

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

<p>IN THE MATTER OF:</p> <p><b>FREMONT FARMS OF IOWA L.L.P.</b> <b>Facility #60767</b></p> <p><b>Poweshiek County, Iowa</b></p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 20<u>20</u>-AFO- 34</p> <p>NO. 20<u>20</u>-WW- 16</p>
---	--

TO: John Pietila, Registered Agent  
Fremont Farms of Iowa L.L.P.  
215 10<sup>th</sup> Street, Suite 1300  
Des Moines, Iowa 50309

T.J. Studyvin, Vice President of Operations  
Fremont Farms of Iowa L.L.P.  
3968 110<sup>th</sup> Street  
Malcom, Iowa 50157

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Fremont Farms of Iowa L.L.P. (Fremont Farms) for the purpose of resolving violations resulting from a manure discharge from Fremont Farms' animal feeding operation that resulted in water quality violations and violations of the facility's NPDES permit. This administrative consent order requires Fremont Farms to do the following: 1) operate and maintain all structures at its facility in compliance with all applicable DNR rules and regulations; 2) install and maintain retaining walls at the front edge of manure storage buildings; 3) load all trucks inside of the manure storage buildings; 4) construct two new manure storage buildings; 5) use temporary stormwater controls and best management practices in the event of stormwater contamination at the facility; 6) test the stormwater runoff for ammonia in five locations at the facility; and 7) pay an administrative penalty in the amount of \$4,000.00.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bill Gibbons, Field Office 5  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/725-0335

**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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

**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 violations 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**

Fremont Farms neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Fremont Farms owns and operates an egg laying facility. The facility has an animal unit capacity of 7,500,000 head of layer chickens with 32 production buildings, two storage buildings, an egg washing facility, and a three-cell lagoon for treatment and storage of wastewater from the egg washing operation. The facility is located at 3868 110<sup>th</sup> Street, Malcom, Iowa (Section 10; Malcom Township; Poweshiek County). The facility has a NPDES permit for the land application of the egg washing wastewater to nearby fields with an irrigation system. Fremont Farms is in the process of converting the facility to a cage-free operation. 20 production buildings at the north end of the facility will be removed and replaced by four production buildings and two manure storage buildings. The number of chickens at the facility will remain the same.

2. On September 11, 2019, Myriam Lafreniere Landry, Poweshiek NRCS/SWCD Watershed Coordinator, emailed Bill Gibbons, DNR Field Office 5 environmental specialist, stating she observed dead fish in Little Bear Creek, starting approximately one mile west of Malcom where 100<sup>th</sup> Street crosses the creek to the south side of Malcom where Highway 63 crosses the creek.

3. On September 12, 2019, Mr. Gibbons began his investigation by conducting field tests at the road crossings over Little Bear Creek, starting 2 1/2 miles west of Malcom at the 90<sup>th</sup> Street crossing to 3 1/2 miles east of Malcom at the 400<sup>th</sup> Avenue crossing. The field test results and observations are listed below:

<b>Location</b>	<b>Temperature (°F)</b>	<b>pH</b>	<b>Ammonia as N (mg/L)</b>	<b>Dissolved Oxygen (mg/L)</b>	<b>Dead Fish Count<sup>1</sup></b>
90 <sup>th</sup> Street	76	6	0.00	6.0	0

<sup>1</sup> A formal fish kill count was not conducted by DNR Fisheries because of the time between the discharge and the investigation. It was determined that DNR Fisheries would not be able to conduct an accurate count.

IOWA DEPARTMENT OF NATURAL RESOURCES  
 ADMINISTRATIVE CONSENT ORDER  
 ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

100 <sup>th</sup> Street	78	6	0.00	6.0	0
110 <sup>th</sup> Street	80	5	1.68	5.0	7
410 <sup>th</sup> Avenue	80	5	1.68	5.0	14
Highway 63	80	5	1.68	5.0	40
130 <sup>th</sup> Street	80	5	0.72	5.0	0
400 <sup>th</sup> Avenue	80	5	0.00	6.0	0

The field test results indicated that the dead fish were found in areas where the ammonia were greater than 1 while all other factors remained at the same levels. Ammonia was the primary factor causing the fish kill. The dead fish ranged from small (a few inches long) to medium size (9-10 inches long) with the majority being small fish. Mr. Gibbons contacted T.J. Studyvin with Fremont Farms. Mr. Studyvin stated he was unaware of the release but that the manure storage building at the southeast corner of the facility was full beyond capacity and some manure had pushed through the north wall. Mr. Studyvin stated that limestone rock had been placed in the area to keep the manure contained. He stated that manure was taken to Axmear Ag, Inc. to the west of the facility because of the capacity issue at the facility.

4. Based on the field test results, the level of ammonia between 100<sup>th</sup> Street and 110<sup>th</sup> Street rose to toxic levels. Maps and aerial photographs show a north to south tributary (tributary) that enters Little Bear Creek south of Diagonal Road, between 100<sup>th</sup> and 110<sup>th</sup> Street. One of the fields that connects to the tributary is directly south of the Fremont Farms facility.

5. On September 13, 2020, Mr. Gibbons returned to the site to investigate the tributary. He conducted field tests and collected laboratory samples starting at Diagonal Road where it crossed over the tributary, upstream of where the tributary enters Little Bear Creek, and continued the field tests at various locations on the tributary to 110<sup>th</sup> Street. The field test and laboratory results are listed below:

Location	Temperature (°F)	pH	Dissolved Oxygen (mg/L)	Field Test – Ammonia as N (mg/L)	Laboratory Sample – Ammonia as N (mg/L)
Diagonal Road	60	5	4.0	>3.0	6.3
Field South of Fremont Farms	62	5	1.0	>3.0	9.9

IOWA DEPARTMENT OF NATURAL RESOURCES  
 ADMINISTRATIVE CONSENT ORDER  
 ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

South Side of Fremont Farms – Highway 6 culvert	68	5	2.0	>3.0	9.6
Highway 6 – Axmear Culvert	66	5	3.0	>3.0	6.6
110 <sup>th</sup> Street	70	5	5.0	1.2	0.36
100 <sup>th</sup> Street	70	5	5.0	0.0	0.0

Mr. Gibbons noted that based on the field test results that the storm water coming from the Fremont Farms and Axmear locations was flowing into the field tiles that outlet to the tributary.

