

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

<p>IN THE MATTER OF:</p> <p>BENJAMIN MARTIN</p> <p>Floyd County Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2022-WW- 18</p>
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TO: Benjamin Martin
2906 130th Street
Charles City, Iowa 506516

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Benjamin Martin for the purpose of resolving water quality violations resulting from a silage discharge from Mr. Martin's silage storage. This administrative consent order requires Mr. Martin to: 1) submit and implement a written plan detailing how the silage runoff will be managed at his facility and 2) pay a \$3,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jacob Donaghy, Field Office 2
Iowa Department of Natural Resources
2300 15th St 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 to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division

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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. Benjamin Martin owns and operates a small animal feeding operation located 2906 130th Street, Charles City, Iowa. The operation houses 48 head of dairy cattle in a confinement building. The facility also has three silage storage silos.

2. On December 6, 2021, DNR Field Office 2 received a complaint regarding discolored water in a tributary of Little Cedar River near Timber Avenue in rural Charles City, Iowa. David Miller and Jacob Donaghy, DNR Field Office 2 environmental specialists, investigated the complaint and met with the complainant on his property. The complainant showed the field office personnel a tributary of Little Creek that had look polluted a few days early. The water had since frozen and the field office personnel did not observe any issues with the water in the tributary because of the ice. A field test of the water in the tributary did not indicate the presence of ammonia.

3. The field office personnel traveled upstream to where a tile was flowing into the tributary from the east. A field test of the tile discharge did not indicate the presence of ammonia. The field office personnel conducted a field test of the tributary upstream of the area where the tile was discharging. The field test indicated 2.8 ppm ammonia and there was a brown filamentous substance in the tributary in this area.

4. The field office personnel traveled further upstream to a fork in the tributary with water flowing from the direction of a farmstead on the east side and from a woodland drainage area on the west side. A field test of the water from the drainage area did not detect any ammonia; however, a field test of the water from the direction of the farmstead indicated ammonia at a level greater than 3.0 ppm. The farmstead was the location of Mr. Martin's facility described above.

5. The field office personnel traveled to the farmstead and spoke to Melinda Martin. The field office personnel informed Ms. Martin of the reason for their visit and Ms. Martin indicated the cloudy water must be from silage water. Ms. Martin gave the field office personnel permission to look around the farmstead and contact after the investigation.

6. The field office personnel started on the west side of the farmstead. The field test indicated ammonia at a level greater than 3.0 ppm. Laboratory samples of the water from the tile outlet indicated the following levels: 0.47 mg/L

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ammonia and 650 mg/L BOD. The discharge also had a whitish deposit in the drainage swall.

7. The field office personnel viewed the farmstead's house to determine if the discharge was from the house's septic system. There was no evidence indicating the discharge was a result of the house's septic system. There was a drainage swale between the septic cleanouts and the tile discharge. The outlet was at a higher elevation than the house foundation. The field office personnel also noted a concrete manure structure north of the tile outlet.

8. The field office personnel collected laboratory samples upstream from where the farmstead discharge entered the tributary. The laboratory samples of the water from the upstream location indicated the following levels: <0.5 mg/L ammonia and <2 mg/L BOD. Laboratory samples were taken downstream from where the where the outlet drained to the tributary. The laboratory samples of the water from the downstream location indicated the following levels: 11 mg/L and 380 mg/L.

9. The field office personnel contacted Ms. Martin and explained that it was suspected the there was an ammonia discharge into the surface water associated with the facility's dairy operation; however, it was uncertain as to where the ammonia came from. The field office personnel scheduled a return visit.

10. On December 8, 2021, the field office personnel returned to the Martin farmstead and met with Ben Martin. The field office personnel explained that they had tracked an ammonia discharge to the tile discharging on the Martin property. Mr. Martin explained that the tile drained two of the three silage silos at the farmstead. Mr. Martin showed the field office personnel where the tile ran and the silos.

11. On January 31, DNR issued a Notice of Violation letter to Mr. Martin for the violations observed during the field office investigation. The letter informed Mr. Martin that the matter would be referred for further evaluation and further enforcement would 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 December 2021

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investigation, DNR Field Office 2 noted that a release of silage from the silage silos at Mr. Martin's farmstead entered a tributary of Little 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 December 2021 investigation, DNR Field Office 2 noted that a release of silage from the silage silos at Mr. Martin's farmstead entered a tributary of Little Creek and caused elevated pollutants and discolored water. The above-mentioned facts indicate violations of the general water quality criteria.

V. ORDER

THEREFORE, the DNR orders and Mr. Martin agrees to do the following:

1. Mr. Martin shall submit a written plan detailing how the silage runoff will be managed at his facility within 30 days of the date the Director signs this administrative consent order to DNR Field Office 2 and shall implement the plan immediately upon approval from DNR Field Office 2; and
2. Mr. Martin shall pay an administrative penalty in the amount of \$3,000.00 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 \$3,000.00. 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

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“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. Martin gained an economic benefit by delaying the cost associated with properly managing the silage runoff. It is estimated that Mr. Martin gained an economic benefit of at least \$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 from the silage silos ultimately resulted in the degradation of water quality. The discharge threatens the integrity of the water quality regulations. Therefore, \$1,250.00 is assessed for this factor.

Culpability – Mr. Martin has a duty to know the regulations and to be aware that his actions are subject to the regulations. Based on the information above, \$1,250.00 is being assessed.

VII. WAIVER OF APPEAL RIGHTS

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



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Dated this 13 day of
June, 2022.