IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

MILAN HAGEMAN
Winneshiek County Iowa
AFO #68705

TO: Milan Hageman
1569 205th Avenue
Ossian, Iowa 52161

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Milan Hageman for the purpose of resolving water quality violations and a fish kill resulting from a discharge from Mr. Hageman’s storage basin at his animal feeding operation. This administrative consent order requires Mr. Hageman to: 1) employ a licensed engineer to inspect the below building pits and make necessary repairs to the below building pits; 2) not store soil conditioner in the below building pits unless secondary containment is constructed; 3) pay fish restitution and investigative costs in the amount of $10,778.87; and 4) pay a $7,500.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Chris Gelner, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Court, Suite 10
Manchester, Iowa 52057
Phone: 563/927-2640

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 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. Milan Hageman owns and operates a small animal feeding operation located 1569 205th Avenue; Ossian, Iowa. The operation has the capacity to house 325 head of cattle in open feedlots and 110 head of grow to finish swine in open feedlots. The operation was previously operated as a dairy and has two free stall barns with below building pits used for storage. At the time of the inspection noted below, Mr. Hageman’s operation had only a small number of animals in one of the confinement buildings. In addition to raising the animals at the operation, Mr. Hageman hauls Iowa Department of Agriculture and Land Stewardship (IDALS) 200 licensed soil conditioner from DCW Casings, LLC and Aveka Nutra Processing. He land applies the soil conditioner; however, when he is unable to land apply the soil conditioner the material is stored in the below building pits.¹

2. On July 9, 2021, DNR Field Office 1 received an anonymous complaint reporting dead fish in Dry Branch Creek, approximately 1.5 miles west of Ossian, Iowa. The caller reported the water had a strong odor.

3. On July 10, 2021, Chris Gelner, DNR Field Office 1 environmental specialist, responded to the complaint. He began the investigation at Dry Branch Creek at the County Road B-32 crossing west of Ossian, Iowa. Mr. Gelner noted a strong organic odor, white foam on the surface of the water, and the field test indicated elevated ammonia. He did not observe any fish at this location. Mr. Gelner continued upstream to the next road crossing at 155th Street. He noted a strong odor, white foam on the surface, and the field test indicated elevated ammonia. He did not observe any fish at this location. Mr. Gelner travelled upstream to the 205th Avenue road crossing. Mr. Gelner did not observe any evidence of pollutants in the water. Mr. Gelner stopped at Mr. Hageman’s facility, but no one was home. Mr. Gelner left two voicemails requesting an immediate response.

¹ 21 IAC 44.55 states that all soil conditioner facilities shall be located within a secondary containment structure. There was no secondary containment structure at this facility.
4. Mr. Gelner returned to the 155th Street crossing and continued upstream. Mr. Gelner observed a branch in the creek. Field tests of the west branch indicate no ammonia and Mr. Gelner did not observe other signs of water quality impacts. The east branch had high levels of ammonia, foam on the surface of the water, a strong odor, and a large area of maggots in the creek.

5. Mr. Gelner continued going upstream in the east branch until he came to an actively flowing discharge to Dry Branch Creek coming from Mr. Hageman’s facility. Mr. Gelner collected laboratory samples of the impacted area and the results are noted below:

<table>
<thead>
<tr>
<th>Sample Collection Location</th>
<th>Ammonia (mg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approximately 20 feet downstream of the confluence of the discharge in Dry Branch Creek</td>
<td>790</td>
</tr>
<tr>
<td>Approximately 20 feet upstream of the confluence of the discharge in Dry Branch Creek</td>
<td>0.23</td>
</tr>
<tr>
<td>Pollutant flow from the facility approximately 20 feet before the entering Dry Branch Creek</td>
<td>1,400</td>
</tr>
</tbody>
</table>

6. Mr. Gelner returned to Mr. Hageman’s facility and spoke to Mr. Hageman regarding his investigation. Mr. Hageman agreed to bring an excavator to the site to stop the discharge. He stated he thought the creek looked cloudy and wondered if the below building pit was leaking last fall. Mr. Hageman and Mr. Gelner walked the site and noted that the discharge was coming from the tile line outlet under the compost pile. Mr. Hageman stated that the field tile comes out at this area, along with a footing tile from the below building pit that ties into the tile line. Mr. Hageman explained that he hauls the IDALS 200 licensed soil conditioner to the fields for land application unless conditions are not favorable, in such cases he places the soil conditioner in the below building pit. Mr. Gelner noted the discharge was likely coming from the below building pit.

7. Mr. Gelner met with Mike Steuck, DNR Fisheries Bureau, to examine the extent of the impact of the discharge. At the 202nd Avenue crossing, they observed many dead fish, foam on the surface of the water, a strong odor, and elevated ammonia levels. At the 110th Street crossing, they observed many dead fish, foam on the surface of the water, a strong odor, and elevated ammonia levels. Mr. Gelner continued to the Jelly Road crossing and observed foam on the surface of the water, a strong odor, and elevated ammonia levels. No fish were observed at this location. At the Juniper Road crossing, Mr. Gelner observed foam on the surface of the water, a strong odor, and elevated ammonia levels. Mr. Gelner traveled to the 292nd Street crossing and noted that the creek was completely losing and no flow was crossing the culvert. There was no water entering the Turkey River on the surface. However, upstream of the road crossing, Mr. Gelner observed the last surface pool of
water with foam on the surface of the water, a strong odor, and elevated ammonia levels.

