

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**FARM NUTRIENTS, LLC
Kossuth County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO-15

TO: Farm Nutrients, LLC
Robert Malloy, Registered Agent
503 Main Street, P.O. Box 128
Goldfield, Iowa 50543

Farm Nutrients, LLC
Adam Cook, Sales Manager
1904 Highway 71 N, Suite 200
Okoboji, Iowa 51355

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Farm Nutrients, LLC (Farm Nutrients) for the purpose of resolving violations from a discharge that resulted in water quality violations. 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: Relating to legal requirements:

Dan Bratrud, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

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 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: FARM NUTRIENTS, LLC

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

Farm Nutrients neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Farm Nutrients is a chicken litter broker. Farm Nutrients markets and sells chicken litter in Iowa, Nebraska and Minnesota. Farm Nutrients stockpiled chicken litter at 3303 240th Avenue, Titonka, Iowa (Section 2, Buffalo Township, Kossuth County). The stockpile is located on property owned by Irene Mayland.

2. During May 2014, DNR Field Office 2 received several calls of concern regarding Farm Nutrients' stockpile. Field Office personnel visited the stockpile and noted that the stockpile met the separation distance requirements. At the time of the visit, there was no runoff from the stockpile.

3. On June 1, 2014, DNR Field Office 2 received a complaint regarding runoff from the stockpile. On June 2, 2014, Dan Bratrud and Ashley Waller, DNR Field Office 2 environmental specialists, visited the stockpile to investigate the complaint and did not document any water quality violations. The field office staff did speak with Irene Mayfield and explained that water quality violations from stockpile runoff could result in an enforcement action.

4. On June 16, 2014, DNR Field Office 2 received a complaint regarding runoff from the stockpile. The complainant stated that the runoff was reaching Buffalo Creek due to a heavy rainfall event. On June 17, 2014, Jeremy Klatt and Adam Shaffer, DNR Field Office 2 environmental specialists, visited the stockpile to investigate the complaint. They noted that runoff from the stockpile had flowed off of the southeast corner of the property through some straw bales. The ponded water below the bales had a dark brown-black appearance and had a manure odor. The field test of the ponded water indicated a very high ammonia concentration. The runoff from the stockpile flowed down the 240th Avenue road ditch to Buffalo Creek. The field office personnel conducted field tests from several locations of standing water in the road ditch which indicated high ammonia concentrations. The high ammonia concentration levels continued to a wetland area at the Intersection of 240th Avenue and County Highway B14. A laboratory sample was collected from this area and the result indicated an ammonia concentration of 30 mg/L. The field office personnel attempted to locate the pipe that discharges to Buffalo Creek, but were unable to locate the pipe, which was likely submerged because of the recent heavy rainfall. A field test of the water ponded in the area of the pipe did not indicate elevated levels of ammonia, likely due to other field drainage that diluted the stockpile runoff.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: FARM NUTRIENTS, LLC

5. On June 18, 2015, Mr. Klatt spoke to Adam Cook, Farm Nutrients' representative, and explained that the field office had documented manure runoff from the stockpile to the road ditch and that additional controls were needed. On June 19, 2015, Mr. Cook contacted Mr. Klatt and informed him that a berm and trench had been constructed at the stockpile. On June 19, 2015, Mr. Klatt spoke to Jay Mayland, son of Irene Mayland. Mr. Mayland had authorized the stockpile on Ms. Mayland's property. Mr. Klatt explained that the field office had documented manure runoff from the stockpile to the road ditch and that steps should be taken to ensure there was no further runoff. Mr. Mayland stated he would remove and transport any runoff from the trench to an empty manure storage structure at his facility. On June 26, 2014, DNR Field Office 2 sent a letter to Mr. Cook and Mr. Mayland summarizing the stockpile runoff and reminding them that adequate controls must be installed to keep manure out of the road ditch. On June 30, 2015, DNR Field Office 2 received a complaint stating that the soil berm had been breached by a heavy rain event. DNR Field Office 2 left a message for Mr. Mayland to repair the berm and to contact DNR Field Office 2. Mr. Mayland did not return the telephone call to DNR Field Office 2.

