

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

IN THE MATTER OF:

**ALAN FEUERHELM dba
PLYMOUTH DAIRY FARMS, L.P.,
SCOTT FEUERHELM, BRAD
FEUERHELM, KARI FEUERHELM,
AND FEUERHELM PROPERTIES,
L.P.
Facility #59964**

Plymouth County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO- **34**

TO: Alan Feuerhelm
Plymouth Dairy, L.P.
1440 4th Ave. SW
LeMars, Iowa 51031

Randall A. Kroes, Registered Agent
Feuerhelm Properties, L.P.
31 2nd Street
LeMars, Iowa 51031

Scott Feuerhelm
Brad Feuerhelm
Kari Feuerhelm
23505 K49
LeMars, Iowa 51031

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Alan Feuerhelm dba Plymouth Dairy, L.P., Scott Feuerhelm, Brad Feuerhelm, Kari Feuerhelm, and Feuerhelm Properties, L.P. (collectively referred to as Plymouth Dairy) for the purpose of resolving water quality violations resulting from a discharge from the Plymouth Dairy animal feeding operation. In the interest of avoiding litigation, the parties have agreed to the provisions below.

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Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Michelle Sabatini, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall-1900 North Grand
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: 515/725-9572

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; 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

1. Plymouth Dairy Farms, L.P. is owned and operated by Alan Feuerhelm. Plymouth Dairy Farms, L.P. was registered as a limited partnership with the Iowa Secretary of State and in 2002, Mr. Feuerhelm submitted a dissolution of the limited partnership. The Plymouth County Assessor's Office lists Scott Feuerhelm, Brad Feuerhelm, Kari Feuerhelm, and Feuerhelm Properties, L.P. as the deed holders of the property and buildings that house the Plymouth Dairy Farms, L.P. animal feeding operation. The animal feeding operation is located at 23505 K49 Avenue, LeMars, Iowa (NW ¼ of the SE ¼ of Section 9, Stanton Township, Plymouth County, Iowa). The operation has a permitted capacity of 3,200 head of confinement dairy cattle and 700 head of open lot dairy cattle. Plymouth Dairy has a multi-stage solids settling system which consists of a sand removal component, two small earthen settling basins, and one large earthen basin for storage. An unnamed tributary of Plymouth Creek is located approximately 250 feet south of the large cell of the basin system and about 800 feet south of the sand settling lane.

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2. On July 1, 2015, Alan Feuerhelm notified DNR Field Office 3 that a discharge of manure had occurred at Plymouth Dairy as a result of a brief power outage. Don Cunningham and Michelle Sabatini, DNR Field Office 3 environmental specialists, responded to the discharge. The field office personnel first visited the site where the tributary crossed County Road K49, this was adjacent to the facility. They noted that Mr. Feuerhelm had placed a large amount of sand in the tributary on the west side of K49 in an effort to create a dam to slow the flow of the contaminated water into Plymouth Creek. Mr. Feuerhelm and his son, Brad, arrived and stated that they had created two other dams further upstream.

3. The field office personnel went back to the facility with Mr. Feuerhelm to observe the status of the spill and the flow from the facility to the tributary. Mr. Feuerhelm stated that there had been an automobile accident in the area earlier in the morning causing a power outage and the facility's backup generator did not turn on immediately. Facility personnel began working on the generator repair immediately. Power was restored before the generator could be repaired. When the power was returned to the site, the flume pump was turned back on. The flume pump ran for approximately 45 minutes when Mr. Feuerhelm noticed that the settling shed was overflowing and manure was bypassing the lagoon. The flume pump was shut off immediately.

4. The field office personnel and Mr. Feuerhelm followed the flow path of manure as it proceeded west along the north berm of the west settling basin and south to the adjacent cornfield. The flow path continued through the cornfield and eventually reached a small tile that lead to the tributary. Mr. Feuerhelm stated he had already started plans to add a small berm with a concrete spillway west of the sand settling shed so that similar events in the future would direct runoff from the shed into a settling basin and would be contained. Mr. Feuerhelm indicated the construction would be completed in the fall of 2015.

5. The field office personnel discussed with Mr. Feuerhelm how to respond to the existing spill. The field office personnel recommended that Mr. Feuerhelm acquire a pump so that any remaining contaminated runoff could be pumped from behind the dam. It was also recommended that clean water be added to flush the contaminated portion of the tributary which also needed to be pumped out to minimize the potential for contaminated water flowing downstream when the dams were removed.

