

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

IN THE MATTER OF:

Carroll Farms LLC

**Lee County, Iowa
AFO #59711**

ADMINISTRATIVE CONSENT ORDER
NO. 2016-AFO-12

TO: David Carroll
Carroll Farms LLC
1626 East County Road 1300
Carthage, IL 62321

Daniel Carroll, Registered Agent
Carroll Farms LLC
1322 North County Road 1600
Carthage, IL 62321

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Carroll Farms LLC (Carroll Farms) for the purpose of resolving water quality violations resulting from a manure discharge at Carroll Farms animal feeding operation in Lee 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:

Jeff Prier, 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 thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CARROLL FARMS LLC

III. STATEMENT OF FACTS

1. Pieper, Inc. owns an animal feeding operation located at 3635 190th Street, Wever, Iowa (Section 21, Green Bay Township, Lee County). The facility is an 8,000 head (3,200 animal units) swine gestation confinement operation. The animal feeding operation is currently being leased and operated by Carroll Farms and David Carroll is the facility contact.

2. On January 31, 2016, DNR Field Office 6 received a complaint regarding a possible manure discharge that appeared to be coming from the Carroll Farms facility. The complainant stated that liquid had been discharged into Rogers Ditch, south of 190th Street, Wever, Iowa. The liquid in the ditch was discolored and had a strong manure odor.

3. On the same day, Brian Lee, DNR Field Office 6 environmental specialist, investigated the complaint. He arrived at the area where the liquid was being discharged to Rogers Ditch. Mr. Lee observed standing liquid approximately 100 yards in the field in the depression leading to Rogers Ditch. The discharge to Rogers Ditch was dark in color with a manure odor. The liquid was foamy. Mr. Lee collected laboratory samples from the impacted areas. The laboratory sample results from an area approximately 50 feet upstream of the discharge point indicated the following concentration levels: E.coli – 52 [MPN]/100mL, ammonia – 0.28 mg/L, biological chemical demand (BOD) - <2 mg/L, and total suspended solids (TSS) – 9 mg/L. The sample from this area was clear in color. The laboratory sample results from the discharge area where the discharge met the stream indicated the following concentration levels: E.coli – 1,900 [MPN]/100mL, ammonia – 64 mg/L, BOD – 130 mg/L, and TSS – 150 mg/L. The sample from this area was dark in color with a strong manure odor. The laboratory sample results from an area approximately 100 yards downstream of the discharge point indicated the following concentration levels: E.coli – 110 [MPN]/100mL, ammonia – 3.8 mg/L, BOD – 30 mg/L, and TSS – 23 mg/L. The sample from this area was slightly dark in color with a slight manure odor. Mr. Lee attempted to contact someone at the Carroll Farms facility but no one was present.

4. On February 1, 2016, Jeff Prier, DNR Field Office 6 environmental specialist senior, contacted Mr. Carroll for more information about the potential discharge at the facility. Mr. Carroll stated that manure was being transferred over the weekend, but he was unsure if there had been a spill. Mr. Carroll stated he was off site, but would contact his farm manager. During a second call, Mr. Carroll stated he was trying to get a farmhand directed to the discharge location.

5. Mr. Prier and Jeff Thomman, DNR Field Office 6 environmental specialist, travelled to the discharge location. They noted manure discharging to Rogers Ditch. The field office personnel followed the manure flow path to the Carroll Farms facility. They met with Jason Todd, the farm manager, and told him why they