6. On July 25, 2014, DNR Field Office 2 received a complaint regarding discolored water smelling like chicken manure flowing into Buffalo Creek. The complainant stated that the water was discharging through a culvert under the road and that it was dark enough to cause a plume as it entered the creek. On the same day, Dan Bratrud and Cindy Garza, DNR Field Office 2 environmental specialists, visited the stockpile to investigate the complaint. At the time of the investigation there was no water flowing in the road ditch from the stockpile, but there was water still standing in the road ditch. The field office personnel noted discolored water standing in the field outside of the bermed area. The field office personnel conducted field tests in the road ditch, approximately 100 feet south of the stockpile discharge point and at the outlet of the culvert leading from the ditch to Buffalo Creek, both field tests indicated high levels of ammonia. The field office personnel collected laboratory samples from the same locations. The laboratory sample results from the road ditch indicated an ammonia concentration of 26 mg/L and a Chemical Oxygen Demand (COD) concentration of 1,500 mg/L and the laboratory sample results from the culvert outlet indicated an ammonia concentration of 14 mg/L and a COD concentration of 300 mg/L. The field office personnel conducted field tests from a bridge 150 feet upstream of the culvert outlet and one mile downstream in Buffalo creek and the field tests indicated no detectable ammonia. The field office personnel collected laboratory samples from the bridge 150 feet upstream of the culvert outlet and from a location approximately 200 feet downstream of the culvert outlet. The laboratory sample results from the bridge upstream of the culvert outlet indicated an ammonia concentration of 0.060 mg/L and a COD concentration of 21 mg/L and the laboratory sample results downstream of the culvert outlet indicated an ammonia concentration of 0.21 mg/L and a COD concentration of 27 mg/L. Ms. Garza contacted Mr. Mayland to inform him of the runoff. Mr. Mayland was on vacation and unable to do anything regarding the runoff. He suggested that Ms.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: FARM NUTRIENTS, LLC

Garza contact Farm Nutrients. Ms. Garza contacted Mr. Cook and informed him that the field office had documented water quality violations from the runoff from the stockpile. She told him that action needed to be taken immediately to stop the discharge. Mr. Cook stated he would visit the stockpile that day and keep the field office informed of what measures were taken to control the discharge. On July 30, 2015, Mr. Cook sent the field office photographs of the construction of a more substantial soil berm. Mr. Cook also talked with Ms. Garza on the telephone regarding the construction of the berm. Mr. Cook stated that Farm Nutrients would no longer be using the site after the current year. Farm Nutrients would be stockpiling in a hoop building with concrete walls near Corwith, Iowa in the future.

7. On September 6, 2014, DNR issued a Notice of Violation letter to Farm Nutrients for the water quality violations that occurred as a result of a discharge from Farm Nutrients' stockpile. The letter informed Farm Nutrients that the violations were being referred for further enforcement.

IV. CONCLUSIONS OF LAW

Farm Nutrient neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 2's investigation it was determined that runoff from Farm Nutrients' manure stockpile was discharged into a water of the state. The above-mentioned facts indicate violations of this provision

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Additionally, DNR Field Office 2 personnel observed discolored water with a manure odor in the road ditch and in Buffalo Creek. The above mentioned facts indicate violations of the general water quality criteria.

V. ORDER

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

1. Farm Nutrients shall submit an affidavit to DNR Field Office 2 within 30 days of the date the Director signs this administrative consent order stating the use of the stockpile has been discontinued and all stockpile material has been properly removed;

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: FARM NUTRIENTS, LLC

2. If the use of the stockpile has not been discontinued, Farm Nutrients shall submit a written plan to DNR Field Office 2 within 30 days of the date the Director signs this administrative consent order detailing how runoff will be controlled in the future to prevent water quality violations; and

3. Farm Nutrients shall pay a penalty of \$5,000.00. \$1,250.00 of the penalty shall be paid to the DNR within 60 days of the date the Directors signs this administrative consent order. In lieu of payment of the remaining \$3,750.00, Farm Nutrients shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Kossuth County Conservation Board. Farm Nutrients shall make a payment of \$3,750.00 to the Kossuth County Conservation Board within 60 days of the date the Director signs this administrative consent order. Once the payment is made, Farm Nutrients shall submit a receipt of payment to Kelli Book, attorney for the DNR.

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 violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. 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 or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Farm Nutrients gained an economic benefit by delaying or avoiding the costs associated with properly controlling the runoff from the stockpile. Farm Nutrients had at least three options to adequately control the runoff from the stockpile. Farm Nutrients could have taken steps to construct adequate controls when it was first notified of the problem in June 2014. Farm Nutrients could have land applied from the stockpile to eliminate the threat of runoff. Farm Nutrients could have constructed covered

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: FARM NUTRIENTS, LLC

storage to properly control the runoff. Delaying the installation of adequate controls, avoiding land application costs, and avoiding the construction of covered storage at this location allowed Farm Nutrients to gain an economic benefit and use the saved funds for other purposes. Based on the above-factors, \$1,000.00 is being 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 2 documented water quality violations that impacted Buffalo Creek on at least one occasion. It is likely that previous runoff from the stockpile resulted in water quality violations that impacted Buffalo Creek, but the time lapse between the rain events and the time the investigations occurred allowed the runoff to be diluted and flushed through the creek before samples could be collected. These violations threaten the integrity of the water quality program. Additionally, DNR Field Office 2 expended a large amount of staff time responding to complaints and working to ensure the runoff from the stockpile was properly controlled. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Farm Nutrients 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. DNR Field Office 2 notified Farm Nutrients on several occasions of the need to properly control the runoff and yet Farm Nutrients failed to install proper controls until after the documented discharge to Buffalo Creek occurred. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: FARM NUTRIENTS, LLC



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 2nd day of
June, 2015.



Farm Nutrients, LLC

Dated this 11th day of
MAY, 2015.

Kelli Book; Dan Bratrud, Field Office #2; EPA; VIII.D