

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

IN THE MATTER OF:

**PAUL SEALINE
Facility #61087
Hamilton County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2016-AFO-01

TO: Paul Sealine
1535 360th Street
Stratford, Iowa 50249

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Paul Sealine for the purpose of resolving water quality violations relating to a manure discharge at Mr. Sealine's facility. 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:

Carl Berg, Field Office 2
Iowa Department of Natural Resources
2300 15th S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PAUL SEALINE

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

III. STATEMENT OF FACTS

1. Paul Sealine owns and operates a three-building, 2,880 head swine finishing confinement feeding operation. The facility has an earthen manure storage basin and a concrete manure storage tank. The facility is located at 1553 360th Street, Stratford, Iowa (SE ¼ of the SW ¼ of Section 10, Marion Township, Hamilton County, Iowa).

2. On August 29, 2015, Paul Sealine contacted DNR Field Office 2 and stated that his concrete manure storage tank would soon be underwater due to heavy rainfall. Later in the day, Carl Berg, DNR Field Office 2 environmental specialist, spoke to Mr. Sealine and the concrete tank was under water.

3. Later in the day on August 29, Mr. Berg visited Mr. Sealine's facility. Mr. Berg and Mr. Sealine observed the flooded concrete tank. Mr. Sealine stated the concrete tank was 10 feet deep and had a diameter of 60 feet. The concrete tank was still under about three inches of water. Mr. Berg noted that the water had receded about 8-12 inches around the perimeter of the pond. Mr. Sealine stated that the surface intake in the road ditch was backing up water onto the facility property and flooded the tank. Mr. Sealine stated he had applied about 100,000 gallons of manure in the spring from the concrete tank. The earthen basin did not flood but was full and Mr. Berg noted it had just over a foot of freeboard. Mr. Sealine stated he would transfer manure temporarily from the concrete tank into his shallow building manure storage pits so he could maintain a foot of freeboard in the concrete tank until he was able to land apply the manure. He stated he would land apply to achieve at least two feet of freeboard in the concrete tank once the field conditions dried up.

4. Mr. Berg conducted field tests of the ponded water about fifteen feet southwest of the concrete tank. The ammonia concentration was greater than 3 mg/L and the water had a slight brown color. Mr. Berg also collected a sample for laboratory analysis from this area. The laboratory results indicated the following concentrations: ammonia – 8.9 mg/L and chemical oxygen demand – 160 mg/L.

5. Mr. Berg continued to the road ditch and conducted field tests on the ponded water in the road ditch near the intake. The ammonia concentration was greater than 3 mg/L and the water had a slight brown color. Mr. Berg also collected a sample for laboratory analysis from this area. The laboratory results indicated the following concentrations: ammonia – 8.5 mg/L and chemical oxygen demand – 140 mg/L. The intake was under water but a metal sign indicated where the intake was located in the road ditch. The tile intake was approximately 250 feet southeast of the concrete tank.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PAUL SEALINE

6. Mr. Berg proceeded to the nearest waterbody, Squaw Creek to determine if there was an impact to the stream. Mr. Berg proceeded south on Gerber Avenue but the road became impassable due to the flooding conditions. Mr. Berg traveled east to Hammond Avenue and observed Squaw Creek at the bridge crossing. The creek was out of its banks and the stream was even with the bridge deck. No fish were observed at this location. A field test indicated an ammonia concentration of <0.4 mg/L. Mr. Berg collected a sample for laboratory analysis from this area. The laboratory results indicated the following concentrations: ammonia – 0.17 mg/L and chemical oxygen demand – 52 mg/L. Due to the significant rainfall and subsequent dilution, minimal impact was observed on Squaw Creek.

7. On September 21, 2015, DNR issued a Notice of Violation letter to Mr. Sealine for the violations observed by Mr. Berg in August. The letter required Mr. Sealine to submit a Plan of Action by November 23, 2015 detailing how future discharges would be prevented. The letter also informed Mr. Sealine the matter was being referred for further enforcement.

8. On October 16, 2015, Mr. Sealine submitted a Plan of Action addressing the manure release. The Plan of Action detailed the following actions: 1) contact Neese Inc. to pump out the concrete tank and 2) contact K&M Construction to add an additional two feet of concrete to the height of the existing tank. The Plan of Action stated that due to the availability of the contractors the projected start date is May 1, 2016. The Plan of Action also stated Mr. Sealine would hire a professional engineer to submit design plans to DNR. On October 16, 2015, DNR approved the Plan of Action dependent on DNR engineering approval. The approval email provided the contact information for Paul Petitti, DNR environmental engineer senior.

