

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

IN THE MATTER OF:

GREG KOENEN

Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO- 11

TO: Greg Koenen
2070 360th Street
Hawarden, Iowa 51023

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Greg Koenen for the purpose of resolving water quality violations resulting from a manure discharge from Mr. Koenen's animal feeding operation in Sioux County. This administrative consent order requires Mr. Koenen to: 1) develop and implement a Plan of Action for manure irrigation to avoid future manure releases; and 3) pay a \$3,000.00 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

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

1. Greg Koenen owns and operates a confined animal feeding operation located in Section 15, Garfield Township, Sioux County, Iowa. The operation has a capacity of 1,190 head of dairy cows (1,666 animal units) in confinement with three earthen basins. The operation also houses some open lot cattle (264 animal units) with an earthen runoff basin for manure storage. The operation was constructed in 1996 and expanded in 2013 and 2016.

2. On September 29, 2020, DNR Field Office 3 received a complaint alleging that Mr. Koenen had been irrigating from his center pivot for several days, ending on September 26, 2020. The complainant alleged that manure entered the tributary west of Mr. Koenen's operation. The complainant further alleged that the tributary was full of manure and was discharging to the Rock River.

3. On September 30, 2020, Brandon Miner, DNR Field Office 3 environmental specialist, visited the property noted in the complaint. Mr. Miner noted that the water in the small tributary was flowing and the water was discolored and had a manure odor. Mr. Miner conducted a field test and collected a laboratory sample at this location. The field test indicated an ammonia concentration greater than 3.0 mg/L. The laboratory sample results indicated an ammonia concentration of 120 mg/L, an E. Coli concentration of 43,000 Col/100 mL, and a BOD concentration of 3,300 mg/L.

4. Mr. Miner followed the tributary east approximately 1,500 feet to where the tributary began. He observed a tile line flowing into the tributary. The tile line was coming from the east and the water was discolored with a manure odor. Mr. Miner collected a laboratory sample at this location. The laboratory sample results indicated an ammonia concentration of 220 mg/L, an E. Coli concentration of 51,000 Col/100 mL, and a BOD concentration of greater than 23,000 mg/L.

5. Mr. Miner continued to walk approximately 2,500 feet to the northwest of the tile outlet to where the tributary flows into the Rock River. Mr. Miner conducted a field test and collected a laboratory sample from a separate small tributary that was flowing into the impacted tributary. The water from the separate small tributary was clear and did not have a manure odor. The field test indicated an ammonia concentration of 0.2 mg/L. The laboratory sample results indicated an

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ammonia concentration of 0.050 mg/L, an E. Coli concentration of 960 Col/100 mL, and a BOD concentration of less than 2.0 mg/L. Mr. Miner conducted a field test and collected a laboratory sample where the two tributaries joined. The water was discolored and had a manure odor. The field test indicated an ammonia concentration greater than 3.0 mg/L. The laboratory sample results indicated an ammonia concentration of 28 mg/L, an E. Coli concentration of 25,000 Col/100 mL, and a BOD concentration of 640 mg/L.

6. Mr. Miner traveled to Mr. Koenen's operation and met with Mr. Koenen. Mr. Koenen stated that he had run his irrigator on the weekend of September 26, 2020. Mr. Miner told Mr. Koenen that it appeared manure from the irrigation had entered the tiles and flowed to the tributary and eventually to the Rock River. Mr. Miner showed Mr. Koenen the tile outlet and asked that the tile be plugged to stop the flow. Mr. Koenen had been previously unaware of the situation.

7. On October 1, 2020, Mr. Koenen contacted Mr. Miner and informed him that the tile line had been temporarily plugged.

8. On November 16, 2020, DNR issued a Notice of Violation and Notice of Referral letter to Mr. Koenen for the violations discovered during the September 2020 investigation. The letter informed Mr. Koenen that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

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

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 September 2020 investigation, DNR Field Office 3 observed that manure from the Koenen operation had entered the tributary and the Rock River. 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.

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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(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land applied in a manner that will not cause surface or ground water pollution. During the September 2020 investigation, DNR Field Office 3 observed that manure from the Koenen irrigation event entered the tributary and the Rock River. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Greg Koenen agrees to do the following:

1. Greg Koenen shall develop a Plan of Action for irrigation events to prevent future manure releases. The plan shall include, but not limited to, a plan for monitoring and providing measures to control manure runoff or infiltration to tile lines during and after manure application. 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
2. Greg Koenen shall pay an administrative penalty in the amount of \$3,000.00 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.

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 \$3,000.00. The administrative penalty is determined as follows:

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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. Mr. Koenen gained an economic benefit from the manure release by failing to monitor the outcome of the manure application. Mr. Koenen saved money and time by not conducting an inspection of the application area after the irrigation. Based on this information, it is estimated that Mr. Koenen gained an economic benefit of at least \$50.00 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. The manure release did result in elevated pollutant levels. 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. Koenen has a duty to know the regulations and to be aware that his actions are subject to the regulations. Based on the information above, \$950.00 is being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

Greg Koenen

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Dated this 23 day of
April, 2021.

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