

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

IN THE MATTER OF:

BRIAN WENDL
Facility #56300

Carroll County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO-38

TO: Brian Wendl
27648 Olympic Avenue
Carroll, Iowa 51401

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Wendl for the purpose of resolving violations resulting from manure releases from Mr. Wendl's open feedlot that resulted in water quality violations and violations of the facility's National Pollutant Discharge Elimination System (NPDES) permit. This administrative consent order requires Mr. Wendl to: 1) develop and implement a Standard Operating Procedure for land application; 2) comply with the facility's NPDES permit; and 3) pay a \$2,000.00 administrative penalty. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Alison Manz, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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 violations of Iowa Code chapter 455B, Division

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN WENDL

III, Part 1; and Iowa Code chapter 459A 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

1. Brian Wendl owns and operates an open feedlot with a permitted capacity of 20,000 open lot beef cattle. The facility is located at 27648 Olympic Avenue; Carroll, Iowa (Section 33, Pleasant Valley Township, Carroll County). Manure controls consist of numerous solids settling basins and one settled open feedlot effluent basin (SOFEB).

2. The facility operates under NPDES permit number 1456300. The NPDES permit contains numerous operating conditions and two of the conditions at issue in this administrative consent order state: 1) land application of effluent shall be conducted on days when weather and soil conditions are suitable and 2) whenever manure is removed from the feedlot areas or effluent from the SOFEB, it shall be applied based on separation distance requirements for land application of manure as required by the administrative rules.

3. On June 9, 2022, DNR received a complaint regarding a manure discharge from Mr. Wendl's facility. The complaint stated that manure from dewatering activities was flowing directly into an unnamed tributary of Willey Creek. Alison Manz, DNR Field Office 4 environmental specialist senior, contacted Mr. Wendl, who was out of state at the time and explained the complaint received alleging that during dewatering of the SOFEB with the stationary guns manure was flowing into the tributary. He informed Ms. Manz that he was returning to the facility immediately. He stated we would contact the facility and require that the pump be turned off and no further manure would be land applied. Mr. Wendl explained that the center pivot was being repaired and while the repairs occurred stationary application guns were being used.

4. On June 10, Ms. Manz and Claire Asberry, DNR Field Office 4 environmental specialist, visited the facility. They noted that the SOFEB had roughly four feet of freeboard and was not in danger of overflowing. The field office personnel observed manure runoff entering the tributary at numerous locations from the application field because the ground was too saturated from receiving three inches of rain leading up to the date of the release. They did not observe any dead fish, but did collect laboratory samples of the impacted area. The results of the laboratory samples are as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
 ADMINISTRATIVE CONSENT ORDER
 ISSUED TO: BRIAN WENDL

Location	Fecal Coliform (CFU/100mL)	Ammonia (N)	E.coli (MPN/100mL)	BOD (mg/L)	Total Suspended Solids (mg/L)
Upstream of the Discharge Points	180	0.090	200	<2	17
Discharge Point to the Tributary	13,000	140	>24,000	810	250
Tributary Outfall to Willey Creek	1,500	0.61	3,100	4	11
Downstream of the Feedlot in Willey Creek	2,800	0.44	<10	9	12

Upon Mr. Wendl's return to the facility later in the day on June 10, 2022, he contacted Ms. Manz and confirmed that the ground was too saturated for the pivots to have been used. He stated that an employee had turned the pumps on thinking that the SOFEB freeboard levels were too high. Mr. Wendl stated the pivots would not be used again until proper vegetation was established in the field along the tributary.

5. On June 11, 2022, Mr. Wendl contacted DNR Field Office 4 and verified that the soil in the land application field was tilled and a large berm was constructed along the tributary to prevent further runoff. Mr. Wendl stated the pivots would not be used again until proper vegetation was established in the field along the tributary. On June 13, 2022, Ms. Asberry visited the facility and confirmed the berm was in place and manure was no longer entering the tributary.

6. On June 30, 2022, DNR issued Mr. Wendl a Notice of Violation letter for the violations observed in June. The letter informed Mr. Wendl the violations were being referred for further enforcement.

7. In July 2022, Mr. Wendl submitted the 2nd quarter report for the facility. The report indicated the freeboard level of the SOFEB was 15 feet. The facility's NPDES permit indicated the start pumping level for the SOFEB is 10 feet. Mr. Wendl submitted photographs to DNR Field Office 4 showing that vegetation had been established between the tributary and the stationary application guns. A new staff gauge was also being installed.

IV. CONCLUSIONS OF LAW

1. Mr. Wendl's NPDES permit requires that land application of manure shall be conducted on days when weather and soil conditions are suitable. The

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN WENDL

SOFEB at Mr. Wendl's facility was pumped following a heavy rain event to saturated soil. The above-mentioned fact indicates a violation of the NPDES permit.

2. 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.

3. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. The SOFEB at Mr. Wendl's facility was pumped following a heavy rain event to saturated soil resulting in the release of manure to an unnamed tributary. This action was contrary to the facility's NPDES permit. The above-mentioned facts indicate a violation of this provision.

4. 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. The laboratory results indicated elevated pollutants. The above-mentioned facts indicate a violation of the general water quality criteria.

5. Iowa Code section 459A.104 provides that the Environmental Protection Commission (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.

6. 567 IAC 65.101(6) states that open feedlot effluent shall be land applied in a manner that will not cause pollution of surface water or groundwater. A person shall not apply manure on land within 200 feet from a designated area unless the manure is incorporated or there is an of permanent vegetation cover. Manure effluent from the SOFEB at Mr. Wendl's facility was dewatered using six guns located approximately 200 feet from the tributary. The land was too saturated and there was no established vegetation to prevent the manure release to the tributary. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Brian Wendl agrees to do the following:

1. Develop and implement a Standard Operating Procedure for employees to follow during land application, including but not limited to monitoring of application activities. A copy of the Standard Operation Procedure shall

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN WENDL

be submitted to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order;

2. Comply with the facility's NPDES permit at all times; and
3. Pay an administrative penalty in the amount of \$2,000.00 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 \$2,000.00. 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 “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 equipment at Mr. Wendl's facility was being repaired at the time of the release and no economic benefit was received through the actions of Mr. Wendl or his employee. Therefore, no economic benefit 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. DNR Field Office 4 documented a manure release that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN WENDL

Culpability –Brian Wendl has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. However, Mr. Wendl was not at the facility at the time of the release and had not instructed the employee to pump from the SOFEB. Mr. Wendl took immediate steps to stop the release and returned to the facility immediately. Therefore, no amount is being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

Dated this _____ day of _____, 2022

Brian Wendl

BRIAN WENDL

Dated this 5th day of December, 2022

Facility #56433; Kelli Book; DNR Field Office 3; EPA; VIII.D.1.b and VIII.D.3.a