

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

IN THE MATTER OF:

PORTER FARMS, INC.

Jefferson County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO-16

TO: Nathan Porter, Registered Agent
Porter Farms, Inc.
1930 250th Street
Fairfield, Iowa 52556

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Porter Farms, Inc. (Porter Farms) for the purpose of resolving violations resulting from a manure discharge to a tributary of Cedar Creek in Jefferson County, Iowa. 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 Kacer, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
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: 515/725-9572

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; Iowa Code chapter 459 and the rules adopted or permits issued pursuant

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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. Porter Farms owns properties in Jefferson County, Iowa including two swine confinement buildings located at 1990 250th Street, Fairfield, Iowa (Sections 22 and 23, Liberty Township, Jefferson County). On November 20, 2014, a Porter Farms' tank being pulled by a tractor on 250th Street overturned due to a mechanical malfunction and released manure that was being transported from the facility into an unnamed tributary of Cedar Creek south of Fairfield. Mark Porter with Porter Farms contacted DNR Field Office 6 to report the spill. Mr. Porter stated Porter Farms was in the process of bringing earth-moving equipment to the site to dam the tributary downstream of the release.

2. On November 20, 2014, Josh Sobaski, Jeff Thomann, and Jim Kacer, DNR Field Office 6, arrived on the site of the release. Porter Farms had constructed two dams in the tributary downstream of the release location. One of the dams was near the release point and the other dam was several hundred feet further downstream. The land on which the manure was released and on which the dams were constructed is owned by Porter Farms. The field office personnel noted a small amount of water leaching through the second dam; however Porter Farms added more soil to the dam and stopped the leak. The field office personnel told Nathan Porter with Porter Farms that the manure residue would need to be washed from the banks and the sediment, and that the water used for this could be land applied on Porter Farms' property adjacent to the tributary. Porter Farms began the removal and application process immediately.

3. The field office personnel collected several water samples from the area. They began upstream of the release, from the branch of the tributary flowing east on the north side of 250th Street. This field test did not detect any ammonia and the water was very clear and colorless. The laboratory sample results indicated a BOD concentration of <2 mg/L, a TSS concentration of 78 mg/L, an ammonia concentration of 0.1 mg/L and an E.coli concentration of 51 [MPN]/100 mL. No fish were observed in this area. The field office personnel continued upstream of the release, at the branch of the tributary that flows north through the culvert under 250th Street. The field test did not detect any ammonia and the water was very clear and colorless. The laboratory sample results indicated a BOD concentration of <2 mg/L, a TSS concentration of 12 mg/L, and an ammonia concentration of 0.16 mg/L. No fish were observed in this area. The field office personnel travelled to the area of the tributary between the two dams. A field test of this area indicated ammonia concentrations above 3 mg/L and the water was very turbid with a strong manure odor. The laboratory sample results indicated a BOD concentration of 2,200 mg/L, a TSS concentration of 1,500 mg/L, an ammonia concentration of 210 mg/L and an E.coli concentration of 83,000 [MPN]/100 mL. The field office personnel observed

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approximately six small dead fish in this area. The field office personnel concluded the sampling downstream of the second dam. The field test did not detect any ammonia and the water was very clear and colorless. The laboratory sample results indicated a BOD concentration of 7 mg/L, a TSS concentration of 41 mg/L, an ammonia concentration of 0.15 mg/L and an E.coli concentration of 200[MPN]/100 mL. DNR Fisheries personnel were notified of the dead fish but were unable to conduct an accurate count before the cleanup had started.

4. On November 21, 2014, Mr. Kacer returned to the site to check on the cleanup process. Porter Farms personnel were cleaning the stream banks and the sediment, starting from the release point and working downstream to the second dam. Mr. Kacer conducted a field test downstream of the release point and the ammonia concentration was approximately 3.0 mg/L. Mr. Kacer instructed Nathan Porter to continue the rinsing operation. Mr. Kacer returned on November 22, 2014 and Porter Farms continued to run pond water into the tributary and continued to collect it behind the second dam for land application. Mr. Kacer conducted a field test just upstream of the second dam and the ammonia concentration was approximately 2.0 mg/L. Mr. Kacer instructed Nathan Porter to continue the pumping at least for the remainder of the day. Mr. Porter stated he was concerned with the heavy rain predicted the following day. Mr. Kacer stated he understood and that he would return the following week.

5. On November 25, 2014, Mr. Kacer returned to the site and spoke to Nathan Porter. Mr. Porter stated that the rainfall event had caused the stream to overflow the dam, but the dam had not been washed out. Porter Farms continued to remove water from the tributary until the rainfall event forced them to stop. Mr. Kacer conducted a field test just upstream of the second dam and the ammonia concentration was approximately 1.0 mg/L. The water was colorless and displayed low turbidity. Mr. Kacer told Mr. Porter he considered the cleanup operation to be complete. Porter Farms submitted its 30-day spill report to the field office on December 8, 2014.

6. On December 23, 2014, DNR issued a Notice of Violation letter to Porter Farms for the water quality violations discovered by DNR Field Office 6 during the November investigation. The letter stated the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

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2. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 6's investigation in November 2014, it was determined that manure from the Porter Farms facility was discharged into a tributary of Cedar Creek. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 6's investigation in November 2014, it was determined that manure from the Porter Farms facility was discharged into a tributary of Cedar Creek. The above facts indicate violations of this provision.

4. 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 levels of pollutants in a tributary of Cedar Creek. DNR Field Office 6 also noted turbid water with a manure odor and dead fish. The above mentioned facts indicate a violation of the general water quality criteria.

5. The DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Porter Farms implements the requirements set forth in Paragraphs 1-2, Section V. Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Porter Farms agrees to do the following:

1. Porter Farms shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;
2. Within 30 days of the date the Director signs this administrative consent order, Porter Farms shall develop a Standard Operating Procedure detailing a preventative maintenance program for its equipment. The Standard Operating Procedure shall also detail how employees will be trained in proper operation of the equipment. It shall also include information on how the facility will prevent any releases of manure during its operations. It shall also set out how Porter Farms will control and contain any manure release from the

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facility or its operations to prevent the manure from reaching a water of the state. A copy of the Standard Operating Procedure shall be submitted to DNR Field Office 6 within 45 days of the date the Director signs this administrative consent order; and

3. Porter Farms, Inc. shall pay an administrative penalty in the amount of \$1,000.00 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 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 \$1,000.00. 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.” Porter Farms may have gained a minimal economic benefit by failing to have preventative maintenance plan for its equipment. Based on the above facts, an economic benefit of \$50.00 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 6 documented a manure discharge that impacted a tributary of Cedar Creek. These violations threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$900.00 is assessed for this factor.

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Culpability –Porter Farms 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. Therefore, \$50.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Porter Farms. For that reason Porter Farms waives the right to appeal this administrative consent order or any part thereof.

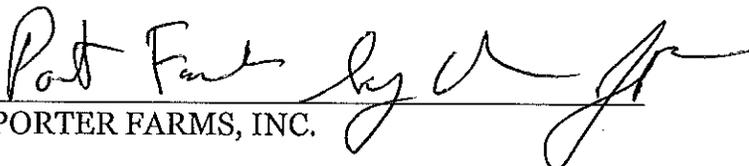
VIII. NONCOMPLIANCE

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.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 2nd day of
June, 2015.



PORTER FARMS, INC.

Dated this 25 day of
May, 2015.

Facility #62630; Kelli Book, DNR Field Office 6, EPA, VIII.D.1.a, VIII.D.3.a