

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

IN THE MATTER OF:

Gary and Darlene Kregel
Facility ID #67831

Clayton County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. ~~2019~~-AFO-06
2020

TO: Gary and Darlene Kregel
30392 Garber Road
Guttenberg, Iowa 52052

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Gary and Darlene Kregel (Jointly, the Kregels), for the purpose of resolving the violations of animal feeding operation regulations resulting from the discharge of manure from the Kregels' animal feeding operation in Clayton County, Iowa. This Order requires the Kregels to take steps to prevent all future discharges, to pay an administrative penalty of \$3,600.00, and in the future comply with the laws and rules governing animal feeding operations and water quality standards for the waters of the state.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Brian Jergenson
DNR Field Office 1
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

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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 459; 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) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Kregels own and operate a confinement feeding operation located at 30392 Garber Road Guttenberg, Iowa (Facility)¹. The Facility houses 120 head of heifers and calves and 420 head of dairy cattle, totaling 708 animal units in confinement. The Facility utilizes an unformed manure storage structure (Structure) at the southeast corner of the Facility to contain manure produced at the Facility until it is land applied. To the southeast of the Structure, a grassed waterway flows downhill to an unnamed tributary of South Cedar Creek (Tributary).

2. On August 23, 2013, DNR Field Office 1 environmental specialist Tom McCarthy conducted an inspection of the Structure. Mr. McCarthy observed erosion on the south side of the Structure and poor weed control on the Structure overall. The information in this report was provided to the Kregels.

3. On March 2, 2018, DNR Field Office 1 environmental specialist Brett Meyers conducted an inspection of the Structure. Mr. Meyers observed that the stormwater runoff was entering the Structure and suggested the Kregels build berms to divert the stormwater flow. The information in this report was provided to the Kregels.

4. On October 9, 2018, DNR Field Office 1 received an anonymous complaint stating the Structure was overflowing and reaching the Tributary. Mr. Meyers contacted Gary Kregel to discuss the complaint. Mr. Kregel was not aware of the overflow and agreed to meet with Mr. Meyers at the Facility on October 10, 2018.

5. On October 10, 2018, Mr. Meyers inspected the Facility with Mr. Kregel present. Mr. Kregel stated that a Structure had a breach in the southeast wall, which he repaired after the phone call on October 9, 2018. Mr. Kregel indicated that manure overflowed through the breach in the Structure and flowed downhill. Mr. Kregel believed the breach was caused by recent rain events overflowing the Structure.

¹ The Kregels also own an open feedlot at this location. The feedlot is not relevant to this Order.

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6. Mr. Meyers followed a downhill flow path created by manure flowing from the Structure. That path converged with a second path created by stormwater runoff from Facility's driveway. Downhill from the convergence was an area of ponded water just northwest of the Tributary. The area had two ponds, with water from the uphill pond actively flowing to the downhill pond, then flowing from there to the Tributary.

7. Mr. Meyers field tested the water in the ponds for ammonia; the results indicated the water in the pond had elevated levels of ammonia. Mr. Meyers also collected samples of the water flowing from the downhill pond to the Tributary; the results of indicated 79 mg/l of ammonia in the water. These results indicate manure from the Structure entered the Tributary.

8. On January 9, 2019, the DNR issued the Kregels a Notice of Violation for the violations discovered during the field office inspection on October 10, 2018.

IV. CONCLUSIONS OF LAW

1. 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 65.

2. 567 IAC 65.2(3) states that all manure for confinement feeding operations must be retained between application periods and shall not be discharged to a water of the state. Manure from the Structure flowed through a breach, ponded, then flowed from the downhill pond and discharged to the Tributary. These facts indicate a violation of this rule.

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

V. ORDER

THEREFORE, the DNR orders and the Kregels agree to the following:

1. The Kregels shall operate the Facility in compliance with all applicable DNR rules and regulations and shall cease all non-permitted discharges.
2. The Kregels shall develop and submit a plan of action to ensure that no further manure releases occur at the Facility, including evaluating the manure storage capacity of the Structure and implementing stormwater controls to reduce the amount of stormwater entering the Structure. The plan of action shall be submitted to DNR Field Office 1 for approval

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within 30 days of receipt of this Order. The Kregels shall immediately implement the plan of action upon its approval by DNR Field Office 1.

3. The Kregels shall pay an administrative penalty in the amount of \$3,600.00 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 this Order with an administrative penalty of \$3,600.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC 10.2(1) considers the costs saved or likely to be saved by the violator. 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 Kregels saved time and money by failing to maintain the Structure, including from failing to implement adequate stormwater controls. This a delayed economic benefit. \$600.00 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. Failing to retain manure creates a harm to the environment, including downstream properties. Failing to comply with regulations related to the retention of manure harms the animal feeding operation program. \$2,000.00 is assessed for this factor.

Culpability – The Kregels have a duty to operate and maintain their animal feeding operation in compliance with applicable laws and regulations. Despite several inspections by the DNR indicating the Structure was prone to erosion due to high amounts of stormwater runoff entering the Structure, the Kregels failed to operate and maintain the Structure in a manner that retained all manure. However, Mr. Kregel did quickly and effectively repair the Structure. Therefore, \$1,000.00 is assessed for culpability.

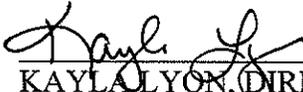
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VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Gary Kregel and Darlene Kregel. For that reason, both parties waive any right to appeal this Order or any part thereof.

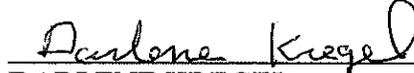
VIII. NONCOMPLIANCE

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.



KAYLALYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 25 day of
Feb, 2019 ~~2020~~



DARLENE KREGEL

Dated this 17 day of
2/17, 2019 ~~2020~~



GARY KREGEL

Dated this 17 day of
2/17, 2019 ~~2020~~

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