

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

IN THE MATTER OF:

RYKEN FARMS, INC.

#1824 CMS Mahaska County

ADMINISTRATIVE CONSENT ORDER

NO. 2016-AFO- 10

TO: John Ryken, Registered Agent
Ryken Farms, Inc.
2689 215th Street
New Sharon, Iowa 50207

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ryken Farms, Inc. (Ryken Farms) 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:

Bill Gibbons, Field Office 5
Iowa Department of Natural Resources
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324
Phone: (515) 725-0335

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

Ryken Farms neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Ryken Farms is a commercial manure service and John Ryken is the commercial manure service manager for Ryken Farms. Ryken Farms and John Ryken also manages and operates the Ring Valley, LLC confinement animal feeding operation located in Mahaska County (SE 1/4 of NE 1/4 of Section 34, Adams Township, Mahaska County, Iowa). The facility is a 3,600 head wean to finish swine operation. The facility has two confinement buildings with formed concrete below building deep pits for manure storage.

2. On October 7, 2015, DNR Field Office 5 received a call from Kent Krause with The Pinnacle Group, LLC. Mr. Krause was calling to report a manure spill at the Ring Valley facility. He stated that Ryken Farms was filling a manure application tank and the overhead loader chute did not close completely after the tank was pulled away. The pump continued to run and manure came out of the loader and pooled on the ground. The estimated time for the chute remaining open was 10 minutes and Mr. Krause estimated approximately 3,000 gallons of manure had been pumped on the ground between the buildings. A portion of the manure flowed toward and into an unnamed tributary of the South Skunk River. As soon as the spill was discovered, personnel for Ryken Farms went downstream just south of 215th Street and constructed a dam to prevent the manure from going downstream. They began pumping the water and manure and land applying it.

3. Bill Gibbons, DNR Field Office 5 environmental specialist, visited the facility on the same day. Mr. Gibbons went to the dammed area of the tributary where Ryken Farms was pumping manure into tank wagons. Mr. Gibbons conducted a field test of the water behind the dam and it indicated an ammonia concentration of greater than 3.0 mg/L. A field test on the downstream side of the dam indicated an ammonia concentration of 1.6 mg/L. At the time Mr. Gibbons did not observe any dead fish in the impacted area.

4. On October 8, 2015, Mr. Gibbons returned to the area. Ryken Farms had continued to remove the water and manure from behind the dammed area. The field test of the water behind the dam indicated an ammonia concentration of greater than 3.0 mg/L. Mr. Gibbons worked his way upstream to where the manure entered the tributary and the ammonia levels dropped to less than 1.0 mg/L. Mr. Gibbons did not observe any dead fish in the impacted area. The field test from below the dammed area indicated an ammonia concentration of less than 1.0 mg/L and Mr. Gibbons observed live fish in the area. On October 9, 2015, Mr. Gibbons returned to the area. The field test from the dammed area indicated an ammonia concentration of 3.0 mg/L.

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5. On October 12, 2015, Mr. Gibbons met Mr. Ryken at the dammed area of the tributary. The water on the upstream and downstream sides of the dam appeared clear. The field test on the upstream side of the dam indicated an ammonia concentration of 0.8 mg/L. Mr. Gibbons told Mr. Ryken the dam could be removed and he could discontinue pumping water from the tributary.

6. On October 16, 2015, DNR issued a Notice of Violation letter to Mr. Ryken for the violations observed in October. The letter stated that the matter would be referred for further enforcement. On November 6, 2015, Mr. Ryken submitted the written spill report.

IV. CONCLUSIONS OF LAW

Ryken Farms neither admits nor denies the Conclusion of Law and enters into this administrative consent order for settlement purposes only.

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 5's investigation it was determined that manure from Ryken Farm's manure transfer was released into an unnamed tributary of the South Skunk River. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of 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 a water of the state. During DNR Field Office 5's investigation it was determined that manure from Ryken Farm's manure transfer was released into an unnamed tributary of the South Skunk River. The above-mentioned facts indicate a violation of this provision.

4. Based on the fact Ryken Farms 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 Ryken Farms implements the requirements set forth in Paragraphs 1-2, Section V. Order of this administrative consent order.

V. ORDER

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

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1. Ryken Farms 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, Ryken Farms shall develop and implement a Standard Operating Procedure detailing employee training to ensure proper procedures are being used when operating manure transfer equipment. A copy of the Standard Operating Procedure shall be submitted to DNR Field Office 5 for approval within 30 days of the date the Director signs this administrative consent order; and
3. Ryken Farms 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.” Ryken Farms did not receive an economic benefit from the manure release. Ryken Farms was required to pump the impacted area for several days, therefore any possible economic benefit received by Ryken Farms was negated. Based on the above-mentioned information 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

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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 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. Therefore, \$500.00 is assessed for this factor.

Culpability – Ryken 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. However, the culpability is greatly reduced because Ryken Farms took immediate steps to prevent further contamination and contacted DNR immediately to report the release, greatly reducing the potential for further environmental harm. 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 Ryken Farms. For that reason Ryken Farms waives the right to appeal this administrative consent order or any part thereof.

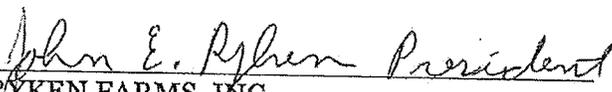
VIII. NONCOMPLIANCE

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 9th day of
September, 2016.



RYKEN FARMS, INC.

Dated this 9th day of
sept, 2016.

Kelli Book, DNR Field Office 5, EPA, VIII.D.1 and VIII.D.3