

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

IN THE MATTER OF:

**LCNJ FARMS, L.L.C.**

Plymouth County Iowa  
AFO #57342

ADMINISTRATIVE CONSENT ORDER  
NO. 2021-AFO- 26

**TO:** Connie Pick, Registered Agent  
Lou Pick, Facility Contact  
LCNJ Farms, L.L.C.  
47746 180<sup>th</sup> Street  
Remsen, Iowa 51050

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and LCNJ Farms, L.L.C. (LCNJ) for the purpose of resolving water quality violations and a fish kill resulting from a manure discharge from LCNJ's animal feeding operation. This administrative consent order requires LCNJ to: 1) clean out manure from basin and properly land apply it; 2) develop and implement a Plan of Action for basin pumping; 3) pay fish restitution and investigative costs in the amount of \$3,349.82; and 4) pay a \$5,500.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jacob Simonsen, Field Office 3  
Iowa Department of Natural Resources  
1900 N Grand Ave, Ste E17  
Spencer, Iowa 51601  
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

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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. LCNJ is a 3,999 head (3,999 animal units) confinement beef cattle operation. The facility is located at 47746 180<sup>th</sup> Street, Remsen, Iowa (Section 14, Remsen Township, Plymouth County, Iowa).
2. On April 5, 2021, DNR Field Office 3 received a call from a citizen stating that Whiskey Creek was bronze in color and had a faint manure odor. The citizen thought the cause was originating near the city of Marcus' wastewater lagoon.
3. On April 5, 2021, Jacob Simonsen, DNR Field Office 3 environmental specialist, and Tom Roos, DNR Field Office 3 environmental specialist senior, travelled to the area to investigate the potential release. They contacted the Marcus wastewater operator. The operator stated the facility was not currently discharging and had not recently discharged.
4. The field office personnel followed the path of Whiskey Creek to look for signs of a release. While driving on 180<sup>th</sup> Street, they observed a channel with dark brown liquid in the south ditch discharging into a tributary of Whiskey Creek. The field office personnel followed the channel approximately a quarter mile west to a runoff basin at the LCNJ facility. The field office personnel collected laboratory samples and conducted field tests of the impacted areas. The results of the laboratory samples and field tests are listed below:

<b>Location</b>	<b>Dissolved Oxygen (mg/L) Field Test</b>	<b>Ammonia (mg/L) Field Test</b>	<b>E.Coli (MPN/100mL) Laboratory Sample</b>	<b>Ammonia (mg/L) Laboratory Sample</b>	<b>Biological Oxygen Demand (BOD) (mg/L) Laboratory Sample</b>	<b>Total Suspended Solids (TSS) (mg/L) Laboratory Sample</b>
Upstream of	11.0	0.43	200	0.070	2	31

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the Discharge Point						
Discharge Point	0.1	>3.0	100,000	81	220	140
Downstream of the Discharge Point	8.5	>3.0	14,000	16	40	56

5. The field office personnel contacted Lou Pick, with LCNJ, and instructed him stop the discharge as soon as possible. Mr. Pick placed corn stalk bales in the path of the discharge to try to prevent the liquid from reaching the creek. The field office personnel spoke further with Mr. Pick. He stated that he had begun to pump the runoff basin the previous day and the equipment had malfunctioned causing the discharge to occur. Mr. Pick said he did not check the equipment on Sunday, so it was unknown how long the discharge was occurring for nor how much liquid was actually released. The field office personnel information Mr. Pick of the violations.

6. Following their discussion with Mr. Pick, the field office personnel checked bridges over Whiskey Creek for approximately four miles downstream of the discharge. They observed dead fish at each crossing and field tests indicated elevated levels of ammonia. At this point, the field office personnel notified the DNR Fisheries Bureau of the fish kill.

7. On April 5, 2021, DNR's Fisheries Bureau personnel surveyed the impacted area of Whiskey Creek. Mike Hawkins and Jed Siegwarth conducted the fish kill investigation. The Fisheries personnel determined the fish kill started in a tributary of Whiskey Creek in the NW ¼ portion of Section 13 extending downstream approximately 2,360 yards. 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: stream conditions, limited property access, and time constraints related to traversing the entire affected stream reach.

8. The fish kill assessment determined that 13,159 fish were killed, valued at \$1,974.27. The Fisheries Bureau investigative costs were \$511.06 and the Field Office investigative costs were \$864.49. The total fish value and investigative costs totaled \$3,349.82.

9. On April 15, 2021, DNR issued a Notice of Violation letter to LCNJ for the violations observed during the April investigation. The letter informed LCNJ

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that the matter would be referred for further evaluation and further enforcement may be pursued.

10. LCNJ entered into an administrative consent order in 2018 for violations that occurred as a result of a manure release from the facility. The facility was required to consult with an engineer to develop a plan for improvements at the facility and to pay an administrative penalty. The facility worked with the engineer to improve the basin and the administrative penalty was paid.

#### 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 3 noted that a release from the manure from the LCNJ facility entered a tributary of Whiskey 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 3 noted that a release from the manure from the LCNJ facility entered a tributary of Whiskey 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 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 3 noted that a release from the manure from the LCNJ facility entered a tributary of Whiskey Creek. The above-mentioned facts indicate a violation of this provision.

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6. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land applying manure from a confinement feeding operation who becomes aware of a release to notify the DNR of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. At no point did LCNJ notify the DNR of the release. The above facts indicate a violation of this provision.

7. 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 LCNJ facility.

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

**V. ORDER**

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

1. LCNJ shall clean out manure from the basin and properly land apply it within ~~30~~ days of the date the Director signs this administrative consent order; 90 L P  
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2. LCNJ shall submit a written Plan of Action detailing the steps that will be taken during periods of basin pumping; including but not limited to equipment checks, periodic monitoring, and recordkeeping of activities. The Plan of Action shall be submitted to DNR Field Office 3 for approval within 30 days of the date the Director signs this administrative consent order. LCNJ shall immediately implement the Plan of Action upon approval by DNR Field Office 3; and
3. LCNJ shall pay fish restitution and investigative costs in the amount of \$3,349.82 and an administrative penalty in the amount of \$5,500.00 in accordance with the following payment plan. The administrative portion on the payments shall be applied first, with the remaining payments to the fish restitution and investigative costs. If any of the payments are not received in accordance with the payment plan the remaining payments shall be due immediately.

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\$1,149.82 due November 15, 2021	\$1,100.00 due November 15, 2022
\$1,100.00 due February 15, 2022	\$1,100.00 due February 15, 2023
\$1,100.00 due May 15, 2022	\$1,100.00 due May 15, 2023
\$1,100.00 due August 15, 2022	\$1,100.00 due August 15, 2023

**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 \$5,500.00. 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 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 LCNJ 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 ultimately resulted in the degradation of water quality and caused a fish kill. Additionally, this is the second administrative action taken against the facility for discharges from the facility. The manure discharge threatens the integrity of the animal feeding operation regulations. Based on the information above, \$2,500.00 is being assessed for this factor.

Culpability – LCNJ has a duty to know the regulations and to be aware that its actions are subject to the regulations. LCNJ was aware of the discharge, but failed to

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check on the impact of the discharge and failed to contact the DNR. Based on the information above, \$3,000.00 is being assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

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

LCNJ Farms LLC  
LCNJ Farms, L.L.C.

Dated this 15 day of  
November, 2021.

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