IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **KRAUSKOPF PUMPING SERVICE, LLC** #9849 CMS Allamakee County	ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO-10

TO: Krauskopf Pumping Service, LLC
Kurt Krauskopf, Registered Agent
2252 350th Street
Decorah, Iowa 52101

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Krauskopf Pumping Service, LLC (Krauskopf Pumping) for the purpose of resolving violations resulting from a manure 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:
Brett Meyers, Field Office 1
Iowa Department of Natural Resources
909 West Main Street
Manchester, Iowa 52057
Phone: (563) 927-2640

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.

III. STATEMENT OF FACTS

1. Krauskopf Pumping is a commercial manure service and was contracted by David and Ross Weymiller to pump and apply manure from the Cyclone 1 swine confinement facility.

2. On October 12, 2015, Kurt Krauskopf contacted DNR Field Office 1 to report a manure spill into Clark Creek in Allamakee County. Mr. Krauskopf stated Krauskopf Pumping was pumping manure at the Cyclone 1 facility when a manure booster pump malfunctioned allowing manure to flow to the creek bank. The pump was shut off and the operator estimated 1,000 gallons of manure was spilled. Mr. Krauskopf stated that most of the manure entered Clark Creek.

3. On October 12, 2015, Brett Meyers, DNR Field Office 1 environmental specialist, spoke to Mr. Krauskopf and Ross Weymiller regarding the cleanup. They stated the creek was dammed up and they were pumping out the creek to a nearby pasture. They estimated 140,000 gallons had been pumped from the creek. Mr. Meyers informed the men that he would not be able to investigate until the following day. Mr. Meyers asked that the pumping continue until the creek was clear of manure. Mr. Meyers notified the DNR Fisheries Bureau of a possible fish kill. They stated an investigation would begin the following day.

4. Mr. Meyers and Chris Gelner, DNR Field Office 1 environmental specialist, returned to the facility on October 13, 2015. They met with David and Ross Weymiller, Mr. Krauskopf, and Theresa Shay, DNR Fisheries Bureau. The group examined the spill area as well as the temporary dams. The dams had been removed at the time of the visit. Mr. Meyers collected field tests above the spill location, at the spill location, and above and below where the dams had been located. The field tests near the spill and above the first dam indicated the presence of ammonia. A laboratory sample from the spill location indicated an ammonia concentration of 0.15 mg/L and a laboratory sample from the dam location indicated an ammonia concentration of 0.16 mg/L. Mr. Meyers did not observe any dead fish in this area. However, Ms. Shay did find two dead fish below the spill location.

5. On January 20, 2016, DNR issued a Notice of Violation letter to Krauskopf Pumping for the violations discovered during the October 2015 investigation. The letter stated the matter may be 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.

2. Iowa Code section 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 1's investigation it was determined manure was released to the creek during the manure transfer. The above-mentioned facts indicate a violation 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 1's investigation it was determined manure was released to the creek during the manure transfer. The above-mentioned facts indicate a violation of this provision.

4. Based on the fact Krauskopf Pumping has no previous violations, the DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Krauskopf Pumping implements the requirements set forth in Paragraphs 1-2, Section V [Order] of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Krauskopf Pumping agrees to do the following:

1. Krauskopf Pumping 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, Krauskopf Pumping shall develop a Standard Operating Procedure detailing an extensive employee training program, including but not limited to proper placement of drag line hoses, maintenance and operation of equipment, and how to check equipment prior to use. A copy of the Standard Operating Procedure shall be submitted to DNR Field Office 1 and the Standard Operating Procedure shall be implemented by Krauskopf Pumping immediately upon receipt of approval from DNR Field Office 1; and

3. Krauskopf Pumping shall pay an administrative penalty in the amount of $2,000.00 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 $2,000.00. 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." Krauskopf Pumping gained an economic benefit by avoiding the costs associated with ensuring proper placement of the pumping equipment. The pump could have been moved farther from the creek if an additional section of drag line had been attached before pumping the manure. Based on the above-mentioned information $100.00 is being assessed.

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 1 documented a manure release to a creek that posed a potential risk to the environment and resulted in animal feeding operation regulation 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, $1,400.00 is assessed for this factor.

Culpability – Krauskopf Pumping 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. Krauskopf Pumping did construct a dam to stop the flow of the manure and immediately notified the DNR of the manure release. Therefore, $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 Krauskopf Pumping. For that reason Krauskopf Pumping 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

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 13th day of April, 2016.

Krauskopf Pumping Service by

KRAUSKOPF PUMPING SERVICE, LLC

Dated this 7 day of April, 2016.

Kelli Book, DNR Field Office 1, EPA, VIII.D.1 and VIII.D.3