

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

IN THE MATTER OF:

LINDOAH, L.L.C. dba HOG HAVEN

Montgomery County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO-24

TO: Lindoah, L.L.C.
555 Skokie Blvd., Suite 555
Northbrooke, IL 60062

CT Corporation System, Registered Agent
400 E Court Avenue
Des Moines, IA 50309

Vic Heller
Hog Haven
2075 G Avenue
Red Oak, IA 51566

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Lindoah, L.L.C. dba Hog Haven (Hog Haven) for the purpose of resolving water quality violations resulting from a manure discharge. 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:

Dan Weber, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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

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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 violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant 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. Lindoah, L.L.C. owns an animal confinement feeding operation, known as Hog Haven, located at 2075 G Avenue, Red Oak, Iowa (1/4 of the SE 1/4 of Section 30, Red Oak Township, Montgomery County, Iowa). Vic Heller operates Hog Haven. The facility is a 3,200 head (1,280 animal units) swine wean to finish facility utilizing shallow pits under the confinement buildings that drain to an earthen basin for manure storage.

2. In the morning of April 28, 2015, Ms. Heller contacted DNR Field Office 4 to report a manure release that occurred at Hog Haven during the night and discovered in the morning. She stated that the manure release was due to a water supply line breaking and filling the confinement building's shallow pits. She stated that an unknown amount of clean water and manure from the pit overflowed onto the ground surrounding the confinement building. Ms. Heller stated the leaking water supply line had been shut off and the overflowing pits were being pumped into the lagoon.

3. On April 28, 2015, Dan Olson, DNR Field Office 4 environmental specialist senior, Josh Chambers and Dan Weber, DNR Field Office 4 environmental specialists, visited the Hog Haven facility to investigate the manure release. The field office personnel observed pooled liquid in front of the facility. The liquid drained to the east where it entered a short section of cement culvert. The culvert then drained into another culvert in the road ditch. The field office personnel observed water in the road ditch and culvert flowing to the south where it drained into an unnamed tributary of the East Nishnabotna River.

4. The field office personnel collected laboratory samples of the impacted areas and the results are shown below:

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Location	E.Coli Concentration (MPN/100 ml)	Ammonia Concentration (mg/L)
Upstream of the culvert	200	0.06
Road Ditch where culvert was discharging	>600,000	46
Downstream in the unnamed tributary	89,000	0.82

Further investigation by the field office personnel determined that a Red Oak city water line was broken and was discharging additional water into the ditch north of the facility. The additional water may have contributed to how far the manure traveled in the tributary, but it may have also diluted the above-noted sample results.

5. Following the instructions of the field office personnel, Hog Haven employees constructed earthen basins near the fence line where the liquid was leaving the property as well as where the road ditch entered the unnamed tributary. Hog Haven employees pumped the liquid from the road ditch and land applied it to crop ground until there were no traces of ammonia.

6. On June 4, 2015, DNR issued a Notice of Violation letter to Ms. Heller for the violations discovered at the Hog Haven facility in April 2015.

7. Hog Haven has been issued three Notice of Violation letters in 2003, 2007, and 2012 for manure management plan violations. The facility has also been issued a Notice of Violation letter in 2009 for failing to contain all manure and insufficient freeboard. Additionally in 2011, a water line broke at the facility causing the pits to overflow resulting in manure to be released to the ground.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.104 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.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 4 documented a manure discharge from Hog Haven's facility to an unnamed tributary of the East Nishnabotna River. Laboratory results indicated elevated levels of pollutants in the tributary. The above-mentioned facts indicate a violation of this provision.

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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. DNR Field Office 4 documented a manure discharge from Hog Haven's facility to an unnamed tributary of the East Nishnabotna River. The above facts indicate a violation of this provision.

4. DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 3 Section IV. Conclusions of Law will recur if Hog Haven implements the requirements set forth in Paragraphs 1-2, Section V. Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Hog Haven agrees to do the following:

1. Hog Haven shall operate and maintain all animal feeding operation structures in compliance with all applicable DNR rules and regulations;
2. Within 30 days of the date the Director signs this administrative consent order, Hog Haven shall develop a Standard Operating Procedure detailing a preventative maintenance program for its equipment, including all water lines and transfer pipes. Preventative maintenance shall address the standard maintenance plan as well as the possibility of redirecting the piping or installing an overflow alarm. The Standard Operating Procedure shall detail how employees will be trained in proper operation and maintenance of the equipment. A copy of the Standard Operating Procedure shall be submitted to DNR Field Office 4 for approval within 45 days of the date the Director signs this administrative consent order; and
3. Hog Haven 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

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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.” Hog Haven gained an economic benefit by failing to be proactive in ensuring the water lines at the facility were in good working order. Hog Haven has delayed the costs associated with developing and implementing a preventative maintenance plan for ensuring all equipment and water lines are in proper working order. Based on the above facts, the economic benefit Hog Haven received was at least \$100.00 and that amount is 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 4 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore \$800.00 is assessed for this factor.

Culpability – Hog Haven 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. A city water line broke and contributed to the amount of water in the ditch; however this did not cause the manure being released from the Hog Haven facility. Therefore, \$100.00 is assessed for this factor.

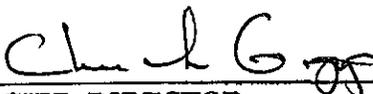
VII. WAIVER OF APPEAL RIGHTS

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

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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 8th day of
September, 2015.



LINDOAH, L.L.C. By: David D. Dunham
Its: Authorized Member
Kelli Book; DNR Field Office 4; EPA; I.C.1, VIII.D.1.a and VIII.D.3.a

Dated this 24th day of
August, 2015.