

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

IN THE MATTER OF:

**DARRYL HUMPAL**

Winneshiek County Iowa  
AFO #68823

ADMINISTRATIVE CONSENT ORDER  
NO. 2018-AFO- *20*

**TO:** Darryl Humpal  
2638 210<sup>th</sup> Street  
Ridgeway, Iowa 52165

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Darryl Humpal for the purpose of resolving water quality violations and a fish kill resulting from a manure discharge from land application. 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:**

Tom McCarthy, Field Office 1  
Iowa Department of Natural Resources  
909 West Main Street, Suite 4  
Manchester, Iowa 52057  
Phone: 563/927-2640

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
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)

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chapter 10, which authorize the Director to assess administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

**III. STATEMENT OF FACTS**

1. Darryl Humpal owns and operates a dairy confinement animal feeding operation located at 2638 210<sup>th</sup> Street; Ridgeway, Iowa (Section 4, Calmar Township, Winneshiek County). The facility has animal unit capacity of 800.40 dairy cows, housed in confinement buildings.

2. On August 23, 2017, Tom McCarthy, DNR Field Office 1 environmental specialist senior, was contacted by a caller who noted a manure odor and dead fish in a small stream one mile south of Decorah in Winneshiek County. Mr. McCarthy contacted Theresa Shay, DNR Fisheries Bureau to notify her of the potential fish kill.

3. On August 23, 2017, Mr. McCarthy and Brian Jergenson, DNR Field Office 1 environmental specialist senior, began the investigation and the locations visited are listed below.

Location 1: 200<sup>th</sup> Street Bridge over a small tributary of Dry Run. The field test did not indicate any ammonia nitrogen. The water was clear and live frogs were observed.

Location 2: 210<sup>th</sup> Street Bridge over a small tributary of Dry Run in Section 2, Calmar Township. The field test did not indicate any ammonia nitrogen and live fish and frogs were observed.

Location 3: 245<sup>th</sup> Street Bridge over the main tributary to Dry Run. The field tested indicated the presence of ammonia nitrogen and dead fish were observed.

Location 4: 210<sup>th</sup> Street Bridge over a small tributary flowing north in Section 3, Calmar Township. The field test did not indicate any ammonia nitrogen and the water was clear.

Location 5: 255<sup>th</sup> Street Bridge over a small tributary of Dry Run in Section 3, Calmar Township. The field test did not indicate any ammonia nitrogen and the water was clear.

Location 6: 255<sup>th</sup> Street Bridge over a larger tributary of Dry Run in Section 3, Calmar Township. The field test indicated an ammonia nitrogen concentration greater than 3 ppm.

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Location 7: 2667 Town Line Road at the Dale Humpal dairy facility. The field office personnel spoke to a facility employee who gave them permission to look around the facility. The field office personnel did not find any evidence of a discharge from this facility.

Location 8: Farm lane to a farmstead in Section 4, Calmar Township. The field test indicated an ammonia nitrogen concentration greater than 3 ppm, a dead fish was observed, and the water was cloudy with a manure odor. No one was present at the farmstead.

Location 9: 2638 210<sup>th</sup> Street at the Darryl Humpal dairy facility. The field office personnel spoke to Michelle Humpal about the fish kill. She stated that the facility had not had a manure discharge from any manure storage area, but that manure from the facility had been recently applied to a field north of the house. Mrs. Humpal gave the field office personnel permission to look around the facility and farm ground. It was noted that there was a discharge from the milk room waste into a low grassy area. The area could possibly discharge into a water of the state.

Location 10: Humpal's hay field adjacent to the tributary for Dry Run. It was noted that surface manure application had occurred approximately 36 feet from the tributary. The vehicle tracks from the DNR vehicle showed saturated manure conditions in the hay field. A laboratory sample of the field surface indicated an ammonia concentration of 630 mg/L. A field test of the water in the tributary indicated an ammonia nitrogen concentration of greater than 3 ppm.

Location 11: Upstream of the application field. The field test did not indicate any ammonia nitrogen and the water was clear with no manure odor. The laboratory sample of the water indicated an ammonia concentration of less than 0.050 mg/L.

Location 12: 3/4 mile east of the application field in the tributary. The water was cloudy and the laboratory sample of the water indicated an ammonia concentration of 4.9 mg/L.

4. At this point in the investigation, the field office personnel returned to the Darryl Humpal dairy facility; no one appeared to be at home. Mr. McCarthy contacted Mr. Humpal by telephone and explained that the manure application on the hay field had caused the fish kill. Mr. Humpal stated that manure had been applied two days prior at 4,000 to 5,000 gallons per acre. He stated the area received some rain after the application and the manure must have been washed into the tributary. Mr. Humpal agreed to start pumping the contaminated water from the tributary at the 245<sup>th</sup> Avenue Bridge. Mr. Humpal also stated he was stopping the discharge of the milk room waste immediately.

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5. The field office personnel continued the investigation at the following locations:

Location 13: 245<sup>th</sup> Street Bridge. The field test indicated an ammonia nitrogen concentration greater than 3.0 ppm and dead fish were observed. The laboratory sample indicated an ammonia concentration of 4.0 mg/L.

Location 14: Town Line Road Bridge over the tributary of Dry Run. Dead and live fish were observed.

Location 15: 233<sup>rd</sup> Avenue over the Dry Run in Section 36, Madison Township. Dead fish were observed and there was foam in the water.

Location 16: Highway 9 Bridge over Dry Run. The field test indicated an ammonia nitrogen concentration of approximately 1 ppm. One dead fish was observed as well as many live fish.

Location 17: Downstream of the Highway 9 Bridge. The water was clear and many live fish were observed.

