

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

IN THE MATTER OF: BUCH FARMS, LLC Jefferson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2022-WW- 26
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To: Buch Farms, LLC
410 South 7th Street
Fairfield, Iowa 52556

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Buch Farms, LLC (Buch Farms), for the purpose of resolving the violations of water quality law. This Order requires Buch Farms to comply with all applicable law in the course of its business and to pay a \$4,500.00 penalty.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Anthony Kerker, DNR Field Office 6
Iowa Department of Natural Resources
1023 W Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:
Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-669-8752

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 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; 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. Buch Farms is in the business of land applying wastewater for their clients.
2. On or about May 16, 2022, Buch Farms entered into a contract to land apply wastewater from the facility located at 24820 160th St, Eddyville, IA 52553 (Facility).
3. On or about May 16, 2022, Buch farms land applied wastewater from the Facility on the field directly to the south of the Facility (Application Field).
4. Late in the afternoon on May 16, DNR Field Office 6 received a complaint from the property owner to the southeast of the Application Field, Nick Batterson.
5. Mr. Batterson stated in the complaint that leachate from the land application was leaving the Application Field through a tile line on that property and discharging to a tributary of Palestine Creek, a water of the state (Creek).
6. On the evening of May 16, DNR environmental specialist Anthony Kerker contacted Mr. Batterson by phone. Mr. Batterson supplied Mr. Kerker with pictures he had taken of the discharge.
7. Based on the complaint, Mr. Kerker conducted an inspection of the discharge on May 17, 2022.
8. Mr. Kerker observed effluent leaving a tile line and discharging to the Creek at the location Mr. Betterson had stated.
9. Mr. Kerker observed ponding of effluent in the slow-moving water of the Creek.
10. Mr. Kerker conducted a field sample for ammonia of the water in the Creek. The results of this test showed elevated levels of ammonia.
11. Mr. Kerker collected water samples from the Creek for laboratory testing. The locations and sample results from those tests are as follows:

Test location	Creek, downstream of tile line	Creek, downstream of tile line	Tile line	Creek, Upstream of tile line	Downstream of the Confluence of the Creek and Palestine	Upstream of the Confluence of the Creek and Palestine

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					Creek	Creek
Ammonia (mg/L)	9.3	9.0	4.2	0.050	1.7	<0.050
Carbonaceous Biological Oxygen Dissolved CBOD (mg/L)	11	18	4	<2	3	<2

12. These results demonstrate that pollutants from the tile line entered the Creek.
13. After collecting the samples, Mr. Kerker met with Brandon Buch of Buch Farms.
14. Mr. Kerker showed Mr. Buch the discharge and the discolored water in the Creek.
15. With Mr. Buch, Mr. Kerker investigated the Application Field. There, Mr. Kerker observed that the ground near the tile line intake was heavily saturated by the land applied effluent.
16. Mr. Buch also observed the tile line intakes, agreed that the land applied effluent was entering the tile line from that point, and agree to not land apply near the area during future applications.
17. On June 9, 2022, the DNR issued Buch Farms a Notice of Violation for the discharge.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission (Commission). Buch Farms discharged wastewater to the Creek. The facts of this case indicate a violation of this provisions.
2. Iowa Code section 455B.173 provides that the Commission shall adopt rules related to discharges of pollutants. The Commission has adopted such rules at 567 IAC chapter 62.
3. 567 IAC 62.1(1) prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Commission. Buch Farms discharged wastewater to the Creek. The facts of this case indicate a violation of this provisions.

V. ORDER

THEREFORE, the DNR orders and Buch Farms agrees to the following:

1. Buch Farms shall operate its business, including but not limited to the land application of all effluent, in a manner that complies with all applicable laws under the jurisdiction of the DNR.

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2. Within 30 days of the date the Director signs this Order, Buch Farms shall pay an administrative penalty of \$4,500.00.

VI. PENALTY

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 \$4,500.00. Buch Farms neither agrees nor disagrees with the statements of facts and law used in this penalty calculation, and agrees to the penalty for settlement purposes only. 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.” Buch Farms gained avoided cost benefits associated with the proper disposal of the discharged effluent. Using a reasonable estimate for these costs, and in the interest of handling this matter administratively, \$750.00 is 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. The discharge to the Creek caused elevated levels of ammonia and COBD, as well as the discharge of other pollutants. Particularly in waters with low flows such as the Creek, discharges of this nature cause severe environmental harm. The discharge of land applied effluent causes programmatic harm. In the interest of handling this matter administratively, \$3,000.00 is assessed for this factor.

Culpability – Buch Farms has a duty land apply effluent under its control in a manner that does not cause violations of wastewater law. In the interest of handling this matter administratively, a penalty of \$750.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Buch Farms. For that reason, Buch Farms waives the right to appeal this Order or any part thereof.

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VIII. SCOPE AND NONCOMPLIANCE

This Order is intended to resolve all violations detailed in the Statement of Facts of this Order. Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this 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 or Iowa Code section 459A.501.



For BUCH FARMS, LLC

Dated this 27th day of

September, 2022

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Noah Poppelreiter, DNR Field Office 6, EPA, I.C.1

