

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

IN THE MATTER OF:

COOPERATIVE CREDIT COMPANY

**Osceola County, Iowa
AFO #65545**

ADMINISTRATIVE CONSENT ORDER
NO. 2016-AFO- 22

TO: Seth Oostenink
Cooperative Credit Company
128 3rd Street NW
Sioux Center, Iowa 51250

Curtis R. Puetz, Registered Agent
Cooperative Credit Company
128 3rd Street NW
Sioux Center, Iowa 51250

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cooperative Credit Company (CCC) for the purpose of resolving water quality violations resulting from a manure discharge at CCC's animal feeding operation in Osceola 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:

Jennifer Christian, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand-Gateway North, E17
Spencer, Iowa 51301-2200
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: 515/725-9572

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.

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III. STATEMENT OF FACTS

1. CCC owns and operates an animal feeding operation located at 5249 220th Street, Ashton, Iowa (Section 12, Gilman Township, Osceola County, Iowa). The facility is a 4,400 head wean to finish swine confinement operation. The facility uses an above ground formed storage structure (slurry store) to retain the liquid manure between the periods of land application.

2. On June 16, 2016, Greg Harson, DNR Northwest District Law Enforcement Supervisor, notified DNR Field Office 3 that manure from a confinement feeding operation was discharging into Kappes Creek. Mr. Harson stated he thought the manure was leaking from a slurry store and discharging to the creek. Mr. Harson provided the location of the facility in question and from that information the field office determined that it was the CCC facility.

3. On June 16, 2016, Jennifer Christian and Doyle McKeever, DNR Field Office 3 environmental specialists, responded to the complaint. They spoke to Amy Strouth, CCC facility manager, and explained to her the nature of the complaint. Ms. Strouth had no knowledge of a manure discharge. The field office personnel and Ms. Strouth walked to the slurry store and observed liquid hog manure at the base of the slurry store surrounding the entire perimeter of the slurry store. The group observed that the manure had leaked out of a hole in the reception pit. The manure would only flow out of the hole when the manure level in the reception pit filled to a certain level. Ms. Strouth stated she manually turns the manure pump on every day. She indicated that the area had looked like the current conditions since she started in April 2016.

4. The manure flowed south into a shallow bermed area next to the slurry store. During the inspection, the field office personnel observed the manure trickling over the berm, entering a crop field and discharging into the creek. At the discharge point the water had a manure odor. The field office personnel collected laboratory samples of the impacted areas and the results are as follows:

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Sample Location	E.coli (Col/100mL)	Ammonia (mg/L)	Biological Oxygen Demand (mg/L)
In Kappes Creek at the Discharge Point	2,700	3.5	4
In the Field Prior to Discharge to the Creek	14,000	29	37
Upstream of the Discharge Point	750	0.21	<2
Downstream of the Discharge Point at E. Bridge	310	0.33	<2

5. Ms. Christian contacted Seth Oostenink, the facility contact, and explained the situation. Mr. Oostenink met with the field office personnel at the facility. Ms. Christian and Mr. Oostenink travelled further downstream to the bridge at Olive Avenue and did not observe any water quality violations at this location.

6. On June 17, 2016, the field office personnel met with Mr. Oostenink at the facility. Mr. Oostenink explained how the situation was being remediated. He explained that a new manure pump with a float was installed in the reception pit and the float was set to engage the pump at a level that was below the hole that the manure had leaked from. The float was a temporary fix until the hole could be repaired properly. A sump pump was placed in the pooled liquid manure located at the base of slurry store and Mr. Oostenink stated that ten gallons of manure had been pumped out. The small berm to the south of the slurry store had been expanded to create a secondary containment barrier. The field office personnel observed a skid loader and excavator on site removing the manure laden soil. The manure laden soil would be land applied once it dried out. Mr. Oostenink stated that a clean water diversion berm would be created to reroute the rainwater to the east of the slurry store. He also stated that the reception pit would be replaced with a new reception pit in the fall of 2016.

7. On July 25, 2016, DNR issued a Notice of Violation letter to CCC for the violations observed during the June inspection. The letter informed CCC that the matter was being 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.

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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 June 2016 investigation, DNR Field Office 3 found evidence that the manure from the CCC facility was discharged to Kappes Creek. 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 June 2016 investigation, DNR Field Office 3 found evidence that the manure from the CCC facility was discharged to Kappes Creek. The above facts indicate violations 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. During the June 2016 investigation, the field office personnel observed the water impacted by the manure had a manure odor. The laboratory results indicated elevated level of pollutants as a result of the manure discharge. 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 CCC constructs the clean water diversion berm and replaces the reception pit as detailed in Paragraph 6, Section III [Statement of Facts] and complies with the requirements listed in Paragraph 1, Section V [Order] of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and CCC agrees to do the following:

1. CCC shall complete the construction of the clean water diversion berm and the replacement of the reception pit within 90 days of the date the Director signs this administrative consent order and shall notify DNR Field Office 3 within 10 days of the completion of the construction and replacement; and
2. CCC shall pay an administrative penalty in the amount of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

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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 \$3,000.00. 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. CCC delayed the cost associated with replacing the reception pit and gained an economic benefit in this delay. Based on these facts, an economic benefit of \$500.00 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. The discharge of manure from the CCC facility resulted in the degradation of water quality. The manure discharge from the CCC facility threatens the integrity of the animal feeding operation regulations. Therefore, \$1,500.00 is assessed for this factor.

Culpability – CCC has a duty to know the regulations and to be aware that its actions are subject to the regulations. The facility manager stated the conditions had been the same since she started several months prior to the field office inspection indicates the facility may have had prior or ongoing manure discharges. Based on the information above, \$1,000.00 is being assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

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

Bruce Trautman for Chuck Gipp

Dated this 16 day of
November, 2016.



Cooperative Credit Company
by: Lee Van Veldhuizen, CEO

Dated this 3rd day of
November, 2016.

AFO #65545; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.a, VIII.D.3.a