

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

IN THE MATTER OF:

**ALVIN MARTIN  
CLEON MARTIN**

**Mitchell County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2021-AFO- 12

**TO:** Alvin Martin  
3297 Dancer Avenue  
Osage, Iowa 50461

Cleon Martin  
1710 Highway 9  
Osage, Iowa 50461

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Alvin and Cleon Martin for the purpose of resolving water quality violations resulting from a manure discharge from the Martin's animal feeding operation in Mitchell County. This administrative consent order requires Martins to: 1) construct and maintain a waterway and 2) pay a \$500.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

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

**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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: ALVIN MARTIN and CLEON MARTIN

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. Alvin Martin owns an animal feeding operation located at 3472 Dancer Avenue, Osage, Iowa (Section 34, Rock Township, Mitchell County). The operation has a capacity of 475 head of beef cows in confinement. Cleon Martin operates the facility.

2. On November 9, 2020, DNR Field Office 2 received a complaint alleging there was manure in an unnamed tributary of Rock Creek, near Echo Avenue north of 340<sup>th</sup> Street in Mitchell County.

3. On November 9, 2020, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, investigated the complaint. He arrived first at the bridge crossing in the area the complainant noted the manure in the tributary. Mr. Klatt observed sewage fungus along the bottom of the tributary near the bridge and the field test indicated an ammonia concentration of approximately 3 ppm and a low dissolved oxygen level of approximately 4 ppm. The laboratory samples indicated the following concentrations: Ammonia – 3.2 mg/L; BOD – 33 mg/L; and E.coli – 400 MPN/100mL.

4. Mr. Klatt then traveled upstream to the Dancer Avenue bridge crossing. The field test indicated ammonia was nondetectable and a dissolved oxygen level of approximately 9 ppm. The laboratory samples indicated the following concentrations: Ammonia – <0.02 mg/L; BOD – <2 mg/L; and E.coli – 230 MPN/100mL. Due to darkness and the need to contact the landowner, Mr. Klatt suspended the investigation until a later date.

5. On November 12, 2020, after contacting Cleon Martin, Mr. Klatt walked the creek between Echo Avenue and Dancer Avenue. He located a tile discharge on the north side of the creek. The discharge was discolored, had a strong manure/silage odor and was creating foam below the outfall. Mr. Klatt sampled the tile discharge and the areas upstream and downstream of the tile. The laboratory results indicated the following:

Sample Location	BOD (mg/L)	Ammonia (mg/L)	E.coli (MPN/100mL)
Tile Discharge	35,000	300	>24,000
Upstream of the Tile	<2	<0.05	Not Sampled

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: ALVIN MARTIN and CLEON MARTIN

Downstream of the Tile	170	1.6	Not Sampled
------------------------	-----	-----	-------------

6. Mr. Klatt contacted Cleon Martin and notified him of the discharge. The two inspected the Martin operation north of the creek on Dancer Avenue. Mr. Klatt noted a flow path to a tile intake that was south of one of the cattle barns. There was standing water in the flow path and around the tile intake. Mr. Klatt collected a sample of the ponded water in flow path. The laboratory samples indicated the following concentrations: Ammonia – 15 mg/L and BOD – 230 mg/L. Mr. Klatt noted that it appeared the stormwater runoff from the operation, including the silage bunker, flows to the tile intake during runoff events. Mr. Martin said he would continue to look for other tiles that may have contributed to the runoff.

7. On November 16, 2020, Mr. Klatt contact Mr. Martin and Mr. Martin stated that he discovered an old tile under the silage bunker and that was likely the cause of the discharge. Mr. Martin removed that section of tile and filled the hole to stop the discharge.

8. On November 18, 2020, Mr. Klatt met with Mr. Martin and explained that even though the tile by the building was not the source of the discharge that the discharge of process wastewater from the operation through that tile intake was prohibited and the process wastewater would need to be diverted from the tile intake. Mr. Martin stated he intended to construct a waterway and grade the site in a manner that would stop the process wastewater from entering the tile intake. Mr. Klatt also confirmed that the tile had been removed and the water quality was improving.

9. On December 8, 2020, DNR issued a Notice of Violation letter to Cleon Martin for the violations discovered during the November 2020 investigation. The letter informed Mr. Martin 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 November 2020 investigation, DNR Field Office 2 observed that a discharge from the Martin site entered at tile intake and then flowed to a nearby creek. The above-mentioned facts indicate a violation of these provisions.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: ALVIN MARTIN and CLEON MARTIN

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. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-3, Section IV [Conclusions of Law] will occur again since Mr. Martin removed the tile and will comply with the requirements set forth in Paragraph 1, Section V [Order] of the administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Alvin and Cleon Martin agree to do the following:

1. The Martins shall construct and maintain a waterway at the facility to divert the process wastewater from the tile intake within 60 days of the date the Director signs this administrative consent order and shall maintain the tile removal that took place in November 2020; and
2. The Martins shall pay an administrative penalty in the amount of \$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 \$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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: ALVIN MARTIN and CLEON MARTIN

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 Martins took immediate steps to properly identify and stop the release; therefore, little to no economic benefit was gained by the Martins. No economic benefit 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 discharge resulted in water quality violations. The violations threaten the integrity of the water quality program. Therefore, \$500.00 is assessed for this factor.

Culpability – The Martins have a duty to know the regulations and to be aware that their actions are subject to the regulations. However, the Martins did take immediate actions to locate the source of the discharge and remove the tile. Therefore, no amount is being assessed for this factor.

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

This administrative consent order is entered into knowingly and with the consent of Alvin and Cleon Martin. For that reason, Alvin and Cleon Martin waive 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: ALVIN MARTIN and CLEON MARTIN

KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Alvin Martin  
ALVIN MARTIN

Dated this 24 day of  
May, 2021.

Cleon Martin  
CLEON MARTIN

Dated this 24 day of  
May, 2021.

Kelli Book, DNR Field Office 2, VIII.D.1.a

57496 05/28/21 AM 11:40