

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

IN THE MATTER OF:

BUCH FARMS, LLC

Jefferson County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 29

TO: Brandon Buch
Buch Farms, LLC
410 South 7th Street
Fairfield, Iowa 52556

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Buch Farms, Inc. (Buch Farms) for the purpose of resolving water quality violations resulting from an accident that caused a manure release. This administrative consent order requires Buch Farms 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, develop and submit a Standard Operating Procedure for the proper transportation of manure, and to pay an administrative penalty in the amount of \$750.00. 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:

Mark Heiderscheid, DNR Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

Payment of penalty to:

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BUCH FARMS, LLC

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

III. STATEMENT OF FACTS

1. Buch Farms is a commercial manure service located in Fairfield, Iowa. The events noted in this administrative consent order occurred as Buch Farms was hauling manure from the Corey Oswald facility. Dietrich Custom Pumping was the contract manure applicator and subcontracted with Buch Farms to haul the manure.

2. On April 29, 2020, Brandon Buch with Buch Farms contacted DNR Field Office 6 indicating that a Buch Farms tanker full of manure had rolled over in a ditch. The area of the accident was approximately a half mile west of the intersection of 210th Street and Highway 149 in Van Buren Township of Keokuk County. Mr. Buch stated that the driver turned short as he was entering the field and rolled the vehicle. Manure from the tanker was discharged to an unnamed tributary of Bridge Creek.

3. Mark Heiderscheit, DNR Field Office 6 environmental specialist, responded to the spill site and met with Mr. Buch. The stream was being flushed and a dam had been constructed downstream. The manure was being pumped into a manure spreader. Mr. Buch estimated that 5,000 gallons of manure had been recovered, with approximately 1,000 gallons of manure being released to the water. Mr. Heiderscheit walked the tributary and noted a very low flow beyond where the dam had been constructed and the water appeared to be clear. Mr. Heiderscheit collected laboratory samples of the impacted area. The results of the samples are noted below:

Sample Location	Ammonia
North side of 210 th Street, upstream of accident location	0.09 mg/L
South side of 210 th Street, between dam and accident location	430 mg/L
South side of 210 th Street, downstream of the dam	1.4 mg/L

4. On April 30, 2020, Mr. Buch contacted Mr. Heiderscheit and provided him an update on the status of the cleanup. Mr. Buch stated the water looked clear. Mr. Heiderscheit conducted a follow up visit to the spill site. He noted that the water about the dam looked murky, but the water downstream of the dam was clear. Mr.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BUCH FARMS, LLC

Heiderscheit collected laboratory samples of the impacted area. The results of the samples are noted below:

Sample Location	Ammonia
North side of 210 th Street, upstream of accident location	0.12 mg/L
South side of 210 th Street, between dam and accident location	15 mg/L
South side of 210 th Street, downstream of the dam	11 mg/L

5. On May 19, 2020, DNR issued a Notice of Violation letter to Buch Farms for the violations resulting from the April manure release. The letter informed Buch Farms that the matter was being referred for further enforcement.

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(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. DNR Field Office 6 observed manure was released to the unnamed tributary when the Buch Farms' tanker rolled into the ditch. The above-mentioned facts indicate a violation of these provisions.

3. 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. The manure release from the Buch Farms' tanker created elevated pollutants in the water and the water was murky. The above-mentioned facts indicate violations of the general water quality criteria.

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 65.2(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. During the April

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BUCH FARMS, LLC

2020 investigation, manure originating from the Oswald facility entered the tributary. The above-mentioned facts indicate a violation of this provision.

5. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-4, Section IV [Conclusions of Law] will occur again if Buch Farms implements the requirements set forth in Paragraph 1-2, Section V [Order] of the administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Buch Farms agrees to do the following:

1. Buch Farms 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;
2. Buch Farms shall develop a Standard Operating Procedure for proper transportation of manure. The Standard Operating Procedure shall include the steps that shall be taken in the event of future accidents. The Standard Operating Procedure shall be submitted to DNR Field Office 6 for approval within 30 days of the date the Director signs this administrative consent order. Buch Farms shall immediately implement the Standard Operating Procedure upon its approval by the field office; and
3. Buch Farms shall pay an administrative penalty in the amount of \$750.00 within 30 days of the date the Director signs this administrative consent order. **Paid October 19, 2020**

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 \$750.00. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BUCH FARMS, LLC

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 an accident. There was little to no economic benefit recognized by Buch Farms, 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, \$750.00 is assessed for this factor.

Culpability – Buch Farms has a duty to know the regulations and to be aware that its actions are subject to the regulations. Officials were notified of the release as soon as it occurred and immediate actions were taken to prevent the further impacts on the tributary. 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 Buch Farms. For that reason, Buch Farms 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BUCH FARMS, LLC



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 23rd day of
November, 2020.



BRANDON BUEH
BUCH FARMS, LLC

Dated this 11th day of
November, 2020.

Kelli Book, DNR Field Office 6, EPA, VIII.D.1.a