

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

IN THE MATTER OF:

**ANDREW VORWERK dba  
VORWERK CUSTOM PUMPING**

ADMINISTRATIVE CONSENT ORDER  
NO. 2021-AFO- 02

TO: Andrew Vorwerk  
Vorwerk Custom Pumping  
22947 County Road 5  
Wykoff, Minnesota 55990

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Rodney Vorwerk dba Vorwerk Custom Pumping (Vorwerk) for the purpose of resolving violations resulting from uncertified manure applicators and a manure discharge that resulted in water quality violations and a fish kill. This administrative consent order requires Vorwerk to do the following: 1) comply with manure applicator certification requirements; 2) submit a Standard Operating Procedure for preventing manure releases during application; and 3) pay fish restitution and investigate costs in the amount of 2,284.64 and an administrative penalty in the amount of \$5,000.00. 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: Relating to legal requirements:**

Jeremy Klatt, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> St SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

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

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**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 or 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. Vorwerk is a commercial manure service based in Wykoff, Minnesota, but also land applies manure in Iowa.

**STATEMENT OF FACTS ASSOCIATED WITH MANURE APPLICATION CERTIFICATIONS:**

2. On November 26, 2019, Michael Hansen, a commercial manure service representative for Vorwerk, contacted DNR Field Office 2 to report a manure spill during application at the Iowa Select Farms Winter Finisher confinement feeding operation located in Hardin County, Iowa.

3. On the same day, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, investigated the spill. During the investigation, he noted that the manure spill occurred when a coupler failed as manure was being applied from the earthen basin at the facility. The manure flowed down the back of the berm to a grass area. The manure was scraped and corn stalks were applied to soak up the pooled manure; no water of the state was impacted. Mr. Klatt also spoke to Mr. Hanson. Mr. Hanson showed Mr. Klatt a screen shot of the completion certificate showing that he completed the 2019 manure applicator training. A later check of the DNR records indicated that the certification and fees had not been submitted to DNR, making Mr. Hanson an uncertified manure applicator.

4. On December 5, 2019, Mr. Klatt contacted Mr. Hanson by telephone to further discuss Mr. Hanson's certification status. Mr. Hanson stated that he applied manure in Iowa in the spring of 2019 as a new employee under the supervision of Andrew Vorwerk, a commercial manure service representative for Vorwerk. Mr. Hanson stated he provided his completion certificate to Mr. Vorwerk with the understanding that Mr. Vorwerk would complete the paperwork. Mr. Klatt also contacted Mr. Vorwerk by telephone to discuss the certification issues. Mr. Vorwerk confirmed that he and Mr. Hanson applied manure for two confinement feeding operations in April and May 2019. A later check of the DNR records indicated that Mr. Vorwerk had taken the online training but had not submitted the certification

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fees, indicating he was not a certified manure applicator during the April and May 2019 manure applications.

5. Following the telephone conversations, Mr. Klatt confirmed that both Mr. Vorwerk and Mr. Hanson were now properly certified manure applicators.

6. On December 12, 2019, DNR issued a Notice of Violation letter to Vorwerk for the certification violations discovered during the November and December 2019 investigation. The letter informed Vorwerk that the violations would be forwarded for further enforcement.

**STATEMENT OF FACTS ASSOCIATED WITH MANURE RELEASE:**

7. Vorwerk was hired to land apply manure from the Iowa Select Farms, Primrose Sow Facility in Mitchell County, Iowa. On April 23, 2020, Keith Kratchmer with Iowa Select Farms contacted DNR Field Office 2 and stated that while Vorwerk was land applying manure from the Primrose Sow Facility that a hose ruptured and manure was released to Little Cedar Creek.

8. On April 24, 2020, Daniel Watterson and Kayla Beck, DNR Field Office 2 environmental specialists, travelled to the site. The field office staff began the investigation at Little Cedar Creek approximately two miles downstream of the discharge location. The field staff did not observe any evidence of manure in the creek. They continued upstream to an abandoned bridge crossing, approximately a mile downstream of the discharge location. The field test did not detect the presence of ammonia, and there was no evidence of manure in the creek.

9. The field office staff went to the spill location and met with facility representatives. They observed a dam that been constructed near the farm buildings. The hose rupture occurred approximately 2,500 feet upstream of the dam. A facility representative stated the pumped manure was being land applied.

10. The field office staff met with Mr. Kratchmer and Mr. Vorwerk who explained to the field office staff that they had placed a main dam and a secondary dam in the impacted area and were pumping water from the area. The field staff tested the water at the main dam and it indicated an ammonia concentration of 1.5 mg/L. The field office staff also checked the area above the discharge point and below the dammed area. Above the discharge point the ammonia concentration was less than 0.050 mg/L and below the dammed area was 0.12 mg/L.

