

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

IN THE MATTER OF:

**VORTHMANN LEGACY FARMS,
LLC**

Pottawattamie County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2016-AFO- ~~23~~

TO: Aaron Vorthmann, Registered Agent
Vorthmann Legacy Farms, LLC
50459 370th Street
Henderson, Iowa 51541

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Vorthmann Legacy Farms, LLC (Vorthmann) for the purpose of resolving water quality violations resulting from a manure discharge from the Vorthmann open feedlot. 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:

Keith Wilken, 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: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VORTHMANN LEGACY FARMS, LLC

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

III. STATEMENT OF FACTS

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

1. Vorthmann owns and operates a cattle open feedlot located at 13256 370th Street, Carson (Section 18, Macedonia Township, Pottawattamie County, Iowa). The facility consists of one open lot and one solids settling basin and has a capacity of 400 head of beef cattle.

2. On March 1, 2016, DNR Field Office 4 visited the Vorthmann facility to investigate a complaint the field office had received regarding possible runoff from a manure stockpile at the facility. During the investigation, there was no runoff observed coming from the manure stockpile. The stockpile was bermed by a terrace. In a letter dated March 7, 2016, DNR reminded Vorthmann that it is a water quality violation if manure from the stockpile reached a water of the state and contaminated the water.

3. On April 20, 2016, DNR Field Office 4 received a complaint regarding foam in the river. On April 20, 2016, Keith Wilken and Wendy Wittrock, DNR Field Office 4 environmental specialists, investigated the complaint.

4. The field office personnel first stopped at the intersection of 370th Street and Beechnut Road (Section 18, Macedonia Township, Pottawattamie County). They observed runoff flowing southeast along a grassed waterway and subsequently entering a culvert under 370th Street and discharging to an unnamed tributary of the West Nishnabotna River. The water was turbid with large amounts of foam on the surface. There was a tile line outlet at the location, but the field office

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VORTHMANN LEGACY FARMS, LLC

personnel was unable to determine if it was flowing due to the heavy flow in the tributary. The field tests from the tributary indicated an ammonia concentration of 10-30 ppm and a dissolved oxygen concentration of 4-5 ppm. The laboratory sample results indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 22 mg/L, BOD - 210 mg/L, and total suspended solids - 810 mg/L.

5. The field office personnel then investigated flow in the field northwest of the discharge point and south of the Vorthmann facility. The field tests from the area indicated an ammonia concentration of 60-90 ppm and a dissolved oxygen concentration of 4-5 ppm. The laboratory sample results from this area indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 59 mg/L, BOD - 560 mg/L, and total suspended solids - 1,480 mg/L.

6. The field office personnel followed this flow to where it was discharging from the solids settling basin through a discharge pipe at the Vorthmann facility. The field tests from the discharge pipe indicated an ammonia concentration of 60-90 ppm and a dissolved oxygen concentration of 5-6 ppm. The laboratory sample results from this location indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 60 mg/L, BOD - 600 mg/L, and total suspended solids - 1,280 mg/L.

7. The field office personnel determined that the discharge from the Vorthmann facility merged with a discharge from another open feedlot at the grass waterway near the discharge point to the tributary. The two discharges contributed to the water quality violations in the tributary.

8. The field office personnel continued downstream in the unnamed tributary to the intersection of the tributary and Pioneer Trail. The field tests from this location indicated an ammonia concentration of 3-4 ppm and a dissolved oxygen concentration of 6-8 ppm. The laboratory sample results from this location indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 2.6 mg/L, BOD - 31 mg/L, and total suspended solids - 390 mg/L.

9. The field office personnel continued to the West Nishnabotna River downstream of the confluence with the unnamed tributary to investigate the impact on the river. The field tests in this area indicated an ammonia concentration of 3-4 ppm and a dissolved oxygen concentration of 8-10 ppm. The laboratory sample results from this location indicated the following concentration levels: E. coli - 2,400,000 [MPN]/10 mL, ammonia - 1.2 mg/L, BOD - 18 mg/L, and total suspended solids - 560 mg/L.

10. The field office personnel visited the West Nishnabotna River upstream of the confluence with the unnamed tributary. The field tests at this location indicated an ammonia concentration of 1-2 ppm and a dissolved oxygen

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VORTHMANN LEGACY FARMS, LLC

concentration of 8-10 ppm. The laboratory sample results from this location indicated the following concentration levels: E. coli – 170,000 [MPN]/10 mL, ammonia – 0.24 mg/L, BOD – 6 mg/L, and total suspended solids – 560 mg/L.

