

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

IN THE MATTER OF:

GARY SOVEREIGN

Howard County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2020-AFO-09

TO: Gary Sovereign
21408 125th Street
Cresco, Iowa 52136

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gary Sovereign for the purpose of resolving water quality violations resulting from a manure during land application in Howard County, Iowa. This administrative consent order requires Mr. Sovereign to ensure that all handling, transferring, and land application of manure is done in a manner that does not result in a manure release to a water of the state and to pay an administrative penalty in the amount of \$2,000.00. 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, DNR Field Office 1
Iowa Department of Natural Resources
909 West Main Street, Suit
Mason City, Iowa 50401
Phone: 641/424-4073

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

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

III. STATEMENT OF FACTS

1. Gary Sovereign is a certified manure applicator and was land applying manure from the JBS Farms Doolittle site located in Section 1, Paris Township, Howard County, Iowa. Mr. Sovereign only applies manure for his family's facilities.
2. On December 5, 2019, Jeff Korsmo with the Howard County Conservation Office contacted the DNR spill line to report that Gary Sovereign contacted him regarding a manure spill during a manure application. Mr. Sovereign stated that approximately 5,000 to 10,000 gallons of manure was released due to a pump failure.
3. On December 6, 2019, Tom McCarthy, DNR Field Office 1 environmental specialist senior, contacted Mr. Sovereign by telephone. Mr. Sovereign stated that on December 5, 2019, a valve on the booster pump failed causing the manure hose to rupture. He estimated that between 5,000 and 10,000 gallons of manure was released to the Turkey River (river). Mr. Sovereign stated he stopped the manure release by blocking the hose. He stated that he was unable to contact DNR to report the release, so he contacted Mr. Korsmo as soon as he stopped the manure release.
4. On December 6, 2019, Mr. McCarthy contacted Mr. Korsmo and Mr. Korsmo stated he checked the river in two locations downstream of the release point. He did not observe any dead fish nor any adverse water quality impacts at either location.
5. On December 6, 2019, Mr. McCarthy visited the release point and met with Mr. Sovereign. Mr. Sovereign agreed to clean up the pooled manure from the farm lane and the bridge over the river. Mr. McCarthy did not observe any dead fish or any adverse water quality impacts at the release point. He did note that the river was moving fast at this location. Mr. McCarthy visited several locations downstream of the release point and did not observe any dead fish or any adverse water quality impacts. After further review of the damaged hose and the impact of the release, Mr. Sovereign recalculated the maximum amount of manure released to be no more than 2,800 gallons.
6. On December 10, 2019, Mr. Sovereign submitted the formal spill report to the DNR. The report indicated that the spill occurred because the valve had been mounted vertically allowing the spill to occur. In order to avoid future releases, the valve was remounted horizontally to prevent future spills.

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7. On January 10, 2020, DNR issued a Notice of Violation letter to Mr. Sovereign for the violations resulting from the December manure release. The letter informed Mr. Sovereign that the matter was being referred for further enforcement.

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 section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Mr. Sovereign stated that manure was released into the river after a manure application hose ruptured. The above-mentioned facts indicate a violation of these provisions.

3. 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. Mr. Sovereign stated that manure from the Doolittle site was released into the river, a water of the state, after a manure application hose ruptured. The above-mentioned facts indicate a violation of this provision.

4. The DNR has determined that there is no likelihood that the violations cited in this administrative consent order will occur again if Mr. Sovereign continues to maintain and operate the pump with the valve adjustment noted in Paragraph 6 Section III [Statement of Facts] of the administrative consent order.

V. ORDER

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

1. Mr. Sovereign shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state; and
2. Mr. Sovereign shall pay an administrative penalty in the amount of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

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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.

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 \$2,000.00. 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. The release was due to a broken piece of equipment. There was little to no economic benefit recognized by Mr. Sovereign, 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. The release of manure resulted in violations of the animal feeding operation regulations. The violations threaten the integrity of the animal feeding operation regulations. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Mr. Sovereign has a duty to know the regulations and to be aware that his actions are subject to the regulations. Officials were notified of the release as soon as it was discovered and immediate actions were taken to prevent the manure from impacting the river. Based on the information above, there is no amount being assessed for this factor.

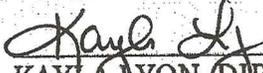
VII. WAIVER OF APPEAL RIGHTS

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

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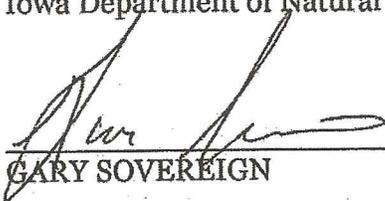
VIII. NONCOMPLIANCE

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.



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 17th day of
March, 2020.



GARY SOVEREIGN

Dated this 13th day of
March, 2020.

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