IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
DENNIS KUEHL
ID #65281
Cass County, Iowa

TO: Dennis Kuehl
65505 Denver Road
Atlantic, Iowa 50022

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Dennis Kuehl for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from a manure discharge at Mr. Kuehl's confinement feeding operation in Cass County, Iowa. This Order requires Mr. Kuehl to take steps to prevent all future discharges; pay an administrative penalty of $6,000.00 pursuant to a payment plan; and in the future comply with the laws and rules governing animal feeding operations.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Dan Olson
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
712-243-1934

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

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 and of Iowa Code chapter

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III. STATEMENT OF FACTS

1. M. Kuehl owns and operates a confinement feeding operation located at 58096 Chicago Road Marne, Iowa (Facility). The Facility is a finishing swine operation with a single confinement building (Barn). The Facility has an animal unit capacity of 999.6 animal units. The Facility uses a below-building manure storage structure (Structure) to contain manure until the manure is land applied.

2. On October 4, 2019, Mr. Kuehl stopped at Field Office 4 to report a release of manure from the Structure. Mr. Kuehl told DNR Field Office 4 environmental specialist Kristi Burg that manure was overflowing from the Structure. DNR Field Office 4 environmental specialist senior Dan Olson and environmental specialist Jake Theis arranged to inspect the Facility with Mr. Kuehl present.

3. When Mr. Olson and Mr. Theis arrived at the Facility, they observed manure on the ground in the parking lot south of the Barn. Mr. Kuehl stated that he observed manure seeping from the ground on the south side of the Barn the previous day. To stop the manure from seeping, Mr. Kuehl stated he removed a pit fan tube from the north side of the Barn to relieve the pressure.

4. When the DNR staff inspected the north side of the Barn, the pit fan tube had been replaced and no manure was actively flowing. However, DNR staff observed where Mr. Kuehl had dug a trench starting immediately at the pit fan tube to a depression in the ground directly north of the Barn. The ground in the trench was colored dark brown and there were remnants of manure in the trench. Mr. Kuehl stated that he dug the trench to the depression to contain the manure until it could be land applied.

5. In the depression was a tile intake (Tile 1). The outfall for Tile 1 was approximately 100 feet to the west in a grassed waterway. Clear water was flowing from the north through the grassed waterway. Mr. Kuehl stated this water would flow all summer and likely into the fall. Mr. Olson collected a water sample for laboratory testing from the water in the grassed waterway upstream of the outfall for Tile 1. Mr. Olson did not observe any discoloration, odor, or other evidence of manure in the water flowing from upstream of the outfall for Tile 1.

6. Following the grassed waterway downstream to the south, DNR staff observed it discharge into a road ditch on the north side of Chicago Road. Mr. Olson collected a water sample for laboratory testing at the discharge point. Mr. Olson observed
that the water was dark brown to black in color and smelled of manure. Foam was present at the discharge point, indicating high turbidity.

7. Mr. Theis collected a water sample from the water in the road ditch for laboratory testing. Mr. Theis collected the sample upstream of the grassed waterway’s discharge point into the road ditch. Mr. Theis did not observe any discoloration, odor or other evidence of manure in the upstream water.

8. The road ditch on the north side of Chicago Road flowed under the road where it ponded in an area contained by a berm. A second tile inlet was present in this ponded area (Tile 2). Mr. Olson collected a water sample for laboratory testing at the ponded area around Tile 2. Mr. Olson could hear water flowing into the intake for Tile 2. Mr. Olson observed that the water was dark brown to black in color and smelled strongly of manure.

9. DNR staff followed the path of Tile 2 south. The outfall for Tile 2 was located in an unnamed tributary of Camp Creek (Tributary). Mr. Olson collected a water sample for laboratory testing at the point where the outfall for Tile 2 discharged into the Tributary. Mr. Olson observed the water flowing from the tile was slightly gray in color and smelled of manure. Mr. Olson observed foam in the Tributary immediately downstream of the outfall, indicating high turbidity.

10. Mr. Theis collected a water sample for laboratory testing upstream of the outfall for Tile 2. DNR staff did not observe discoloration, odor, or other evidence indicating the presence of manure in the upstream water of the Tributary.

11. Mr. Olson collected a water sample for laboratory testing from the water in the Tributary downstream of the outfall for Tile 2. Mr. Olson observed that the downstream water was clear but smelled of manure. Mr. Olson observed foam in the Tributary downstream of the outfall, indicating high turbidity.

