

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

IN THE MATTER OF:

KRIS EHLERS

Buena Vista County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 31

TO: Kris Ehlers
1980 490th Street
Albert City, Iowa 50510

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kris Ehlers for the purpose of resolving water quality violations resulting from a manure discharge from Mr. Ehlers' animal feeding operation in Buena Vista County. This administrative consent order requires Mr. Ehlers to: 1) to develop and implement a Plan of Action for regular inspections of the manure storage structures at his facility to avoid future manure releases and 2) pay a \$2,500.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Brandon Miner, DNR Field Office 3
Iowa Department of Natural Resources
1900 N Grand Ave, Ste E17
Spencer, Iowa 51301
Phone: 712/262-4177

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

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. Kris Ehlers owns and operates a confined animal feeding operation located at 1980 490th Street; Albert City, Iowa (Section 7, Fairfield Township, Buena Vista County). The operation has a capacity of 1,300 head of swine (520 animal units). Manure is stored in an above-ground slurry store structure.

2. On July 19, 2020, Mr. Ehlers contacted DNR Field Office 3 to report a manure spill at his facility. He stated the spill was due to a failed seal on a valve. Manure had reached an underground tile line and flowed to a dredge ditch. Mr. Ehlers stated that he observed dead fish in the dredge ditch.

3. On the same day, Brandon Miner, DNR Field Office 3 environmental specialist, met with Mr. Ehlers at the facility. Mr. Miner observed that manure flowed from the slurry store structure to a neighboring soybean field and to a grassed waterway. Mr. Ehlers had constructed an earthen dike in the grassed waterway to contain the manure spill. Most of the manure appeared to have soaked into the field and the waterway. Mr. Ehlers explained to Mr. Miner that there was an underground tile line in the grassed waterway that drains to a dredge ditch.

4. Mr. Miner assessed the impact of the manure spill to the dredge ditch. The findings of Mr. Miner's investigation are noted below:

Location	Ammonia Field Test (mg/L)	Observations	Ammonia (mg/L) Laboratory Sample	E.Coli (Col/100 mL) Laboratory Sample	BOD (mg/L) Laboratory Sample
Tile Outlet to the Dredge Ditch	0.8	Water was with no manure smell	0.49	>24,000	14
Approximately 100 yards downstream of Tile Outlet	1.8	Water was cloudy with slight manure smell	N/A	N/A	N/A
Approximately 300 yards downstream of Tile Outlet	1.8	Water was clear	N/A	N/A	N/A
Approximately 1/2	>3.0	Water was	1.9	>24,000	14

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mile downstream of Tile Outlet		slightly cloudy with no manure smell			
Intersection of 490 th and 180 th Avenue (first road crossing of the dredge ditch)	>3.0	Water had a slight manure smell and approximately 20 dead fish	64	19,000	290
170 th Avenue Bridge	>3.0	Approximately 10 dead fish	N/A	N/A	N/A
Intersection of 490 th Street and 160 th Avenue	>3.0	Approximately 10 dead fish	N/A	N/A	N/A
Intersection of 490 th Street and 169 th Avenue	>3.0	Approximately 10 dead fish	N/A	N/A	N/A
One mile west of the 490 th Street Bridge (downstream of where the dredge ditch joined the North Raccoon River)	0.2	Water was clear and no dead or live fish were observed	N/A	N/A	N/A

5. On July 20, 2020, Mr. Miner and Jacob Simonsen, DNR Field Office 3 environmental specialist, returned to the area to check the condition of the dredge ditch downstream of the tile outlet. The outcome of their investigation is noted below:

Location	Ammonia Field Test (mg/L)	Observations
Approximately 1/2 mile downstream of Tile Outlet	1.8	1 dead fish
Intersection of 490 th and 180 th Avenue (first road crossing of the dredge ditch)	>3.0	Approximately 15 dead fish
One mile west of the 490 th Street Bridge (downstream of where the dredge ditch joined the North Raccoon River)	1.9	Water was clear and no dead or live fish were observed
150 th Avenue after the confluence of the dredge ditch and the North Raccoon River	1.4	Water was clear and no dead or live fish were observed
500 th Street after the confluence of the dredge ditch and the North	1.8	Water was clear and no dead or live fish were observed

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Raccoon River		
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6. On July 20, 2020, Ben Wallace, DNR Fisheries biologist, was notified of the fish kill. On July 20, 2020, Mr. Wallace determined that a fish kill assessment would not be conducted because dead fish were observed at only one road crossing on that day.

7. On August 21, 2020, DNR issued a Notice of Violation and Notice of Referral letter to Mr. Ehlers for the violations discovered during the July 2020 investigation. The letter informed Mr. Ehlers 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. During the July 2020 investigation, DNR Field Office 3 observed that manure from the Ehlers facility had entered the dredge 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 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 July 2020 investigation, DNR Field Office 3 observed that manure from the Ehlers facility had entered the dredge ditch. The above-mentioned facts indicate a violation of these provisions.

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V. ORDER

THEREFORE, the DNR orders and Kris Ehlers agrees to do the following:

1. Kris Ehlers shall operate and maintain all structures at his facility in compliance with all applicable DNR rules and regulations;
2. Kris Ehlers shall develop a Plan of Action to conduct regular inspections of all manure storage areas at his facility to prevent future manure releases. The Plan of Action shall be submitted to DNR Field Office 3 within 30 days of the date the Director signs this administrative consent order and implemented immediately upon approval by DNR Field Office 3; and
3. Kris Ehlers shall pay an administrative penalty in the amount of \$2,500.00 within 30 days of the date the Director signs this administrative consent order.

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 \$2,500.00. 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 manure release was caused by an accidental situation and there was no evidence of economic benefit received by Mr. Ehlers; therefore, no economic benefit is being assessed for this factor.

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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 manure release did result in elevated pollutant levels and resulted in a fish kill. 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.

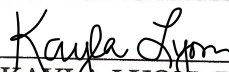
Culpability – Mr. Ehlers has a duty to know the regulations and to be aware that his actions are subject to the regulations. Mr. Ehlers stated he was uncertain as to when the manure release started because he does not often inspect the slurry store area. Based on the information above, \$500.00 is being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

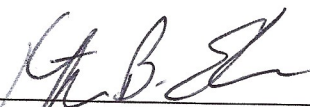
This administrative consent order is entered into knowingly and with the consent of Kris Ehlers. For that reason, Kris Ehlers waives the right to appeal this administrative consent order or any part thereof.

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.


KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 3rd day of
December, 2020.


KRIS EHLERS

Dated this 20th day of
November, 2020.

Kelli Book, DNR Field Office 3, EPA, VIII.D.1.a