11. The pumps at the dammed area continued to run for at least another hour after which time the ammonia concentration was 0.4 mg/L. The field office staff approved that the removal of the dams.

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12. On April 24, 2019, DNR's Fisheries Bureau personnel conducted its fish kill assessment of the impacted areas of the tributary to Little Cedar River. The fish kill investigation was led by Theresa Shay, Mike Siepker, and Sophia Campbell. The Fisheries personnel determined the fish kill extended 0.49 miles in the tributary. The Fisheries Bureau personnel performed the count utilizing a complete count of all dead fish because the stream was completely accessible and the water was clear as outlined in American Fisheries Society, Special Publication 30.

13. The fish kill assessment determined that 2,375 fish were killed, valued at \$475.75. The Fisheries Bureau investigative costs were \$1,277.41 and the Field Office investigative costs were \$531.48. The total fish value and investigative costs totaled \$2,284.64.

14. On May 11, 2020, DNR issued Vorwerk a Notice of Violation for the violations observed in April 2020. The letter indicated the violations were 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 459.315(2) and 567 IAC 65.19(1) state that a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Iowa Code section 459.102(12)"b" defines a "commercial manure service representative" as an employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. During the November 2019 and December 2019 investigation DNR Field Office 2 determined that Mr. Hanson applied manure on behalf of Vorwerk in November 2019 without being properly certified. Additionally, it was determined that Mr. Hanson and Mr. Vorwerk applied manure on behalf of Vorwerk on two occasions in April and May 2019 without being properly certified. The above-mentioned facts indicate violations of this provision.

3. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the April 2020, investigation, DNR Field Office 2 found evidence that the manure from Vorwerk's application was discharged to a tributary of Little Cedar Creek. The above-mentioned facts indicate a violation of these provisions.

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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. During the April 2020, investigation, DNR Field Office 2 found evidence that the manure from Vorwerk's application was discharged to a tributary of Little Cedar Creek. The above-mentioned facts indicate a violation of this provision.

5. 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 laboratory results indicated elevated pollutants and there was a documented fish kill in the tributary. The above-mentioned facts indicate violations of the general water quality criteria.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure release from the Vorwerk application.

7. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 3-5, Section IV [Conclusions of Law] will occur again if Vorwerk implements the requirements set forth in Paragraph 2, Section V [Order] of the administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Vorwerk agrees to do the following:

1. Vorwerk shall ensure that all of its employees are properly certified prior to handling, applying or transporting manure;
2. Vorwerk shall develop a Standard Operating Procedure for the land application of manure. The Standard Operating Procedure shall include the steps that shall be taken to ensure there is no runoff from the application fields. The Standard Operating Procedure shall be submitted to DNR Field Office 2 for approval within 30 days of the date the Director signs this administrative consent order. Vorwerk shall immediately implement the Standard Operating Procedure upon its approval by the field office; and

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3. Vorwerk shall pay fish restitution and investigative costs in an amount of \$2,284.64 and an administrative penalty in the amount of \$5,000.00 in accordance with the following payment schedule.

\$1,824.64 due January 15, 2021	\$1,820 due January 15, 2022
\$1,820.00 due July 15, 2021	\$1,820 due July 15, 2022

The administrative penalty shall be satisfied first and the remainder of the payments shall be applied to the fish restitution. If any of the said payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately.

**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 \$5,000.00. 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.” Vorwerk gained a minimal economic benefit by delaying the costs associated with paying the certification fees for at least two of its employees. However, at the time of this administrative consent order, the certification fees have been paid resulting in a minimal economic benefit. Additionally, there was no economic gain from the manure release during the land application as immediate steps were taken to remediate the situation and prevent further environmental harm. 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.

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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 applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Vorwerk accepted at least three application jobs without the applicators being properly certified. Additionally, the discharge from the application field resulted in the degradation of water quality and a fish kill. The violations threaten the integrity of the regulatory program. Therefore, \$2,000.00 is assessed for the applicator certification violations and \$1,500.00 is assessed for the manure discharge violations for a total amount of \$3,500.00 being assessed for this factor.

Culpability – Vorwerk 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. Vorwerk accepted at least three application jobs without the applicators being properly certified. During the manure discharge, Vorwerk took immediate action to remediate the discharge and prevent further environmental harm. Therefore, \$1,500.00 is assessed for this factor.

#### **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Vorwerk. For that reason, Vorwerk 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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Dated this 19th day of  
January, 2020.

  
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ANDREW VORWERK dba  
VORWERK CUSTOM PUMPING

Dated this 1 day of  
January, 2020.

Kelli Book, Field Office #2, EPA, VIII.D.2.b, VIII.D.1.a, VIII.D.3.a

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