6. On August 24, 2017, DNR Field Office 1 received a call reporting that people were picking up dead fish in the tributary of Dry Run. Mr. McCarthy contacted Mr. Humpal by telephone and Mr. Humpal stated that the manure and water had been pumped from the tributary and had been applied to pasture land. Mr. McCarthy stated that manure in the application field would need to be incorporated as soon as possible. Mr. McCarthy asked if Mr. Humpal had directed anyone to remove the dead fish from the tributary. Mr. Humpal admitted that he and another person picked up four small calf pails of dead fish and the pails had been dumped in a corn field. Mr. Humpal contacted Mr. McCarthy later in the day and stated that the bottom half of the application field had been incorporated and the water had been pumped out of the tributary until the tributary was clear.

7. On August 24, 2017, DNR's Fisheries Bureau personnel surveyed the impacted area of Dry Run and its tributary in Winneshiek County. Theresa Shay and Mike Siepker conducted the fish kill investigation. The Fisheries personnel determined the fish kill extended 4.9 miles in Dry Run and the tributary. The Fisheries Bureau personnel surveyed the impacted area in accordance with the Narrow Stream Incompletely Accessible method outlined in American Fisheries Society, Special Publication 30. This method was chosen based on the following factors: length of the kill extended greater than three miles; crossed four main road bridges; the terrain; poor water clarity that hindered the ability to get accurate counts of fish on stream bottom at depths greater than 18 inches; limited daylight hours; the stream was densely covered with vegetation in many places; and the water depth was deeper than five feet at some locations.

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8. The fish kill assessment determined that 34,486 fish were killed, valued at \$10,157.43. The fish kill assessment included the dead fish that Mr. Humpal had removed from the tributary. The Fisheries Bureau investigative costs were \$1,451.42 and the Field Office investigative costs were \$1,835.89. The total fish value and investigative costs totaled \$13,444.74.

9. On February 9, 2018, DNR Field Office 1 issued a Notice of Violation letter to Mr. Humpal for the violations observed during the August investigation. The letter informed Mr. Humpal that the matter would be referred for further evaluation and further enforcement may be pursued.

#### 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.

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 August 2017 investigation, DNR Field Office 1 found evidence that the manure from the land application of manure from Mr. Humpal's facility was discharged to a tributary of Dry Run. The above-mentioned facts indicate a violation 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 the August 2017 investigation, DNR Field Office 1 found evidence that the manure from the land application of manure from Mr. Humpal's facility was discharged to a tributary of Dry Run. The above-mentioned facts indicate a violation of this provision.

4. Iowa Code section 459.311(3) and 567 IAC 65.2(7) state that manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. During the August 2017 investigation, DNR Field Office 1 found evidence that the manure from the land application of manure from Mr. Humpal's facility was discharged to a tributary of Dry Run. The above-mentioned facts indicate violations of these provisions.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically

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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 and there was a documented fish kill in the tributary. The above mentioned facts indicate violations of the general water quality criteria.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the land application of manure from Mr. Humpal's facility.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Humpal complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Darryl Humpal agrees to do the following:

1. Mr. Humpal shall submit a written plan with Standard Operating Procedures for land application methods; including but not limited to incorporation of manure in order to prevent manure runoff. The Standard Operating Procedures shall be submitted to DNR Field Office 1 for approval within 30 days of the date the Director signs this administrative consent order. Mr. Humpal shall immediately implement the Standard Operating Procedures upon approval by DNR Field Office 1; and
2. Mr. Humpal shall pay fish restitution and investigative costs in an amount of \$13,444.74 and an administrative penalty in the amount of \$2,000.00 in accordance with the following payment plan:

\$1,934.74 due September 15, 2018	<b>pd</b> \$1,930.00 due September 15, 2019
\$1,930.00 due December 15, 2018	\$1,930.00 due December 15, 2019
\$1,930.00 due March 15, 2019	\$1,930.00 due March 15, 2020
\$1,930.00 due June 15, 2019	\$1,930.00 due June 15, 2020

The administrative penalty shall be satisfied first and the remainder of the payments shall be applied to the fish restitution. If any of the said payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately.

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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. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air 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.” Mr. Humpal gained an economic benefit of not incorporating the manure after it was land applied. This delayed the costs associated with incorporation including equipment and personnel costs. It is estimated that Mr. Humpal saved at least \$50.00 through these delayed costs associated with the basin and the demolition 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. The discharge of manure from the land application ultimately resulted in the degradation of water quality and caused a fish kill. The manure discharge from the land application threatens the integrity of the animal feeding operation regulations. Therefore, \$1,750.00 is assessed for this factor.

Culpability – Darryl Humpal has a duty to know the regulations and to be aware that his actions are subject to the regulations. In this case, Mr. Humpal took immediate action to remove the manure from the tributary. Based on the information above, \$200.00 is being assessed.


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**VII. WAIVER OF APPEAL RIGHTS**

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

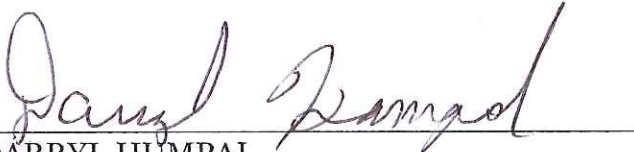
**VIII. NONCOMPLIANCE**

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.



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BRUCE TRAUTMAN,  
ACTING DIRECTOR  
Iowa Department of Natural Resources

Dated this 2 day of  
November, 2018.



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DARRYL HUMPAL

Dated this 1 day of  
Sept, 2018.

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

RECEIVED

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