8. Later in the day of July 10, 2021, Mr. Hageman contacted Mr. Gelner and stated the discharge had been stopped. Mr. Hageman dug out and constructed several earthen berms to contain and prevent the flow from entering the creek. Mr. Hageman stated he had begun to draw down the basin and would either land apply the material or move it to another below building pit at the facility.

9. On July 12, 2021, Mr. Gelner visited the facility and observed the earthen berms as well as the below building pit which had been pumped down.

10. On July 10 and July 12, 2021, DNR’s Fisheries Bureau personnel surveyed the impacted area of Dry Branch Creek. Theresa Shay, Mike Steuck, Mike Siepker, Caleb Schnitzler, Allison Norris, Braden Lensing, and Ryan Wooten conducted the fish kill investigation. The Fisheries personnel determined the fish kill traveled 8.3 miles down the Dry Branch Creek starting approximately 1.5 miles west of Ossian, Iowa through Military Township (Sections 5, 8, 16, 17, 20, 21, 28, 29, 32, and 33 in Winneshiek County) and Dover Township (Section 4 in Fayette County). The Fisheries Bureau personnel surveyed the impacted area in accordance with the “Incompletely Accessible” method outlined in American Fisheries Society, Special Publication 35. This method was chosen based on the length of the creek.

11. The fish kill assessment determined that 19,252 fish were killed, valued at $8,662.71. The Fisheries Bureau investigative costs were $2,116.16 and the Field Office investigative costs were $655.98. The total fish value and investigative costs totaled $10,778.87.

12. On July 14, 2021, DNR issued a Notice of Violation letter to Mr. Hageman for the violations observed during the July investigation. The letter informed Mr. Hageman 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 July 2021 investigation, DNR Field Office 1 noted that a release of soil conditioner from the Hageman facility
entered Dry Branch 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 July 2021 investigation, DNR Field Office 1 noted that a release of soil conditioner from the Hageman facility entered Dry Branch Creek and caused foam on the water surface, a strong odor, elevated pollutants, and a fish kill. 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 July 2021 investigation, DNR Field Office 1 noted that a release of soil conditioner along with some manure from the Hageman facility entered Dry Branch 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 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 release from the Hageman facility.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Hageman complies with the provisions listed in Paragraphs 1 and 2, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Mr. Hageman agrees to do the following:
1. Mr. Hageman shall hire a licensed engineer to inspect the below building pits at the facility to determine the structural integrity of the below building pits and all other aspects of the pits within 30 days of the date the Director signs this administrative consent order and shall provide the engineering report to DNR Field Office 1;

2. Mr. Hagman shall no longer store soil conditioner in the below building pits at his facility, unless secondary containment is constructed; and

3. Mr. Hageman shall pay fish restitution and investigative costs in the amount of $10,778.87 and an administrative penalty in the amount of $7,500.00 in accordance with the following payment plan:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>$798.00</td>
<td>May 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>June 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>July 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>August 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>September 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>October 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>November 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>December 1, 2022</td>
</tr>
<tr>
<td>$760.00</td>
<td>January 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>February 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>March 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>April 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>May 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>June 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>July 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>August 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>September 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>October 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>November 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>December 1, 2023</td>
</tr>
<tr>
<td>$760.00</td>
<td>January 1, 2024</td>
</tr>
<tr>
<td>$760.00</td>
<td>February 1, 2024</td>
</tr>
<tr>
<td>$760.00</td>
<td>March 1, 2024</td>
</tr>
<tr>
<td>$760.87</td>
<td>April 1, 2024</td>
</tr>
</tbody>
</table>

The administrative penalty shall be satisfied first and the remainder of the payments shall be applied to the fish restitution. If any of the said payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately.

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
administered penalty of $7,500.00. 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.” Mr. Hageman gained an economic benefit by storing the soil conditioner in the below building pit. He was able to avoid the costs associated with properly land applying the soil conditioner. He benefitted by taking payment for accepting the soil conditioner but not being able to land apply it at the time of receipt. Mr. Hageman also stated he thought that the below building pit may be leaking the previous fall and delayed the costs associated with inspecting and repairing the below building pit. It is estimated that Mr. Hageman gained an economic benefit of at least $1,500.00 and that 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 soil conditioner and manure ultimately resulted in the degradation of water quality and caused a fish kill. From the condition of the water and the large number of maggots in the water, it is determined that this was a chronic and ongoing discharge from the facility. The discharge threatens the integrity of the water quality regulations. Therefore, $3,000.00 is assessed for this factor.

**Culpability** – Mr. Hageman has a duty to know the regulations and to be aware that his actions are subject to the regulations. Mr. Hageman indicated that he suspected a leaking below building pit n in the fall but took no action to investigate or prevent a discharge. He also stated that he noted the water was cloudy but once again took no action to investigate a possible discharge. 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 Mr. Hageman. For that reason, Mr. Hageman 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

MILAN HAGEMAN

Dated this 5th day of April, 2022.

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