

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

IN THE MATTER OF:

**DIETRICH HAULING & FENCE
BUILDING, INC.**

Keokuk County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO- 25

TO: Brandon Dietrich, Registered Agent
Dietrich Hauling & Fence Building, Inc.
2515 N Avenue
Williamsburg, Iowa 52361

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dietrich Hauling & Fence Building, Inc. (Dietrich Hauling) for the purpose of resolving water quality violations resulting from a manure release due to an accident during transport. This administrative consent order requires Dietrich to ensure that all handling, transferring, and land application of manure is done in a manner that does not result in a manure release to a water of the state, develop and submit a Standard Operating Procedure for the proper transport of manure, and to pay an administrative penalty in the amount of \$1,000.00. 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:

Benjamin Stracuzzi
DNR Field Office 6
1023 W Madison
Washington, Iowa 52353
Phone: 319/653-2135

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.

III. STATEMENT OF FACTS

1. Dietrich Hauling is a hauling company located in Williamsburg, Iowa. The company provides custom manure application, custom fence building, and grain hauling services. Dietrich Hauling was hired by Prestage Farms to land apply manure from its facility located at 17884 110th Street; Keswick, Iowa.

2. On December 5, 2020, Brandon Dietrich, Dietrich Hauling, contacted DNR Field Office 6 to report a manure spill near the intersection of 190th Avenue and 110th Street north of Keswick, Iowa. Mr. Dietrich stated a hitch snapped on the manure tank while it was being transported and the manure tanker crashed into the road ditch. As a result of the accident, manure was released to the road ditch and entered an unnamed tributary of the South English River. Mr. Dietrich estimated approximately 500 gallons of manure was released. Mr. Dietrich and other Dietrich Hauling employees created a berm and began pumping the contaminated water.

3. On December 6, 2020, Benjamin Stracuzzi, DNR Field Office 6 environmental specialist, arrived at the release location to evaluate the impact of the release. The field test indicated elevated levels of ammonia downstream of the release point. Based on the field test results, Mr. Stracuzzi asked that Mr. Dietrich build up the berm, scrape the solids from the ditch, and continue pumping.

4. Mr. Stracuzzi conducted field tests and collected laboratory samples of the impacted area. The results of the tests and samples are noted below:

Field Test Results

Sample Location	Ammonia (mg/L)
Upstream of the Discharge Site	0
Discharge Site (Accident Site)	>3.0
Downstream of the Discharge Site	>3.0
Downstream – Tributary West of Unnamed Tributary	0.7
Downstream – Confluence of	3.0

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Unnamed Tributary and West Tributary	
Downstream at 120 th Street	0.6

Laboratory Sample Results

Sample Location	Ammonia (mg/L)	BOD (mg/L)	TSS (mg/L)	E.Coli (MPN/100 mL)
Upstream of the Discharge Site	0.22	100	3,140	1,600
Discharge Site	22	110	110	5,500
Downstream of the Discharge Site	36	370	170	11,000
Downstream – Tributary West of Unnamed Tributary	<0.050	N/A	N/A	N/A
Downstream – Confluence of Unnamed Tributary and West Tributary	6.8	N/A	N/A	N/A
Downstream at 120 th Street	0.06	<2	5	420

5. Mr. Stracuzzi spoke with Mr. Dietrich prior to leaving the investigation and explained that the removal of the manure-impacted water should continue until it has been removed. Once all the impacted water has been removed, the earthen basin could be removed. On December 16, 2021, Mr. Stracuzzi re-visited the impacted area and noted that the manure appeared to have all been removed from the site.

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. DNR Field Office 6 observed manure was discharged to an unnamed tributary of the South English River when a Dietrich Hauling tanker crashed into a road ditch leading to the discharge. The above-mentioned facts indicate a violation of these provisions.

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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 manure release created elevated pollutants in the water. The above-mentioned facts indicate violations of the general water quality criteria.

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(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 6 observed manure originating from Prestage Farms entered an unnamed tributary of the South English River. The above-mentioned facts indicate a violation of this provision.

6. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-5, Section IV [Conclusions of Law] will occur again if Dietrich Hauling implements the requirements set forth in Paragraph 1-2, Section V [Order] of the administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Dietrich Hauling agrees to do the following:

1. Dietrich Hauling shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;
2. Dietrich Hauling shall develop a Standard Operating Procedure for proper manure transportation and land application. The Standard Operating Procedure shall be submitted to DNR Field Office 6 for approval within 30 days of the date the Director signs this administrative consent order. Dietrich Hauling shall immediately implement the Standard Operating Procedure upon its approval by the field office; and

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3. Dietrich Hauling shall pay an administrative penalty in the amount of \$1,000.00 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 \$1,000.00. 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. The manure discharge was a result of a traffic accident and Dietrich Hauling gained no economic benefit. Therefore, no economic benefit 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 release of manure resulted in elevated pollutant and violations of the animal feeding operation regulations. The violations threaten the integrity of the animal feeding operation regulations. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Dietrich Hauling has a duty to know the regulations and to be aware that its actions are subject to the regulations. The manure discharge was a result of a traffic accident and Dietrich Hauling took immediate action to remove the manure-impacted water and to prevent further impacts on the tributary. Based on the information above, there is no amount being assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

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

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



Dietrich Hauling & Fence Building, Inc.

Dated this 14th day of
October, 2021