6. The field office personnel returned to the tributary at K49. They collected a water sample from the west side of the tributary (behind the dam). The field sample indicated an ammonia concentration of greater than 3ppm. The laboratory sample indicated an E.coli concentration of 150,000 mg/L, an ammonia concentration of 13 mg/L, and a BOD concentration of 74 [MPN]/100m/L. The field

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office personnel crossed K49 and collected a sample where the small tributary flowed into another tributary on the east side of K49. The field test indicated an ammonia concentration of 1.1 ppm. The field office personnel continued north following the tributary to the bridge crossing on County Road C44. The field test from this location indicated an ammonia concentration of greater than 3 ppm. The laboratory sample indicated an E. coli concentration of 120,000 mg/L, an ammonia concentration of 9.6 mg/L, and an BOD concentration of 75 [MPN]/100m/L. The field office personnel continued upstream to the Lynx Avenue Bridge. The bridge is located at a point after the tributary entered Plymouth Creek. The field test from this location indicated an ammonia concentration of 0.2 ppm.

7. On July 2, 2015, Mr. Cunningham and Ms. Sabatini returned to the facility to follow up on the remedial actions taken by Mr. Feuerhelm. Mr. Feuerhelm stated he had contacted a local pumping company to pump as much water as possible from behind the dams. He stated they pumped at 1,000 gallons per minute for approximately 30 minutes in two locations behind the dams and had planned to repeat the same process the following day. When Mr. Feuerhelm returned to the site the next day, he discovered that the dams had been eroded by clean tile water and there was no accumulation of potentially contaminated water to pump. The field office personnel conducted a field test at the K49 Bridge. The field test indicated an ammonia concentration of 1.0 ppm. The field office personnel also conducted a field test at the Lynx Avenue Bridge. The field test indicated an ammonia concentration of 0.2 ppm.

8. On September 4, 2015, DNR issued a Notice Violation letter to Plymouth Dairy for the violations discovered during the July 1, 2015 investigation. The letter informed Mr. Feuerhelm that the matter was being referred for further enforcement.

9. On October 14, 2015, a representative from Plymouth Dairy contacted DNR and stated that the facility tests the backup generator on a weekly basis. The facility intended to continue with the weekly tests and make repairs when necessary.

10. In 2004, Plymouth Dairy had a plug in a transfer pipe to the settling basin that resulted in a discharge to a water of the state. The violation was referred to and pursued by the Iowa Attorney General's Office.

IV. CONCLUSIONS OF LAW

1. Iowa Code sections 459.103 and 459A.104 provide that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and

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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 a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Plymouth Dairy had a runoff event in which process waste water and manure was discharged to a tributary of Plymouth Creek. The laboratory samples collected by the field office personnel confirmed elevated concentrations of pollutants. 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. 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. DNR Field Office 3 documented a manure discharge from the Plymouth Dairy facility to an unnamed tributary. The above facts indicate a violation of this provision.

5. DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 4 Section IV. Conclusions of Law will recur if the permanent remedy planned by the facility as noted in Paragraphs 4 and 9, Section III. Statement of Facts are completed and the items in Paragraphs 1 and 2, Section V. Order are complied with.

V. ORDER

THEREFORE, the DNR orders and Plymouth Dairy agrees to do the following:

1. Plymouth Dairy shall operate and maintain all animal feeding operation structures in compliance with all applicable DNR rules and regulations;
2. Plymouth Dairy shall complete the construction of a containment berm as described in Paragraph 4, Section III. Statement of Facts within 60 days of the date the Director signs this order; and

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3. Plymouth Dairy 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. Alan Feuerhelm dba Plymouth Dairy, L.P., Scott Feuerhelm, Brad Feuerhelm, Kari Feuerhelm, and Feuerhelm Properties, L.P. are jointly and severally liable for the penalty. 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.” The discharge was a result of a transformer power failure caused by an automobile accident and mechanical failure of a backup generator. Any economic benefit was minimal; 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. DNR Field Office 3 documented a 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. Based on the above facts, \$900.00 is assessed for this factor.

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Culpability –Plymouth Dairy 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. Mr. Feuerhelm did notify the DNR as soon he became aware of the discharge and took immediate steps to stop the flow of the discharge. The power failure was out of the control of the facility. A majority of the culpability has been mitigated; therefore a minimal amount of \$100.00 is being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Plymouth Dairy. For that reason Plymouth Dairy 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
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 3rd day of
November, 2015.

Alan Feuerhelm
ALAN FEUERHELM

Dated this 19 day of
October, 2015.

Scott Feuerhelm
SCOTT FEUERHELM

Dated this 19 day of
October, 2015.

Brad Feuerhelm
BRAD FEUERHELM

Dated this 19 day of
October, 2015.

Kari Daale-Feuerhelm
KARI FEUERHELM

Dated this 19 day of
October, 2015.

Feuerhelm Properties L.P. by Alan Feuerhelm
FEUERHELM PROPERTIES, L.P.

Dated this 19 day of
October, 2015.

Facility #59964; Kelli Book; DNR Field Office 3; EPA; I.C.1, VIII.D.1.b and VIII.D.3.a