

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

<b>IN THE MATTER OF:</b>  <b>HOKSBERGEN FARMS LAND, INC.; HOKSBERGEN FARM IRREVOCABLE TRUST; FARMERS NATIONAL COMPANY; FIRST INTERSTATE BANK f/k/a GREAT WESTERN BANK</b>  Poweshiek County, Iowa AFO #69184	<b>ADMINISTRATIVE CONSENT ORDER NO. 2022-AFO-28</b>
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**TO:** Douglas Hoksbergen  
Hoksbergen Farms Land, Inc.  
Hoksbergen Farm Irrevocable Trust  
721 460<sup>th</sup> Avenue  
Grinnell, Iowa 50112

C T Corporation System, Registered Agent  
Farmers National Company  
400 E Court Ave  
Des Moines, Iowa 50309

Ben Watson  
Farmers National Company  
PO Box 367  
State Center, Iowa 50247

Justin Sullivan, attorney for First Interstate Bank, f/k/a Great Western Bank  
Whitfield & Eddy, PLC  
699 Walnut Street, Suite 2000  
Des Moines, Iowa 50309-4195

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Hoksbergen Farms Land, Inc., Hoksbergen Farm Irrevocable Trust, Farmers National Company, and First Interstate Bank for the purpose of resolving water quality violations resulting from repeated manure discharges from the PSL Cattle facility located in Poweshiek County. This administrative consent order requires Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust to comply with the approved site plan for

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the facility and for Farmers National Company, and First Interstate Bank to pay a \$10,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bill Gibbons, DNR Field Office 5  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/725-0335

**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.

## III. STATEMENT OF FACTS

Hoksbergen Farms Land, Inc. and Hoksbergen Farms Irrevocable Trust neither admit nor deny the Statement of Facts and enter into this administrative consent order for settlement purposes only. Farmers National Company and First Interstate Bank neither admit nor deny the Statement of Facts and enter into this administrative consent order for settlement purposes only.

1. PSL Cattle is an animal feeding operation located at 754 Ewart Road, Grinnell, Iowa (Section 19, Pleasant Township, Poweshiek County). The operation consists of two dry bedded cattle confinement buildings. The north building was previously owned by Hoksbergen Farms Land, Inc. and the south building is owned

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by Hoksbergen Farms Irrevocable Trust<sup>1</sup>. At the time of the events noted in this administrative consent order PSL Cattle was in a receivership held by First Interstate Bank. First Interstate Bank hired Farmers National Company as the management company. At the time of the events noted in this administrative consent order Farmers National Company was responsible for all PSL Cattle operations and Ben Watson was a manager for Farmers National Company.

2. In April 2021, DNR Field Office 5 received a complaint regarding manure runoff from PSL Cattle that entered a creek. Bill Gibbons, DNR Field Office 5 environmental specialist, conducted an inspection at the facility. During the inspection, a pathway from the stockpile to an unnamed tributary of Middle Buck Creek (creek) was observed, indicating during precipitation events manure likely would enter the creek. Manure solids were also noted piled close to several drainage tiles at the facility. Mr. Gibbons informed Mr. Hoksbergen of the issues at the facility. Mr. Gibbons also notified Mr. Watson of the issues at the facility and provided him with a copy of the administrative rules that apply to facility. A follow-up inspection by Mr. Gibbons at the end of April 2021 indicated that most of the stockpiled manure had been land applied and the remaining manure was to be land applied within the following week. Mr. Watson informed Mr. Gibbons that manure would no longer be stockpiled outside the building. He stated the manure would be kept inside the buildings until fall when it could be removed and land applied.

3. In July 2021, DNR Field Office 5 received a complaint forwarded from Environmental Protection Agency Region 7. The complaint noted a citizen concern with manure leaking from the buildings at the PSL Cattle facility. Mr. Gibbons visited the facility to investigate the complaint and met with Mr. Hoksbergen. Mr. Gibbons noted manure near the south building had been pushed onto the ground and not the pad. The manure contained little bedding and was in a semi-liquid state. The bedded manure inside the building had not been removed. Mr. Gibbons also observed a basin near the north building with an erosion gully. It appeared liquid effluent from the basin traveled downhill toward the creek; however, Mr. Gibbons did not observe any evidence of a discharge to the creek. Mr. Gibbons noted a large tile outlet that discharged to the creek and Mr. Hoksbergen stated there were tile intakes and lines throughout the facility that drained to the large tile outlet. Water was flowing out of the tile into the creek. The tile intakes were observed between the two buildings and near the area where manure was stockpiled. The tile intake near

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<sup>1</sup> The south building was constructed on land owned by Zedaka Land and Cattle Company. On May 18, 2022, Hoksbergen Farms Irrevocable Trust purchased the land. A sheriff's sale has occurred, the north building was sold at sheriff's sale, First Interstate Bank tendered a successful credit bid and is currently the holder of the certificate of purchase of the real property where the north building sits. First Interstate Bank remains the only grantee or assignor of a sheriff's deed; Mr. Hoksbergen's redemption rights have expired.

