IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

JAMES CARSTENSEN
Facility ID # 56649
Jackson County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2019-AFO- 26

To: James Carstensen
45436 45th Street
Preston, Iowa 52069

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and James Carstensen for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from a discharge of manure produced at a feedlot owned by Mr. Carstensen. This administrative consent order (Order) requires Mr. Carstensen to implement a plan of action to prevent all discharges of manure and/or obtain a permit to cover future discharges; in the future comply with the laws and rules governing the animal feeding operations and water quality; and to pay an administrative penalty of $10,000.00.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Brian Jergenson, DNR Field Office 1
Iowa Department of Natural Resources
909 W Main St, Ste 4
Manchester, Iowa 52057
563-927-2640

Relating to legal requirements:
Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

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

1 For brevity in this Order, the terms “manure,” “open feedlot effluent,” and “settled open feedlot effluent” as defined in 567 IAC 65.101 shall all be referred to as “manure” unless otherwise clarified or specified. “Manure” when used in this Order may indicate more than one or a mix of these pollutants.
II. JURISDICTION

This 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 permitted 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. Mr. Carstensen owns and operates an open feedlot located at 45436 45th Street, Preston, Iowa (Feedlot). The Feedlot has two solids settling basin (SSB), one on the southeast of the production area and one on the southwest. The Feedlot has a maximum capacity of 700 head of beef-finishing cattle (700 animal units). The Feedlot is located approximately one-third of a mile from Copper Creek (Creek). There is no NPDES permit associated with the Feedlot.

2. On May 24, 2019, DNR Field Office 1 received a complaint stating that Mr. Carstensen had dug a trench to transport manure from the southwest SSB to the Creek. DNR Field Office 1 environmental specialist senior Brian Jergenson immediately responded to investigate.

3. When Mr. Jergenson arrived at the Feedlot, he observed a trench running from the southwest SSB to the road ditch leading to the Creek. Manure was flowing out of the SSB and through the trench and ditch, then discharging to the Creek. The water in the Creek around the discharge appeared as though manure was present in the Creek. Mr. Jergenson also observed settleable solids in the Creek at the point of discharge.

4. Mr. Jergenson made contact with Mr. Carstensen. During the investigation, Mr. Carstensen stated that he dug the trench to prevent manure from entering the fields surrounding the Feedlot. Mr. Carstensen stated that the SSBs did not have enough capacity to hold all the manure produced at the Feedlot due to the rainfall. Mr. Carstensen stated that he knew of the applicable laws and rules related to discharges of manure, but that he felt digging the trench to the Creek was appropriate to prevent an overflow onto the neighboring field.

5. Mr. Jergenson collected water samples at three locations in the Creek. The laboratory results are as follows:
These results indicate that manure discharged into the Creek and caused elevated ammonia levels in the Creek.

6. On June 3, 2019, DNR issued Mr. Carstensen a Notice of Violation for violations observed during the May 24, 2019, investigation.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. 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. A discharge of manure from the Facility caused discolored water, solids and elevated pollutants in the Tributary. The above mentioned facts indicate violations of the general water quality criteria.

3. Iowa Code section 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. Manure produced at the Feedlot discharged to the Creek without a permit. The facts of this case indicate violations of these provisions.

4. Iowa Code section 459.103 provides that the 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.
5. 567 IAC 65.106 adopts by reference the federal regulations regarding CAFOs and NPDES permit requirements.

6. 40 CFR 122.23(b)(6) defines a “Medium CAFO” as a facility that has between 300 and 999 head of non-dairy cattle and that discharge pollutants to the waters of the United States through a man-made device. The Feedlot has a capacity of 700 animal units. Manure discharged through a trench created by Mr. Carstensen. The facts of the case demonstrate that the Feedlot is a Medium CAFO.

7. 567 IAC 65.101(3) and 40 CFR 122.23(d) state that in no case shall settled open feedlot effluent from a feedlot that is a Medium CAFO be discharged into a water of the United States unless the discharge is authorized by a NPDES permit. Manure discharged from the Feedlot into the Creek without the authorization of a NPDES permit. The facts of this case indicate a violation of these rules.

8. 567 IAC 65.101(3)“b” requires sufficient capacity in a solids settling basin to store settleable solids between periods of land application. The Feedlot’s SSBs did not have sufficient capacity to store the manure and manure solids. These facts indicate a violation of this rule.

9. DNR has determined that there is no likelihood that the violations cited in this Order will recur if Mr. Carstensen implements the requirements set forth in Paragraphs 1-2, Section V of this Order.

V. ORDER

THEREFORE, the DNR orders and Mr. Carstensen agrees to the following:

1. Mr. Carstensen shall operate all feedlots in compliance with all applicable laws and regulations and shall cease all non-permitted discharges;

2. In order to prevent future non-permitted discharges from the Feedlot to a water of the state or the Waters of the United States, Mr. Carstensen shall choose one of the following options, and shall inform the DNR of the choice within 30 days of the date the Director signs this Order:
   a. Mr. Carstensen shall develop a Plan of Action (POA) approved by the DNR that addresses the land application of settled solids to prevent all future discharges of any type from the Feedlot to a water of the state, including but not limited to the removal of the trench. This POA shall be submitted to Field Office 1 for approval within 30 days of the date the Director signs this Order and shall be implemented within 60 days of the date the Director signs this Order, OR;
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b. Mr. Carstensen shall submit a complete NDPES permit application to the
DNR and shall comply with all the terms contained therein. The permit
application shall be submitted within 180 days of the date the Director signs
this Order; and

3. Mr. Carstensen shall pay an administrative penalty in the amount of
$10,000.00 within 30 days from the date the Director signs this Order.

VI. PENALTY

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 $10,000.00. 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. Carstensen gained an avoided cost benefit by failing to implement, operate,
and maintain the Feedlot in a manner that retained all manure and manure solids prior to land
application and/or release to a properly designed filter strip. Using a reasonable estimate for
these costs, $4,000.00 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 in this case was
extensive enough to produce elevated levels of ammonia in the Creek. Most problematically,
however, is the intentional nature of this discharge. Constructing a trench to discharge
manure greatly degrades the environment. Allowing such a discharge to occur degrades the
animal feeding and water quality programs. Therefore, $3,000.00 is assessed for this factor.

Culpability – By digging the trench, Mr. Carstensen intentionally caused the
discharge of manure to the Creek, despite knowing of the applicable laws and regulations
related to the discharge of manure. The intentional action by Mr. Carstensen shows the
highest level of culpability. Therefore, $3,000.00 is 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 Mr. Carstensen. For that reason Mr. Carstensen waives the right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this 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 or Iowa Code section 459A.501.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

JAMES CARSTENSEN

Dated this 28th day of August, 2019.

Noah Poppelreiter, DNR Field Office 1, EPA, VIII.D.1.b