

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

<p>IN THE MATTER OF:</p> <p>Patricia Plagge Jorgensen</p> <p>Crawford County, Iowa AFO # 57986</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- 14</p>
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TO: Patricia Plagge Jorgensen
813 N. 24th Street
Denison, Iowa 51442

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Patricia Plagge Jorgensen for the purpose of resolving water quality violations resulting from a manure discharge at Ms. Plagge Jorgensen's animal feeding operation in Crawford 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:

Holly Vandemark, 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

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)

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chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Patricia Plagge Jorgensen owns and operates a 3,300 head (1,320 animal units) confinement swine grow-finish operation. The facility consists of four confinement buildings with an above ground manure storage tank (slurry store). The facility is located at 2790 250th Street, Denison, Iowa (Section 34, Denison Township, Crawford County, Iowa).

2. On November 14, 2015, DNR Field Office 4 received a call from the Crawford County Sheriff's Office reporting a manure release from the Jorgensen facility. The Sheriff's Office stated that the cap to the slurry store was removed, possibly as an act of vandalism. Ms. Jorgensen reported the incident to the Sheriff's Office and believed the manure had been released the night before. On November 14, 2015, Holly Vandemark, DNR Field Office 4 environmental specialist senior, responded to the call. When Ms. Vandemark arrived at the facility, the cap had been replaced and earthen berms were constructed at the facility and in the road ditch to contain the manure. Ms. Vandemark determined that prior to the discovery of the discharge, the manure from the tank flowed west from the slurry tank across the property to the road ditch. The manure then flowed south approximately 1/2 mile to an unnamed tributary. Ms. Vandemark noted another unnamed tributary approximately 750 feet east of the first tributary. The second tributary connected to Buck Creek approximately 2 1/2 miles downstream. Ms. Vandemark conducted field tests and collected laboratory samples from the impacted areas. The results are as follows:

Sample Location	Ammonia Concentration from Field Test (mg/L)	Ammonia Concentration from Laboratory Sample (mg/L)
50 Feet Upstream of Discharge in the First Tributary	<1	0.24
Discharge Location at the Road Ditch	>30	92
50 Feet Downstream of Discharge in First Tributary	>30	80

Ms. Vandemark did not collect samples from the second tributary because of possible influence from other open feedlots. The slurry tank was not at capacity prior to the release; therefore it was difficult for the facility personnel to determine how much manure had been released. Prior to leaving the facility, Ms. Vandemark

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spoke to Ms. Jorgensen and Ms. Jorgensen stated the pooled manure at the facility and the manure in the road ditch would be recovered and land applied. On November 15, 2015, Ms. Vandemark returned to facility and verified that the area had been cleaned up.

3. On December 9, 2015, DNR Field Office 4 received the written spill report from Ms. Jorgensen. The report indicated as soon as the discharge was discovered that the facility contacted the Sheriff's Office and began the cleanup of the manure.

4. On March 2, 2016, DNR issued a Notice of Violation letter to Ms. Jorgensen for the violations discovered during the November 2015 inspection. The letter informed Ms. Jorgensen the matter was being referred for further enforcement.

5. On April 4, 2016, Ms. Jorgensen submitted a Plan of Action to DNR Field Office 4 detailing steps that will be taken to prevent future discharges. The Plan of Action includes the following steps: 1) maintain a lock on the slurry store cap so it cannot be opened unless pumping is occurring; 2) maintain a dike in the flow area to stop any releases from entering a water of the state; and 3) make underground repairs to the cap to remove the potential for the accidental removal of the cap. Ms. Jorgensen stated the facility may be sold in the future.

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 the November 2015 investigation, DNR Field Office 4 found evidence that the manure from the Jorgensen facility was discharged to an unnamed tributary. 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 the November 2015 investigation, DNR Field Office 4 found evidence that the manure from the Jorgensen facility was discharged to an unnamed tributary. The above facts indicate violations 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 violations of the general water quality criteria.

5. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-4, Section IV [Conclusions of Law] will occur again if Ms. Jorgensen implements the requirements set forth in Paragraph 1, Section V [Order] of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Ms. Jorgensen agrees to do the following:

1. Ms. Jorgensen shall immediately implement the Plan of Action submitted on April 4, 2016, documented in Paragraph 5, Section III [Statement of Facts]; and
2. Ms. Jorgensen shall pay an administrative penalty in the amount of \$500.00 within 30 days of the Directors 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 \$500.00. 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

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benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available. The manure release was caused by a likely act of vandalism; thus no economic benefit was realized by Ms. Jorgensen. Therefore, no economic benefit 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. The discharge of manure from Ms. Jorgensen’s facility ultimately resulted in the degradation of water quality. The manure discharge from Ms. Jorgensen’s facility threatens the integrity of the animal feeding operation regulations. Therefore, \$500.00 is assessed for this factor.

Culpability – Ms. Jorgensen has a duty to know the regulations and to be aware that her actions are subject to the regulations. In this case, Ms. Jorgensen acted immediately upon discovering the release to minimize the impact of the release. The release likely was a result of vandalism and Ms. Jorgensen has taken steps to prevent similar vandalism in the future. Based on the information above, no culpability is being assessed.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Patricia Plagge Jorgensen. For that reason Patricia Plagge Jorgensen 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.

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CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
August, 2016.



Patricia Plagge Jorgensen

Dated this 10 day of
August, 2016.

AFO #57986; Kelli Book, DNR Field Office 4, EPA, VIII.D.1.a, VIII.D.3.a