

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

<p>IN THE MATTER OF:</p> <p>ANTHONY NAGEL</p> <p>Wayne County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2015-AFO- 31</p>
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TO: Anthony Nagel
2601 140th Street
Allerton, Iowa 50008

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Anthony Nagel 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:

Jeff Theobald, Field Office 5
Iowa Department of Natural Resources
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324
Phone: 515/725-0268

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 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.

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III. STATEMENT OF FACTS

1. Anthony Nagel owns and operates an 83 head dairy cow confinement facility. The facility consists of one confinement building with a circular formed concrete pit east of the building that collects all solids and liquids from the dairy operations. The facility was constructed in 2012 and is located at 2601 140th Street; Allerton, Iowa.

2. On October 27, 2014, DNR Field Office 5 received a telephone call from Dave Rhodes, Wayne County Sanitarian. Mr. Rhodes stated that the dairy parlor waste and manure was overflowing the storage basin at Mr. Nagel's facility. Mr. Rhodes stated the flow path lead to a tributary of Medicine Creek.

3. On October 28, 2014, Anthony Bigger, DNR Field Office 5 environmental specialist, and Mr. Rhodes visited Mr. Nagel's facility. Mr. Bigger and Mr. Rhodes noted that the storage basin was overflowing and the flow path was discharging through a culvert to the tributary. They collected water samples from the tributary at three locations: 50 feet upstream of the discharge point; 50 feet downstream of the discharge point; and 500 feet downstream of the discharge point. The laboratory results indicated the following:

Location	Biological Oxygen Demand (BOD)	Ammonia – Nitrogen
Upstream Location	<2 mg/L	0.13 mg/L
50 feet Downstream Location	140 mg/L	120 mg/L
500 feet Downstream Location	6 mg/L	12 mg/L

4. On October 29, 2014, Bill Gross, DNR Field Office 5 environmental specialist senior, contacted Mr. Nagel and instructed him to immediately pump down the manure storage basin and properly land apply the contents. Mr. Nagel stated he would pump the basin down and properly land apply the contents.

5. On October 30, 2014, Jeff Theobald, DNR Field Office 5 environmental specialist, and Mr. Bigger returned to Mr. Nagel's facility to conduct a follow-up inspection. The field office personnel observed that there was no manure flowing into the tributary and the manure that had flowed down the hill to the tributary had been scraped up. Some manure was observed around the base of the basin and the field office personnel instructed Mr. Nagel to scrape off the manure and land apply it. The basin was 12 feet deep and 118 feet in diameter with 10 inch thick walls and floor. The basin was filled to capacity with liquid and solids built up exceeding the top level of the basin. The confinement building was built on the slope of the hill and because of the slope of the hill, during heavy rain events the water makes it through

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the building and into the basin. Mr. Nagel stated he had not been able to pump the basin down and after a heavy rain event a few weeks prior the basin started to overflow.

6. Mr. Theobald and Mr. Bigger followed the manure path and noted that the tributary of Medicine Creek where the manure entered flowed to the southeast under 140th Street and went approximately 500 feet before entering Medicine Creek. The field office personnel collected three water samples from the following locations: at the tributary before it entered Medicine Creek; in Medicine Creek upstream of the tributary entry point; and in Medicine Creek downstream of the tributary entry point. The laboratory sample results indicated the following:

Location	Total Coliform Bacteria	E.coli	Ammonia - Nitrogen	BOD	Total Suspended Solids
Tributary	44,000 [MPN]/100mL	2,800 [MPN]/100 mL	11 mg/L	29 mg/L	240 mg/L
Upstream	21,000 [MPN]/100mL	150 [MPN]/100mL	<0.050 mg/L	<2 mg/L	4 mg/L
Downstream	2,900 [MPN]/100mL	140 [MPN]/100mL	0.16 mg/L	<2 mg/L	7 mg/L

Mr. Theobald and Mr. Bigger continued to check Medicine Creek for impacts from the manure discharge. They did not observe any dead fish and the ammonia field tests conducted several miles downstream did not show elevated levels of the pollutant.

7. On November 5, 2015, Mr. Theobald returned to Mr. Nagel's facility. He noted that the manure solids had been removed and land applied to nearby pasture ground. Mr. Theobald also noted approximately one foot of freeboard in the basin. Mr. Nagel stated that an applicator was coming within the next few days to apply the liquid manure. Mr. Theobald also determined the confinement building and storage basin were constructed within 150 feet of a water source to the northeast, north, and southeast of the facility.