12. When DNR staff returned to Chicago Road, DNR staff encountered Dan Wetherell and Craig Huff. Mr. Wetherell identified himself as the environmental health and safety manager for the company that owns the pigs at the Facility. Mr. Wetherell stated that Mr. Kuehl had contacted him regarding the Structure being full; in turn, Mr. Wetherell insisted Mr. Kuehl contact the DNR to report the spill.

13. DNR staff sent the water samples collected to the State Hygienic Laboratory for testing. The results of the testing are as follows:
These results indicate manure from the Facility entered the Tributary.

14. On October 29, 2019, the DNR issued a Notice of Violation letter to Mr. Kuehl detailing the violations and the associated regulations.

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. Iowa Code section 455B.186 and 567 IAC 62.1, prohibit the discharge of pollutants into a water of the state, except adequately treated pollutants discharged pursuant to a permit from the DNR. During the field office investigation, it was determined that untreated manure from the Facility discharged to the Tributary. The facts of this case indicate a violation of these provisions.

3. 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.

4. 567 IAC 65.2(3) states 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 field office investigation, it was determined that manure from the Structure discharged to the Tributary. The facts of this case indicate a violation of this rule.

5. 567 IAC 65.2(9) requires that releases of manure must be reported to the DNR as soon as possible but no later than six hours after the onset or discovery of the release. Mr. Kuehl learned of the release from the Facility on October 3, 2019, but did not contact the DNR until the following day. The facts of this case indicate a violation of this rule.

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

V. ORDER

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

1. Mr. Kuehl shall operate and maintain the Facility and all other animal feeding operations under his control in compliance with all applicable laws and regulations;

2. Within 30 days of the date the Director signs this Order, Mr. Kuehl shall develop a plan of action to prevent all future discharges from the Facility, including the submission of monthly freeboard levels, and shall submit the plan to DNR Field Office 4 for approval. Within 60 days of the date the Director signs this order, Mr. Kuehl shall implement the plan of action.

3. Mr. Kuehl shall pay a penalty in the amount of $6,000.00 pursuant to the following payment plan:

   $500.00 on March 1, 2020.  
   $500.00 on April 1, 2020.  
   $300.00 on May 1, 2020.  
   $500.00 on June 1, 2020.  
   $500.00 on July 1, 2020.  
   $500.00 on August 1, 2020.  
   $500.00 on September 1, 2020.  
   $500.00 on October 1, 2020.  
   $500.00 on November 1, 2020.  
   $500.00 on December 1, 2020.  
   $500.00 on January 1, 2021.  
   $500.00 on February 1, 2021.

Payment shall be considered received by the DNR on the day it is postmarked. If the DNR has not received a payment due for any month by the first day of that month, the DNR
shall notify Mr. Kuehl in writing of his failure to pay. If Mr. Kuehl has not paid the penalty within five (5) days of receiving the notice, payment in full of the remaining amount of the penalty shall be due within 30 days of the notice. Nothing in this plan shall prevent Mr. Kuehl from making additional payments toward the penalty amount.

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 this Order with an administrative penalty of $6,000.00. 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. Kuehl failed to properly ensure the proper retention of manure from the Facility and caused a discharge as a result. This failure resulted in delayed costs from planning, construction, maintenance, and monitoring, saving the Mr. Kuehl these costs. Therefore, $1,000.00 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. There were multiple water quality violations in this case that negatively impacted water quality in the Tributary. Operating the Facility in a manner that allows discharges from the Structure and causes water quality violations threatens the integrity of the animal feeding operation and water quality improvement programs. Therefore, $2,000.00 is assessed for this factor.

Culpability – Mr. Kuehl has a duty to follow the applicable laws and regulations while storing manure to ensure storage does discharge to a water of the state and create a water quality violation. Mr. Kuehl knew of the discharge of manure, but did not take adequate steps to prevent the discharge until the following day. Additionally, Mr. Kuehl dug a trench for the manure to flow directly to a tile line. Therefore, $3,000.00 is assessed for this violation.
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS KUEHL

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Mr. Kuehl. For that reason, Mr. Kuehl waives his 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 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 459.603.

KAYLE LYON, DIRECTOR
Iowa Department of Natural Resources

Dennis Kuehl

Dated this 24th day of January, 2020

Dated this 22 day of January, 2020

Noah Poppelreiter, DNR Field Office 4, EPA, VII.B.1, VII.D.1.a