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the stockpile was plugged. Mr. Gibbons conducted field tests and collected laboratory samples of the area. The results of the test and samples are listed below:

Location	Field Test – Ammonia (mg/L)	Laboratory Sample – Ammonia (mg/L)	Laboratory Sample – Fecal Coliform (CFU/100mL)
Upstream of Tile Outlet	0.0	<0.050	2,900
At Tile Outlet	0.112	0.160	5,100
Directly Downstream of Tile Outlet	0.0	<0.050	2,200
Downstream of Tile Outlet at Culvert under 70 <sup>th</sup> Street	0.0	0.090	2,300

4. Mr. Gibbons returned to the facility the following day following a precipitation event. There was a basin near the south building and water was ponded in the area. The basin near the north building was overflowing with the effluent traveling to a vegetative area; but no discharge was observed. Mr. Gibbons conducted field tests and collected laboratory samples in the same location as the previous day. The results of the test and samples are listed below:

Location	Field Test – Ammonia (mg/L)	Laboratory Sample – Ammonia (mg/L)	Laboratory Sample – Fecal Coliform (CFU/100mL)
Upstream of Tile Outlet	0.0	<0.050	3,700
At Tile Outlet	0.36	.470	>6,000
Directly Downstream of Tile Outlet	0.0	<0.050	5,100
Downstream of Tile Outlet at Culvert under 70 <sup>th</sup> Street	0.0	0.050	4,800

5. On August 12, 2021, DNR issued a Notice of Violation letter to Farmers National Company for the violations observed during the July inspections. The letter required Farmers National Company to either submit a written response detailing how the discharge would be eliminated or apply for a NPDES permit.

6. In August 2021, DNR received an anonymous complaint regarding a the PSL Cattle facility. The complainant stated that manure had been applied five or six times to the same field during the summer. Mr. Gibbons visited the facility to

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investigate the complaint. Mr. Gibbons observed a pasture on the north side of the facility where manure had recently been applied. The thickness of the manure application was six to eight inches. The manure was not incorporated and was within 50 feet of the creek bank. Mr. Hoksbergen contacted Mr. Gibbons following the inspection. Mr. Hoksbergen stated he applied the manure under the direction of Mr. Watson. Mr. Hoksbergen stated he was concerned the manure would be released to the nearby tiles. Mr. Gibbons then contacted Justin Sullivan, the attorney for First Interstate Bank, and informed him the manure within 200 feet of the creek would need to be incorporated. Mr. Gibbons also provided the same information to Mr. Watson. Mr. Watson and First Interstate Bank both deny they directed Mr. Hoksbergen to land apply manure in August 2021. Mr. Gibbons traveled to the facility to verify that the manure had been incorporated. The manure had been incorporated; however, it was determined the application was not in the facility's manure management plan (MMP), the manure was not applied at a rate calculated in the MMP, and Mr. Hoksbergen was not certified to apply the manure.

7. Later in August 2021, DNR Field Office 5 received a complaint regarding manure from the north building at PSL Cattle running down the hill into the creek. Mr. Gibbons visited the facility to investigate the complaint. He observed a path of manure solids from where the manure was pushed out of the north building down the hill slope and into the creek. The manure entered the creek near the culvert under 70<sup>th</sup> Street. Mr. Gibbons also observed manure had been pushed out of the south building. There was a broken tile in area and the basin was completely full with manure solids coming from the basin to the area between the buildings. Mr. Gibbons contacted Mr. Watson and informed him immediate actions would need to be taken to stop the release of manure to the creek. Mr. Watson agreed to remove the manure on the hill slope and construct an earthen basin below the small basin.

8. In September 2021, DNR Field Office 5 received a complaint that manure from PSL Cattle was flowing down the hill into the creek. Mr. Gibbons travelled to the facility to investigate the complaint. He observed manure effluent flowing over the berm, down the hill and entering the creek. He collected laboratory samples of the impacted areas upstream and downstream of the discharge location. The results are shown below:

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Location	Ammonia (mg/L)	Biochemical Oxygen Demand (mg/L)	Total Suspended Solids (mg/L)
Upstream of Discharge Point	6.6	110	110
Downstream of Discharge Point	15	350	260

9. On February 10, 2022, DNR issued a Notice of Violation letter to Farmers National Company and First Interstate Bank for the violations in August and September 2021. The letter informed the parties the violations were being referred for further enforcement.

10. While the receivership has not been formally terminated, the receiver is no longer on site. The north building sits vacant as only First Interstate Bank has a right of possession. Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust have taken over management of the south facility.

11. Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust submitted a written site plan for the management and operation of the facility. The plan included the following information: 1) The north building has a stocking rate of 900 and the south building has a stocking rate of 995 head with a maximum stocking capacity of 1,100 head; 2) the stockpiling areas for each building has a storage capacity of 14 days; 3) there will be no flowable liquid manure stockpiled; 4) there will no gaps between the corn stalk bales used in the stockpiles; 5) no deteriorated corn stalk bales will be used; 6) a flail type manure spreader will be used; 7) stockpile areas will be adequately sized to retain all dry bedded manure and any potential precipitation; 8) all tile intakes between the buildings will be closed; 9) other tile intakes at the facility will be protected by corn stalk bales; 10) a stormwater diversion berm will be constructed; and 11) conduct routine inspections of all parts of the facility. DNR approved the plan on May 3, 2022.

#### IV. CONCLUSIONS OF LAW

Hoksbergen Farms Land, Inc. and Hoksbergen Farms Irrevocable Trust neither admit nor deny the Conclusions of Law and enter into this administrative consent order for settlement purposes only. Farmers National Company and First Interstate Bank neither admit nor deny the Conclusions of Law and enter into this administrative consent order for settlement purposes only.

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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, August 2021, and September 2021 investigations, DNR Field Office 5 noted that manure discharges from the PSL Cattle facility entered the creek. The above-mentioned facts indicate violations of these provisions.

3. 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.

4. 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, August 2021, and September 2021 investigations, DNR Field Office 5 noted that manure discharges from the PSL Cattle facility entered the creek. The above-mentioned facts indicate a violation of this provision.

5. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 and 4, Section IV [Conclusions of Law] will occur again if Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust comply with the requirements set forth in Paragraphs 1 and 2, Section V [Order] of the administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust agree to do the following:

1. Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust shall comply with the Site Plan, as noted in Paragraph 11, Section III [Statement of Facts] of the administrative consent order and in the Site Plan agreed upon with DNR Field Office 5 in May 2022 for the operation of the PSL Cattle facility; and

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2. If a future proven discharge occurs at the PSL Cattle facility, Hoksbergen Farms Land, Inc. and Hoksbergen Farm Irrevocable Trust shall submit an NPDES permit application to the DNR within 60 days of being notified by the DNR of the requirement to submit the NPDES permit application.

THEREFORE, the DNR order and Farmers National Company and First Interstate Bank agree to do the following:

3. Farmers National Company and First Interstate Bank, jointly and severally, shall pay an administrative penalty in the amount of \$10,000.00 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 \$10,000.00. Farmers National Company and First Interstate Bank shall be jointly and severally liable for the penalty. 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.” During the time of the receivership under First Interstate Bank and management by Farmers National Company, the facility did not have adequate manure storage or manure handling. Great Western Bank and Farmers National Company gained an economic benefit by failing to provide adequate storage and manure handling at the facility. It is

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estimated that they saved at least \$1,000.00 and that amount 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. 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. On multiple occasions, during the time of the receivership under First Interstate Bank and management by Farmers National Company, manure was discharged to the creek. The manure releases resulted in elevated pollutant levels and water quality violations. The DNR acknowledge both First Interstate Bank and Farmers National Company as successors in interest to Mr. Hoksbergen's cattle operation. However, the violations did threaten the integrity of the water quality program. Additionally, DNR Field Office 5 expended a large amount of staff time working with First Interstate Bank and Farmers National Company in responding to complaints and working to achieve compliance at the facility. For the violations listed in Section IV. Conclusions of Law, Paragraph 2 \$3,000.00 is assessed and for the violations listed in Section IV. Conclusions of Law, Paragraph 4, \$3,000.00 is assessed Therefore, a total of \$6,000.00 is assessed for this factor.

Culpability – First Interstate Bank and Farmers National Company have a duty to know the regulations and to be aware that their actions are subject to the regulations. The facility had multiple discharges while under receivership by First Interstate Bank, and management by Farmers National Company. Therefore, \$3,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Hoksbergen Farms Land, Inc., Hoksbergen Farm Irrevocable Trust, Farmers National Company, and First Interstate Bank. For that reason, Hoksbergen Farms Land, Inc., Hoksbergen Farm Irrevocable Trust, Farmers National Company, and First Interstate Bank waive 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

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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

Hoksbergen Farms Land Inc By Paige Hahlyon  
Hoksbergen Farms Land, Inc. Dated this 12<sup>th</sup> day of  
October, 2022.

Hoksbergen Farm Irrevocable Trust  
by Paige White  
Hoksbergen Farm Irrevocable Trust Dated this 12<sup>th</sup> day of  
October, 2022.

Ken Schutt  
Farmers National Company Dated this 12<sup>th</sup> day of  
October, 2022.

R a f  
First Interstate Bank Dated this 12 day of  
October, 2022.