9. The facility has had previous manure releases at the facility. In August 2010, Mr. Sealine spoke to DNR Field Office 2 regarding the flooding of the concrete tank. DNR Field Office 2 reminded Mr. Sealine to contact the field office on manure releases within 6 hours. In April 2012, DNR and Mr. Sealine entered into an administrative consent order regarding an August 2011 manure application that resulted in water quality violations and a fish kill.

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.

2. 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. The concrete tank at Mr. Sealine's facility was inundated from

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PAUL SEALINE

surface water drainage from a significant rainfall event causing the concrete tank to be under water. The field and laboratory test results indicated similar elevated levels of ammonia and chemical oxygen demand depleting pollutants outside of the tank and at the ponded surface intake in the road ditch. This data establishes that the surface water was contaminated by the manure from the concrete tank. The field and laboratory test results also demonstrate that the facility's failure to retain all manure resulted in a discharge to a water of the state. The above 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. The concrete tank at Mr. Sealine's facility was inundated from surface water drainage from a significant rainfall event causing the concrete tank to be under water. The field and laboratory test results indicated similar elevated levels of ammonia and chemical oxygen demand depleting pollutants outside of the tank and at the ponded surface intake in the road ditch. This data establishes that the surface water was contaminated by the manure from the concrete tank. The field and laboratory test results also demonstrate that the facility's failure to retain all manure led to a discharge to a water of the state. 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 Mr. Sealine implements the requirements set forth in Paragraph 8, Section III. Statement of Facts and Paragraph 1, Section V. Order of this administrative consent order. A future discharge at the facility may result in the requirement of a NPDES permit for the facility.

V. ORDER

THEREFORE, the DNR orders and Paul Sealine agrees to do the following:

1. Paul Sealine shall comply with the Plan of Action detailed in Paragraph 8, Section III Statement of Facts. The construction of the additional height to the concrete tank shall be completed by July 15, 2016. Mr. Sealine shall take necessary actions to prevent rain water from reaching the concrete tank until the construction is completed; and
2. Paul Sealine shall pay an administrative penalty in the amount of \$500.00 within 30 days of the date the Director signs this administrative consent order; and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PAUL SEALINE

3. If the requirements referenced in Paragraph 1 of this section is not completed by July 15, 2016, Paul Sealine shall pay a stipulated penalty in the amount of \$500.00 per month for each month the requirement in Paragraph 1 is not completed up to \$9,500.00. The stipulated penalty will be in addition to the administrative penalty assessed in Paragraph 2 of this section.

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 \$500.00 and stipulated penalties for violations of the compliance schedule of this administrative consent order.

The stipulated penalties in this administrative consent order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to Mr. Sealine for failing to complete construction of the additional wall height. Such penalties are related to the probable severity of the violation in that not meeting the compliance schedule in this administrative consent order is a fairly serious matter. The penalties would also be related to future culpability in that Mr. Sealine has been put on notice by this administrative consent order that stipulated penalties will result if the compliance schedule is not met. The administrative penalty is 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.” The heavy rainfall event caused the concrete tank to be flooded and the manure to be released. The concrete tank had overflowed as a heavy rain event previously but Mr. Sealine did not take actions to prevent a future overflow at the time of the previous flooding. Mr. Sealine delayed the costs associated with the construction of additional tank height and that delay

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PAUL SEALINE

has resulted in an economic benefit of 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. Although the release was accidental, manure was released. The violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$200.00 is assessed for this factor.

Culpability – Paul Sealine 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. The concrete tank had flooded previously and no preventative steps had been taken to prevent future flooding. The area did receive a large rainfall event and Mr. Sealine did contact the DNR prior to the tank being flooded. Once the flooding occurred, Mr. Sealine cooperated with the DNR to limit the impact of the manure release. Therefore, the culpability is minimal and \$200.00, is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Paul Sealine. For that reason Paul Sealine 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: PAUL SEALINE

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 25th day of
January, 2016.

Paul Sealine
Paul Sealine

Dated this 13 day of
Jan, 2016.

Facility #61087; Kelli Book, DNR Field Office 2, EPA, VIII.D.1.a