

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

IN THE MATTER OF:

PRECISION PUMPING, L.L.C.

Winneshiek County Iowa
AFO #68823

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO- 17

TO: Todd Buchanan, Registered Agent
Precision Pumping, L.L.C.
111 N. Dodge Street
Algona, Iowa 50511

Cody Schmidt, Manager
Precision Pumping, L.L.C.
32900 410th Street
Rolfe, Iowa 50581

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Precision Pumping, L.L.C. (Precision Pumping) for the purpose of resolving water quality violations and a fish kill resulting from a manure discharge from land application. This administrative consent order requires Precision Pumping to: 1) develop and implement Standard Operating Procedures for land application methods; 2) pay fish restitution and investigative costs in the amount of \$5,962.88; and 3) pay a \$6,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th 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

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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; 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. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. Precision Pumping is a commercial manure service and was hired by KKF Farms in Kossuth County, Iowa to land apply manure from the facility.
2. On April 14, 2021, Cody Schmidt, Precision Pumping manager, contacted DNR Field Office 2 to report a manure release into Lotts Creek. Mr. Schmidt stated he was land applying manure from the KKF Farms facility when an umbilical hose broke away from the booster pump and entered Lotts Creek. Mr. Schmidt explained as soon as he realized the pressure loss he shut down the pumps but some manure entered the creek. He estimated 10,000 gallons of manure entered the creek.
3. On the same day, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, began the investigation of the manure release. Mr. Klatt met Mr. Schmidt at the site of the release near the intersection of 150th Street and Lotts Creek in Kossuth County. Mr. Klatt observed the umbilical hose running from the KKF facility across Lotts Creek to a booster pump. This was the area where the hose broke loose from the pump and entered Lotts Creek. Mr. Klatt noted the creek was clear and rapidly flowing at the time of his visit, indicating the manure had already moved down stream. Mr. Klatt and Mr. Schmidt continued downstream to track the manure release.
4. They stopped at the bridge crossing at 140th Street. Mr. Klatt conducted a field test of the water, which indicated an ammonia concentration of 2.8 ppm. He also observed approximately 10 dead fish in this area. At this point, Mr. Klatt contacted Scott Grummer, DNR Fisheries Bureau, to notify him of a fish kill. Mr. Grummer indicated he would travel to the area the following morning.
5. Mr. Klatt and Mr. Schmidt continued to the 40th Avenue bridge crossing and noted dead and dying fish. The creek was discolored and had a manure odor. Mr. Klatt conducted a field test, which indicated an ammonia concentration of greater than 3 ppm. Mr. Klatt also collected laboratory samples of the impacted

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creek. The laboratory results indicated an ammonia concentration of 120 ppm and a biochemical oxygen demand (BOD) concentration of 220 ppm.

6. Mr. Klatt and Mr. Schmidt continued downstream to the crossing at the 130th Street bridge. The water was clear with no indication of manure. Laboratory samples from the area indicated no detectable BOD or ammonia. Mr. Klatt and Mr. Schmidt discussed the possibility of damming the creek; however, Mr. Schmidt said it would be difficult to do because of the steep banks and the amount of water flowing. He also said it would be difficult to find a landowner willing to have water pumped onto their property. Therefore, the creek was not dammed. Prior to leaving the location, Mr. Klatt went upstream of the release point to the 150th Street bridge crossing. Laboratory samples from the area indicated no detectable BOD or ammonia.

7. On April 15, 2021, Mr. Klatt and Jake Donaghy, DNR Field Office 2 environmental specialist, returned to the area to take additional water quality samples. They first visited the 40th Avenue bridge crossing where the manure slug had been the previous day. The field test indicated an ammonia concentration of 0.2 mg/L and a dissolved oxygen concentration of 18.2 mg/L. They travelled downstream to the Iowa Avenue bridge crossing where the Fisheries Bureau began its fish kill count. The field test indicated an ammonia concentration of 0.5 mg/L and a dissolved oxygen concentration of 16.8 mg/L. The field office personnel continued downstream to Lotts Creek at the confluence of Trulner Creek. The field test indicated an ammonia concentration of 0.2 mg/L and a dissolved oxygen concentration of 15.4 mg/L. They ended their visit downstream at the Des Moines River. The field test indicated an ammonia concentration of 0.5 mg/L and a dissolved oxygen concentration of 15.8 mg/L.

8. On April 15, 2021, DNR's Fisheries Bureau personnel surveyed the impacted area of Lotts Creek in Kossuth and Humboldt Counties. Scott Grummer and Kurt Meek conducted the fish kill investigation. The Fisheries personnel determined the fish kill started in Section 5 of Garfield Township in Kossuth County on Lotts Creek and traveled 9.6 stream miles down to Section 4 of Delana Township in Humboldt County. The Fisheries Bureau personnel surveyed the impacted area in accordance with the "Narrow Stream, Incompletely Accessible - stream accessible at road crossings and beyond" method outlined in American Fisheries Society, Special Publication 35. This method was chosen based on the following factors: length of the kill and the remoteness of the kill location. Most of the stream length had recently been dug out by the drainage district, so the in-stream habitat was homogeneous. The side cast materials in the fields next to the creek were recently seeded at the time of investigation.

9. The fish kill assessment determined that 35,004 fish were killed, valued at \$4,233.30. The Fisheries Bureau investigative costs were \$779.21 and the

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Field Office investigative costs were \$950.37. The total fish value and investigative costs totaled \$5,962.88.

10. On April 28, 2021, DNR issued a Notice of Violation letter to Precision Pumping for the violations observed during the April investigation. The letter informed Precision Pumping that the matter would be referred for further evaluation and further enforcement may be pursued.

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 April 2021 investigation, DNR Field Office 2 noted that a release from the manure application by Precision Pumping entered Lotts Creek. 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. During the April 2021 investigation, DNR Field Office 2 noted that a release from the manure application by Precision Pumping entered Lotts Creek and caused a fish kill and elevated pollutant levels. The above-mentioned facts indicate violations of the general water quality criteria.

4. 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.

5. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of 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 a water of the state. During the April 2021 investigation, DNR Field Office 2 noted that a release from the manure application by Precision Pumping entered Lotts Creek. The above-mentioned facts indicate a violation of this provision.

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

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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 land application of manure by Precision Pumping.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Precision Pumping complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Precision Pumping agrees to do the following:

1. Precision Pumping shall submit a written plan with Standard Operating Procedures for land application methods; including but not limited to inspection of all equipment prior to application. The Standard Operating Procedures shall be submitted to DNR Field Office 2 for approval within 30 days of the date the Director signs this administrative consent order. Precision Pumping shall immediately implement the Standard Operating Procedures upon approval by DNR Field Office 2; and
2. Precision Pumping shall pay fish restitution and investigative costs in the amount of \$5,962.88 and an administrative penalty in the amount of \$6,000.00 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 Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air 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 \$6,000.00. 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.” The manure release was accidental and Precision Pumping realized little to no economic benefit; therefore, no amount is being 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 discharge of manure from the land application ultimately resulted in the degradation of water quality and caused a fish kill. The manure discharge from the land application threatens the integrity of the animal feeding operation regulations. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Precision Pumping has a duty to know the regulations and to be aware that its actions are subject to the regulations. Precision Pumping chose to place an umbilical hose through the creek for manure application, rather than choosing a field that did not require this type of crossing. Based on the information above, \$3,000.00 is being assessed.

VII. WAIVER OF APPEAL RIGHTS

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

Precision Pumping, LLC
PRECISION PUMPING, L.L.C.

Dated this 23 day of
August, 2021.

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

Kelli
Book

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