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CARROLL FARMS LLC

were at the facility. They told him the manure discharge needed to be remediated immediately. The field office personnel followed the ditch west along the south side of the facility. The ditch led to the slurrystore; the field office personnel noted manure solids and liquids under the inlet/outlet piping. They also observed manure pooled in the driveway north of the slurrystore. They observed a flow path leading north from the pooled manure. They observed multiple locations where manure had flowed out of the west side of one of the confinement buildings. The field office personnel observed manure solids at the outlets of the ventilation ports on the confinement building. Liquid manure was observed pooled around several of the ventilation ports. Liquid manure was observed in the pits as well as a pump and umbilical line that was charged but did not appear to be pumping manure to the slurrystore. Manure was observed in the road ditch upon entering the facility from the field drive. There was a black tile line entering the ditch to the west of the field drive. The field officer personnel met with Mr. Todd and Tyler Lewis, facility farmhand, at this location. Mr. Todd was unsure of where the tile line came from. As for the confinement building, Mr. Todd stated that a water line had broken overnight and filled the pit causing the discharge. He contacted his boss, Drew Carroll, about the spill and then fixed the water line. He also began pumping the manure to another confinement building to stop the leak. He obtained a longer hose to pump to the slurrystore. The field office personnel asked about the manure solids on the ground in the transfer area. Mr. Todd stated that three or four months before there had been an attempt to pump slurrystore out and during that time manure solids were sprayed on the ground. Before leaving the facility, the field office personnel instructed the facility personnel to remove as much liquid as possible from the road ditch and provide pictures of the remediation effort.

6. Following the inspection, Mr. Prier spoke to Carroll Farms representatives on the telephone and explained that enforcement would likely be pursued for the violations discovered during the investigation. They stated they would begin pumping the manure and would construct an earthen berm to limit the discharge.

7. On February 3, 2016, Mr. Lee returned to the facility and impacted area. Mr. Lee observed that manure was still being discharged to Rogers Ditch. The discharge had a manure odor, was light brown in color and was foaming. Mr. Lee observed a breached earthen berm in the field drainage area. Mr. Lee spoke to a facility employee and requested additional berms be constructed and that pumping in the impacted area be continued.

8. On February 4, 2016, DNR issued a Notice of Violation letter to Carroll Farms for the violations discovered during the February investigation. The letter requested a written spill report be submitted by March 4, 2016 and advised Carroll Farms that the violations were being referred for further enforcement.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CARROLL FARMS LLC

9. On March 2, 2016, Carroll Farms submitted a Plan of Action for preventing future discharges at the facility. The plan stated daily inspection of waterlines and weekly pit levels will be recorded. Carroll Farms also developed an Emergency Action Plan that will be maintained on site. Carroll Farms also stated the outlets in the drainage ditch south of the facility had been plugged. On March 8, 2016, DNR Field Office 6 approved the Plan of Action and stated the plan should be implemented immediately.

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 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 February 2016, it was determined that manure from the Carroll Farms facility was discharged to Rogers Ditch, at water of the state. 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 6's investigation in February 2016, it was determined that manure from the Carroll Farms facility was discharged to Rogers Ditch, at water of the state. The above facts indicate violations of this provision.

4. 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. Carroll Farms failed to notify the DNR of the manure release that occurred at the facility. The above mentioned facts indicate a violation of this provision.

5. 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 DNR personnel observed brown, foamy water with a manure odor. The laboratory results indicated elevated

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CARROLL FARMS LLC

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

6. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-5, Section IV [Conclusions of Law] will occur again if Carroll Farms implement the requirements set forth in Paragraph 9, Section III [Statement of Facts] and Paragraph 1, Section V [Order] of this administrative consent order.

V. ORDER

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

1. Carroll Farms shall operate and maintain all animal feeding operation structures and production areas in compliance with all applicable rules and regulations and shall immediately implement its approved Plan of Action; and
2. Carroll Farms shall pay an administrative penalty in the amount of \$7,000.00 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 \$7,000.00. 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.” Carroll Farms gained an

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CARROLL FARMS LLC

economic benefit by failing to properly land apply the excess water that had been pumped into the pit. It is estimated that Carroll Farms gained an economic benefit of at least \$1,000.00 and that amount 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 water of the state. The violations included in this administrative consent order threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all regulated animal feeding operations in this state. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Carroll 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. Carroll Farms failed to notify the DNR of the manure release at the facility. Therefore, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Carroll Farms. For that reason Carroll Farms waive 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 1st day of
June, 2016.

David Carroll
Carroll Farms LLC

Dated this 16 day of
May, 2016

Facility #59711; Kelli Book, DNR Field Office 6, EPA, VIII.D.1.a, VIII.D.3.a