6. On September 16, 2019, Mr. Gibbons contacted Mr. Studyvin and Mr. Studyvin took immediate action to prevent the runoff of manure from the facility.

7. On September 17, 2019, Mr. Gibbons and Dennis Thielen, DNR Field Office 5 environmental specialist senior, returned to the facility for a site survey inspection for the upcoming construction project. While at the facility, Mr. Gibbons also spoke to Mr. Studyvin about the earlier release. Mr. Studyvin showed Mr. Gibbons where the manure had been released from the wall of the manure storage building. Runoff from the exposed manure flowed to a low spot where two culverts drain into another culvert that conveys water to the road ditch. The road ditch flows to a culvert that goes under Old Highway 6 to the field on the south side of the Highway and where the tile line is exposed to the surface. Mr. Studyvin informed Mr. Gibbons that the manure that had been released was being contained and placed back in storage, while some was taken the Axmear location. Mr. Gibbons and Mr. Thielen traveled to the Axmear location and spoke to Jerry Axmear. Mr. Axmear stated he purchases manure from Fremont Farms and generally applies the manure directly to fields. He said he only stockpiled the current pile at the request of Fremont Farms and would land apply the stockpile within the next few days.

8. On October 11, 2019, DNR issued a Notice of Violation letter to Fremont Farms for the violations discovered during the September 2019 investigation. The letter required Fremont Farms to submit a written plan on how the manure will be stored as well as a monitoring plan to measure ammonia in the stormwater.

9. On November 12, 2019, DNR received a written plan from Fremont Farms that addressed the manure storage and monitoring requirements. Fremont Farms stated that it planned to do the following: 1) add retaining walls to the front

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

edge of the manure barns to increase the structural integrity of the buildings; 2) load trucks inside the manure buildings; 3) two new buildings part of the new construction will increase the manure storage capacity at the facility; 4) if there is stormwater contamination, temporary controls and best management practices will be put in place; and 5) measure and log stormwater runoff at five locations as it leaves the building site (monthly and after specific contamination events).

#### IV. CONCLUSIONS OF LAW

Fremont Farms neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants from a point source into any water of the State without an applicable permit. DNR Field Office 5 noted that stormwater and manure runoff from Fremont Farms was discharged to a tributary and subsequently to Little Bear Creek not in accordance with a permit. The above-mentioned facts demonstrate violations of these provisions.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits any discharges that will settle to produce sludge deposits or that are toxic to aquatic life. Stormwater and manure runoff from Fremont Farms led to elevated pollutants in the tributary and Little Bear Creek and resulted in a fish kill. The above-mentioned facts demonstrate violations of this provision.

3. Iowa Code section 459A.104 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.

4. 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. DNR Field Office 5 noted that manure from Fremont Farms was discharged to a tributary and subsequently to Little Bear Creek. The above-mentioned facts indicate violations of these provisions.

5. The DNR has determined that there is no likelihood that the violations cited in this administrative consent order will occur again if Fremont Farms implements and complies with Paragraphs 1-6; Section V Order of this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

**V. ORDER**

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

1. Fremont Farms shall operate and maintain all structures at its facility in compliance with all applicable DNR rules and regulations;
2. Fremont Farms shall install and maintain retaining walls at the front edge of the existing manure storage buildings within 60 days of the date the Director signs this administrative consent order and the retaining walls shall also be included in the new construction taking place at the facility;
3. Fremont Farms shall load all trucks inside of the manure storage buildings;
4. Fremont Farms shall construct two new manure storage buildings as part of the new construction. The construction and implementation of the first building shall be completed within 24 months of the date the Director signs this administrative consent order and the construction and implementation of the second building shall be completed within 48 months of the date the Director signs this administrative consent order;
5. Fremont Farms shall use temporary stormwater controls and best management practices in the event of stormwater contamination at the facility;
6. Fremont Farms shall test and log the stormwater runoff for ammonia in five locations at the facility. The tests shall be conducted on a monthly basis after the first 1/2 inch of rainfall and periods of frozen conditions and draught shall be noted in the sampling log. In the event of stormwater contamination, testing shall occur at all locations regardless of the precipitation event. Sampling protocol established in the November 12, 2019 letter to the DNR shall be followed; and
7. Fremont Farms shall pay an administrative penalty in the amount of \$4,000.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

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 \$4,000.00. 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.” It is estimated that Fremont Farms gained an economic benefit of at least \$500.00 and that amount 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. DNR Field Office 5 documented a manure discharge that led to documented water quality violations and a fish kill. The DNR personnel expended a large amount of staff time in investigating and responding to the manure release. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, based on the above-mentioned facts, \$1,500.00 is assessed for this factor.

Culpability – Fremont Farms has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Fremont Farms is obligated to operate the facility in accordance with the state regulations. Therefore, \$2,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: FREMONT FARMS OF IOWA L.L.P.

**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 18th day of  
December, 2020.

  
\_\_\_\_\_  
For FREMONT FARMS OF IOWA L.L.P.

Dated this 17<sup>th</sup> day of  
December, 2020.

Facility #60767; Kelli Book; DNR Field Office 5; EPA; I.C.1, VIII.D.1.b and VIII.D.3.a