

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

IN THE MATTER OF:  <b>COLLIN KELTING</b>  Johnson County Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2023-AFO- 21
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**TO:** Collin Kelting  
4738 230<sup>th</sup> Street  
Walcott, Iowa 52773

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Collin Kelting for the purpose of resolving water quality violations resulting from a manure release during land application of manure. This administrative consent order requires Collin Kelting to: 1) develop and submit a Standard Operating Procedure for land application of manure; 2) ensure that all future handling, transferring, and land application of manure is done in accordance with the regulations and does not cause water quality violations; and 3) pay a \$1,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Caroline Davis, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

**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

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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**

1. Collin Kelting is a certified manure applicator and was hired to apply manure from the Randy Lackender animal feeding operation located at 4611 Dane Road SW, Iowa City, Iowa. On April 11, 2023, Mr. Kelting contacted DNR Field Office 6 to report a manure spill that reached an unnamed tributary of Old Man's Creek. Mr. Kelting stated that an umbilical hose broke and manure was released to the creek. Mr. Kelting stated he dammed the creek to contain the manure release and then immediately contacted DNR.

2. On April 11, 2023, Bert Noll and Caroline Davis, DNR Field Office 6 environmental specialists, travelled to the impacted area. They met with Mr. Kelting and Mr. Lackender. Mr. Kelting stated that the umbilical hose ruptured and the pump was immediately shut off to stop the discharge. Manure flowed down the embankment and entered the unnamed tributary. The field office personnel observed manure on the bank of the tributary and the water in the tributary was discolored. The field office personnel noted two dams were constructed, with one dam upstream of the spill and one dam downstream of the spill. A pump was being used to remove the water from the contained area and land applied to an adjacent field.

3. The field office personnel walked the length of the impacted segment of the tributary to conduct field tests and collect laboratory samples. The field tests indicated elevated ammonia levels for at least ¼ of a mile downstream of the manure release. The field office personnel noted downstream at the confluence with another unnamed tributary, the water from the manure-impacted segment was dark brown and cloudy as it met and mixed with the clear water from the other unnamed tributary. The laboratory sample results are shown below:

<b>Sample Location</b>	<b>Ammonia (mg/L)</b>	<b>BOD (mg/L)</b>	<b>E.Coli (MPN/100mL)</b>
Upstream Dam 1	0.5	<2	31
Downstream Dam 2	300	690	24,000
Above confluence – unaffected tributary	24	<2	<10
Downstream Dam 3	<.10	43	240

The field office personnel recommended that Mr. Kelting and Mr. Lackender construct a third dam immediately upstream of the confluence with the unaffected

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stream. Mr. Kelting and Mr. Lackender agreed to construct the third dam and continue to pump the water from the impacted areas and flush with fresh water.

4. On April 12, 2023, Ms. Davis returned to the location and noted that the first dam had been removed with clear water flowing. Some manure remained on the embankment of the tributary. Dams 2 and 3 were still in place, but some water was flowing through both dams. Ms. Davis collected laboratory samples of the impacted area. The laboratory sample results are shown below:

<b>Sample Location</b>	<b>Ammonia (mg/L)</b>	<b>BOD (mg/L)</b>
Downstream Dam 2	.78	<2
Old Man's Creek – nearest accessible downstream location	<0.10	<2

5. On April 24, 2023, DNR issued a Notice of Violation letter to Mr. Kelting for the violations resulting from the manure release. The letter informed Mr. Kelting that the violations were being referred for further enforcement.

#### 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 April 2023 investigation, DNR Field Office 6 noted that during land application by Mr. Kelting that manure was discharged into an unnamed tributary. 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 April 2023 investigation, DNR Field Office 6 noted that during land application by Mr. Kelting that manure was discharged into an unnamed tributary and caused discolored water and elevated pollutant levels. The above-mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation

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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 April 2023 investigation, DNR Field Office 6 noted that during land application by Mr. Kelting that manure was discharged into an unnamed tributary. The above-mentioned facts indicate a violation of this provision.

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

**V. ORDER**

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

1. Develop and submit a Standard Operating Procedure documenting the land application procedures, including equipment inspections, employee training, and notification procedures. The Standard Operating Procedure shall be submitted to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order and implemented immediately upon approval by DNR Field Office 6;
2. Ensure that all future handling, transferring, and land application of manure is done in accordance with the regulations and does not cause water quality violations; and
3. Pay an administrative penalty in the amount of \$1,000.00 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

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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 \$1,000.00. 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 manure release was caused by an unintentional equipment failure and Mr. Kelting realized little to no economic benefit. 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. The manure release resulted in the degradation of water quality, including discoloration and elevated pollutants. The manure containment requirements are integral parts of the animal feeding operation programs and violations of the regulations threaten the integrity of the animal feeding operation regulations. Based on the information above, \$1,000.00 is assessed for this factor.

Culpability – Mr. Kelting has a duty to know the regulations and to be aware that his actions are subject to the regulations. The release was accidental and the Mr. Kelting took immediate steps to limit the impact of the release. Based on the information above, no culpability is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

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

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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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Collin Kelting  
Collin Kelting

Dated this 16 day of  
October, 2023.