11. During the investigation, the field office personnel contacted Aaron Vorthmann concerning the discharge. Mr. Vorthmann blocked the inlet of the solids settling basin to stop the discharge from the facility. While at the Vorthmann facility, the field office personnel observed open feedlot manure stockpiled in an area that may result in runoff. The stockpile was observed directly east of the feedlot on the east side of 370th Street. Mr. Vorthmann stated the manure was stockpiled to dry out before applying it.

12. On May 13, 2016, DNR issued a Notice of Violation letter to Vorthmann for the water quality violations discovered during the April 2016 field office investigation. The letter indicated the facility was considered a medium CAFO and provided the facility four options: 1) obtain a National Pollutant Discharge Elimination System (NPDES) permit as a medium CAFO; 2) eliminate the man-made conveyance; 3) reduce the number of animals housed at the facility to less than 300 head; or 4) expand the facility to 1,000 head and obtain a NPDES permit. The letter required Vorthmann to submit a Plan of Action to the field office by June 15, 2016 outlining the steps the facility intends to take to ensure compliance. The letter also required Vorthmann to land apply the manure stockpile and submit documentation of such to the field office by June 15, 2016. The letter informed Vorthmann the violations were being referred for further enforcement.

13. On June 17, 2016, the field office personnel visited the Vorthmann facility to follow up on the requirements outlined in the Notice of Violation letter. The field office noted that a retention pond, a valve control structure and an irrigation pipe had been constructed. Vorthmann informed the field office that the retention pond was constructed large enough to contain excess liquid that cannot be contained within the existing solids settling structure. Vorthmann informed the field office that the valve control structure and irrigation pipe allowed the facility to control the land application of the liquid in the solids settling structure and retention pond. The irrigation pipe crosses the grass waterway and extends approximately 300 feet into the adjacent crop field to the west, thus removing the man-made conveyance. The field office personnel also noted that the manure stockpile had not been land applied and had increased in size. In a letter dated June 20, 2016, the field office instructed Vorthmann that the manure from the stockpile must be properly land applied with documentation submitted to the field office by August 1, 2016.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VORTHMANN LEGACY FARMS, LLC

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 4's investigation it was determined that the open feedlot effluent from the Vorthmann facility was discharged to an unnamed tributary causing violations of the water quality standards. The above-mentioned facts indicate a violation of this provision.

3. 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.

4. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Vorthmann maintains the improvements identified in Paragraph 13, Section III. Statement of Facts and complies with the requirements identified in Paragraphs 1 and 2, Section V. Order of this administrative consent order

V. ORDER

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

1. Vorthmann shall operate and maintain its animal feeding operation in compliance with all applicable rules and statutes;
2. Vorthmann shall properly land apply the manure from the stockpile and provide documentation to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order; and
3. Vorthmann shall pay an administrative penalty in the amount of \$2,500.00. \$725.00 shall be paid to the Department within 30 days of the date the Director signs this administrative consent order. In lieu of the payment of the remainder of the administrative penalty, Vorthmann shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Pottawattamie County Conservation Board. Vorthmann shall make a payment of \$1,875.00 to the Pottawattamie County Conservation Board (Pottawattamie County Conservation

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VORTHMANN LEGACY FARMS, LLC

Board; Mark Shoemaker, Executive Director; 223 S. 6th Street; Council Bluffs, Iowa 51501-4238) within 30 days of the date the Director signs this administrative consent order. Once the payment is made, Vorthmann shall submit a receipt of payment to Kelli Book, attorney for the DNR.

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 \$2,500.00. 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 benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Vorthmann gained an economic benefit by failing to properly contain the manure from its facility. Vorthmann delayed the costs associated with the construction of additional manure controls at the facility. Vorthmann delayed the costs associated with the installation and maintenance of the control structures. Based on the above facts, the economic benefit Vorthmann received was at least \$200.00 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 4 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, \$1,500.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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Culpability – Vorthmann 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. Vorthmann failed to notify the DNR of the manure release. However, once notified of the manure release Vorthmann took immediate steps to stop the release and to prevent future releases. Therefore, \$800.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Vorthmann. For that reason Vorthmann 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 Truettman for
Chuck Gipp

Dated this 17 day of
November, 2016.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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 Aaron Vorthmann
VORTHMANN LEGACY FARMS, LLC

Dated this 7 day of
 November , 2016.

Kelli Book, DNR Field Office 4, EPA, VIII.D.1.B and VIII.D.3.a