW the Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (DNR), and for its claim against Defendant Dean Pedersen (Pedersen) states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Dean Pedersen, arising from his failure to file an updated manure management plan and pay the applicable fees. In addition, Pedersen has applied manure from his confinement feeding operation without an updated manure management plan.

PARTIES

- 2. The State of Iowa is a sovereign state of the United States of America.
- 3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
- 4. Defendant Dean Pedersen resides at 42500 - 180th Avenue, Laurens, Pocahontas County, Iowa.

JURISDICTION

5. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

6. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2), 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

7. The owner of a confinement feeding operation required to submit a manure management plan is also required to submit an updated manure management plan on an annual basis. Iowa Code § 459.312(3), 567 Iowa Admin. Code 65.16(3)“b”. The owner shall submit an annual compliance fee with the manure management plan update. Iowa Code § 459.400(1), 567 Iowa Admin. Code 65.16(3)“c”.

8. Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required, until the DNR has approved the manure management plan and the updated manure management plan. Iowa Code § 459.312(5).

9. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

10. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

11. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

12. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

13. The Attorney General is authorized under Iowa Code section 455B.109(3), on request of the DNR, to institute summary proceedings to recover the penalty and any accrued interest at the rate of one and one-half percent (1.5%) per month or part of a month on the unpaid balance where a penalty had been assessed by the DNR in a final administrative order but remains unpaid.

FACTS

14. On April 17, 2006, the EPC voted to refer the matters described in paragraphs fifteen (15) through twenty (20) below to the Attorney General for purposes of initiating judicial enforcement against this defendant.

15. Defendant Dean Pedersen owns and operates a confinement feeding operation for swine located in the NW 1/4 of Section 16, T93N, R33W, Cummins Township, Pocahontas County, Iowa. The operation consists of one (1) building with a total animal unit capacity of 504. Manure from the confinement buildings is stored in an earthen manure storage basin.

16. On November 16, 2004, the director of the DNR issued Administrative Order No. 2004-AFO-121 to the defendant, a copy of which is attached, marked as Exhibit A and incorporated by reference. The Order required the defendant to submit an updated manure management plan and fees within 30 days of receipt of the Order. The Order also assessed an administrative penalty of Seven Hundred Fifty Dollars (\$750.00), pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The defendant received a copy of the Order on November 20, 2004, as shown by the return receipt, a copy of which is attached, marked as Exhibit B and incorporated by reference. The defendant did not appeal the Order. The defendant has not paid the administrative penalty, but Five Hundred Dollars (\$500.00) has been collected by the Iowa Department of Revenue.

17. On December 16, 2004, DNR officials conducted an inspection of the defendant's facility. DNR officials observed that the operation was populated with hogs and that manure had been removed from the earthen manure storage basin that fall. The defendant had not submitted a manure management plan update and had not paid the applicable fees.

18. On July 14, 2005, DNR officials forwarded a letter to the defendant reminding him that his updated manure management plan for 2005 was due September 1, 2005. When the defendant did not submit an updated plan and pay the fees by September 1, DNR officials on

October 10, 2005, issued a Notice of Violation to the defendant for failure to file the updated manure management plan for 2005.

19. On November 17, 2005, DNR officials conducted an inspection of defendant's facility. DNR officials observed that the facility was still populated with hogs and that the earthen manure storage basin was nearly empty, indicating that manure had been removed that fall. The defendant had not submitted a manure management plan update and had not paid the applicable fees.

20. The defendant has failed to pay the balance of the administrative penalty referenced in paragraph sixteen (16).

VIOLATIONS

21. The defendant has failed to submit an annual manure management plan update and applicable fees for 2004 and 2005, in violation of Iowa Code sections 459.312(3), 459.400(1); 567 Iowa Admin. Code 65.16(3) "b", 65.16(3) "c"; and Administrative Order No. 2004-AFO-121.

22. The defendant has continued to land apply manure without an approved manure management plan in violation of Iowa Code section 459.312(5).

23. The defendant has failed to pay the balance of the administrative penalty referenced in paragraph sixteen (16), even though the time for payment has passed, or any accrued interest in violation of Administrative Order No. 2004-AFO-121.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Dean Pedersen, pursuant to Iowa Code sections 455B.191(1), 459.103(3) and 459.603, for each day of violation of Iowa Code sections 459.312(3), 459.312(5), 459.400(1); 567 Iowa Admin. Code 65.16(3)“b”, 65.16(3)“c”; and Administrative Order No. 2004-AFO-121, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

b. issue a permanent injunction ordering Defendant Dean Pedersen to submit an updated manure management plan and pay the applicable fees, and further enjoining Defendant Dean Pedersen from any violation of Iowa Code sections 459.312(3), 459.312(5), 459.400(1); 567 Iowa Admin. Code 65.16(3)“b”, 65.16(3)“c”; and Administrative Order No. 2004-AFO-121; and

c. order that the Defendant Dean Pedersen pay the balance of the administrative penalty assessed in Administrative Order No. 2004-AFO-121 and accrued interest, pursuant to Iowa Code section 455B.109(3).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

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Assistant Attorney General

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ATTORNEYS FOR PLAINTIFF, STATE

OF IOWA, EX REL., IOWA DEPARTMENT

OF NATURAL RESOURCES

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

Dean Pedersen Facility, ID #60387
Section 16, Cummins Township
Pocahontas County, Iowa

ADMINISTRATIVE ORDER
NO. 2004-AFO- 121

TO: Dean Pedersen
42500 180th Avenue
Laurens, IA 50554

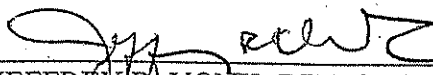
VIOLATION: 567 Iowa Administrative Code (IAC) 65.16(3)"b". You failed to submit an updated manure management plan (MMP) to the Department, to the board of supervisors of the county where your confinement feeding operation is located, and to the board of supervisors of each county where manure from your confinement feeding operation is land-applied, by September 1, 2004. 567 IAC 65.16(3)"c". You also failed to submit your annual compliance fee of \$0.15 per animal unit capacity at your animal feeding operation by that date. You were sent notice of these requirements on July 15, 2004, first notice of delinquency on September 10, 2004, and second notice of delinquency on October 8, 2004.

ORDER: You shall submit to Department Field Office #3 your updated MMP and annual compliance fee within 30 days of your receipt of this Order. In addition, a penalty of \$750.00 is assessed effective 30 days from your receipt of this Order, and shall be paid to the Department (address at bottom of this Order) within 60 days of receipt of this Order, unless you appeal as provided below. \$350.00 of this amount is based on the gravity of the violation, considering the size of this facility; agency costs in addressing this violation, and the importance of the animal feeding operation program. \$400.00 of this amount is for culpability, since you were sent three notices of the requirement.

AUTHORITY: Iowa Code §§455B.109, 459.103(3); 567 IAC 10.3, 65.16(3)"b" and "c".

APPEAL: Iowa Code §455B.109; 561 IAC 7.5(1) A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Randall Clark at (515) 281-8891 for more information regarding appeal procedures and resolution of this Order.

NONCOMPLIANCE: If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §§455B.191 and 459.603.



JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES
Wallace State Office Building, Des Moines, Iowa 50319

Dated this 16 day of
November, 2004

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

MG/NF

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

7003 1680 0000 8097 8117

DEAN PEDERSEN
42500 180TH AVENUE
LAURENS IA 50554

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

11-20-84

5. Received By: (Print Name)

Dean Pedersen

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

X *[Signature]*

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.