8. On November 10, 2015, DNR issued a Notice of Violation letter to Mr. Nagel for the water quality violations discovered by the field office in October and November 2015. The letter requested that Mr. Nagel submit a plan of action to the field office by December 16, 2014 detailing how the facility was going to address the manure retention issues as well as the separation distance requirements for the building and basin from the water source. The letter also informed Mr. Nagel that the matter may be referred for further enforcement. On November 19, 2014, an additional Notice of Violation letter was sent to Mr. Nagel with the laboratory sample

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results from the investigation. The letter reminded Mr. Nagel of the plan of action as well as of possible enforcement.

9. On December 15, 2015, Mr. Nagel submitted a plan of action to the field office. Mr. Nagel stated he met with NRCS to discuss options for his facility. At the time of the submittal of the plan of action, Mr. Nagel was waiting to hear from NRCS to determine if a secondary containment could be constructed. The plan of action stated that if the secondary containment could not be constructed the following steps would be taken: 1) Mr. Nagel would construct a diversion to divert all clean water from entering the area; 2) he would reshape the drainage ditch and re-seed into a grassed waterway on the property; 3) he would construct an area that could immediately seal off the road culvert in the event of another manure discharge; 4) he would work with the neighboring property owners to reshape neighboring property; and 5) he would construct a diversion that would direct any possible runoff to the south away from the newly constructed waterway.

10. On August 5, 2015, Mr. Nagel submitted a revised plan of action for the facility. The revised plan included the following actions: 1) Mr. Nagel will construct a secondary containment system and berm around the existing lagoon and 2) Mr. Nagel purchased a manure pump and spreader. With the new equipment, Mr. Nagel will be able to pump and apply manure as necessary.

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 5 documented a manure discharge from Mr. Nagel's facility to a tributary of Medicine Creek. Laboratory results indicated an elevated level of ammonia in the tributary. The above-mentioned facts indicate a violation of this provision.

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 5 documented a manure discharge from Mr. Nagel's facility to a tributary of Medicine Creek. The above facts indicate a violation of this provision.

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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 pollutants. The above mentioned facts indicate a violation of the general water quality criteria.

5. 567 IAC 65.2(9) requires that a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release to notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Mr. Nagel told DNR Field Office 5 that the basin began overflowing several weeks prior to the field office's visit. The release was not reported to the DNR. The above mentioned facts indicate a violation of this provision.

6. 567 IAC 65.2(3)(b) requires that manure stored in formed manure storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard. During the field office visit, it was noted the basin did not have the minimum one foot of freeboard. The above mentioned facts indicate a violation of this provision.

7. DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 6, Section IV. Conclusions of Law will recur if Mr. Nagel implements the requirements set forth in Paragraphs 1-3, Section V. Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Anthony Nagel agrees to do the following:

1. Anthony Nagel shall operate and maintain all animal feeding operation structures in compliance with all applicable DNR rules and regulations;
2. Anthony Nagel shall maintain one foot of free-board in the basin and record the levels on a daily basis. The records shall be submitted to DNR Field Office 5 on a monthly basis from the date the Director signs this administrative consent order. If the one foot of freeboard is breached, Mr. Nagel shall contact DNR Field Office 5 within 24 hours and make arrangements to pump down the basin. This recordkeeping requirement will be discontinued once the construction of the containment and berm has been completed;

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3. Anthony Nagel shall construct a secondary containment system and berm around the existing lagoon within 180 days of the date the Director signs this administrative consent order; and
4. Anthony Nagel 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.” Mr. Nagel gained an economic benefit from delaying the land application of the liquid and solid manure from the basin. When the basin needed to be pumped down, Mr. Nagel did not have crop fields available and would have had to land apply to other farms that he did not own, thus losing the value of the manure fertilizer. Mr. Nagel would have then had to purchase commercial fertilizer. Based on the above facts, the economic benefit Anthony Nagel 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 5 documented a manure discharge that led to

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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. Additionally, DNR Field Office 5 made several visits to Mr. Nagel's facility to assist in compliance at the facility. Therefore \$800.00 is assessed for this factor.

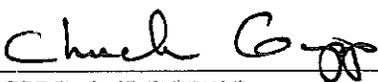
Culpability –Anthony Nagel has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Nagel failed to notify the DNR of the manure release once he became aware of the release. Therefore, \$100.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

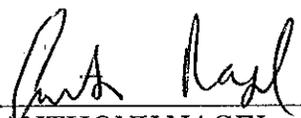
VIII. NONCOMPLIANCE

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 14th day of
October, 2015.



ANTHONY NAGEL

Dated this _____ day of
_____, 2015.

Kelli Book; DNR Field Office 5; EPA; I.C.1, VIII.D.1.a and VIII.D.3.a