

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>BRIAN KRUSE Facility #65410</p> <p>Osceola County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO-19</p>
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TO: Brian Kruse
1021 Nest Avenue
Sibley, Iowa 51249

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Kruse for the purpose of resolving violations resulting from a manure discharge from Mr. Kruse's open feedlot operation 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:
Michelle Sabatini, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

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: 515/281-8563

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

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

III. STATEMENT OF FACTS

Mr. Kruse denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Brian Kruse owns and operates an open feedlot located in Section 8, Viola Township, Osceola County, Iowa. The feedlot has a capacity of 999 head of beef cattle. The facility has a single solids settling structure measuring 4' x 10' x 2.5' that stores some manure from the pens. An unnamed tributary of the Little Rock River is located approximately 1,700' south of the facility.

2. In 2007, DNR Field Office 3 received a complaint about manure from Mr. Kruse's facility entering the road ditch. As a result of this complaint, DNR Field Office 3 required that Mr. Kruse install additional settling structures. Mr. Kruse installed two picket fences and an earthen basin.

3. On June 20, 2014, Michelle Sabatini, DNR Field Office 3 environmental specialist, conducted a routine inspection at Mr. Kruse's open feedlot. During the inspection, Ms. Sabatini did not observe evidence of a discharge or runoff, but expressed concerns to Mr. Kruse of the potential for a discharge to a road ditch. Ms. Sabatini also spoke to Mr. Kruse regarding her concerns that the solids settling structure was undersized. Mr. Kruse stated he was working with a consultant to create plans for additional solids settling structures. Mr. Kruse stated the plans required that he obtain additional land from the adjacent landowner; however, he and the landowner had been unable to come to a sales agreement. Mr. Kruse and Ms. Sabatini discussed options that would not require the additional land.

4. On October 27, 2015, DNR Field Office 3 received a complaint from the county engineer stating that the county had removed manure from the road ditch by Mr. Kruse's facility but manure was still entering the road ditch. On November 9, 2015, Brandon Miner, DNR Field Office 3 environmental specialist, investigated the complaint. He observed manure in the road ditch leading to the bank of the tributary. Mr. Miner told Mr. Kruse to control the runoff because a heavy rainfall event would result in manure entering the tributary.

5. On November 12, 2015, DNR Field Office 3 received another complaint regarding manure runoff from Mr. Kruse's facility. On November 17, 2015, Ms. Sabatini visited Mr. Kruse's facility. The area had received about an inch of rain between November 16 and November 17. During the inspection, Ms. Sabatini noted manure solids in the road ditch extending to the field entrance. The nutrient rich effluent flowed through the culvert in the field and traveled south to the unnamed tributary of the Little Rock River. Ms. Sabatini conducted a field test of the effluent

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as it entered the tributary, which indicated an ammonia concentration greater than 3.0 ppm. Ms. Sabatini collected laboratory samples from this location, from a bridge a half mile upstream of the discharge point and from a bridge one mile downstream of the discharge. The laboratory sample results indicated the following concentrations:

Location	E. coli [MPN]/100mL	Ammonia mg/L	Biological Chemical Demand (BOD) mg/L
Upstream	64,000	0.23	4
Discharge Point	24,000	18	37
Downstream	20,000	1	5

Mr. Kruse stated the recent rain events caused manure and effluent to accumulate in the southeast corner of the southeast pen. The outer walls of that pen are made of preformed concrete slabs and two of the slabs had separated causing the manure solids and effluent to flow from the pen to the solids settling structure. The manure solids and effluent filled the solids settling structure and eventually overflowed to the road ditch.

6. On November 25, 2015, Ms. Sabatini received an email from Mr. Kruse's consultant detailing the design plan for improving the containment structures at the facility. On November 30, 2015, Ms. Sabatini reviewed the plan with the consultant. She provided the following timeline for the consultant to follow: by February 2, 2016 Mr. Kruse must have the proposed land acquired and submit a timeline for implementation of the plan and if the land cannot be obtained, Mr. Kruse must submit a secondary plan by March 6, 2016. To date, Mr. Kruse has not submitted a timeline for the implementation of the plan and there has been no acknowledgment that the land has been acquired.

7. On December 15, 2015, DNR issued a Notice of Violation letter to Mr. Kruse for the violations discovered during the November inspection. The letter informed Mr. Kruse that his facility had been classified as a Medium Concentrated Animal Feeding Operation (CAFO) because it contained between 300 and 1,000 head of cattle and discharged to a water of the United States through a man-made conveyance. Mr. Kruse was given three options to bring the facility into compliance: 1) apply for a National Pollutant Discharge Elimination System (NPDES) permit; 2) eliminate the use of the man-made conveyance; or 3) reduce the number of animals to less than 300. The letter also informed Mr. Kruse that the matter was being referred for further enforcement.

8. On October 5, 2016, Mr. Kruse notified the DNR that he had fenced off the southeast corner of the open feedlot to allow for a secondary settling area. He also purchased a pump to empty the settling areas more frequently. Mr. Kruse

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indicated he planned to apply for a funding program to construct a confinement building to replace the open feedlot.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 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 water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3's investigation it was determined that manure from Mr. Kruse's facility entered the road ditch and the open feedlot effluent from Mr. Kruse's facility was discharged to a tributary of the Little Rock River. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.101(9) require that a person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall 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. Manure liquids from Mr. Kruse's facility were discharged into the tributary and no notification was received by the DNR. The above mentioned facts indicate a violation of this provision.

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. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Kruse maintains the improvements set forth in Paragraph 8, Section III. Statement of Facts of this administrative consent order and complies the requirements set forth in Paragraph 1, Section V. Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Brian Kruse agrees to do the following:

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1. Mr. Kruse shall operate and maintain his animal feeding operation in compliance with all applicable rules and statutes;
2. Mr. Kruse 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.” Mr. Kruse gained an economic benefit by failing to properly contain the manure from his facility. Mr. Kruse delayed the costs associated with the construction of additional containment at his facility. He was instructed in 2014 to improve the drainage and solids settling structure and has been able to delay the costs associated with the construction of those improvements. Based on the above facts, the economic benefit Mr. Kruse received was 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. DNR Field Office 3 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

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requirements is required of all persons in this state. Therefore, \$500.00 is assessed for this factor.

Culpability – Mr. Kruse 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. Mr. Kruse was informed of the need for more storage in 2014 prior to the current release. Additionally, he failed to notify the DNR of the discharge. Therefore, \$400.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Brian Kruse. For that reason Brian Kruse waives the right to appeal this administrative consent order or any part thereof.

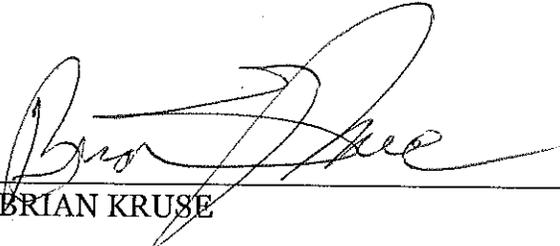
VIII. NONCOMPLIANCE

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 26th day of
October, 2016.



BRIAN KRUSE

Dated this 17th day of
October, 2016.

Facility #65410; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.B and VIII.D.3.a