

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

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| IN THE MATTER OF:<br><br><b>KIM CONOVER</b><br><b>Facility #57500</b><br><br><b>Ida County, Iowa</b> | ADMINISTRATIVE CONSENT ORDER<br>NO. 2023-AFO-23 |
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TO: Kim Conover  
1932 Faith Avenue  
Holstein, Iowa 51025

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kim Conover for the purpose of resolving violations resulting from a manure release that occurred during land application in Ida County. This administrative consent order requires Mr. Conover to: 1) develop and implement a Plan of Action to monitor the manure pump during land application; and 4) 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:**

Jennifer Christian, Field Office 3  
Iowa Department of Natural Resources  
Gateway North, Suite E17  
Spencer, Iowa 51301  
Phone: 712/262-4177

**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 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KIM CONOVER

Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Kim Conover owns and operates of an animal feeding operation located at 1932 Faith Avenue; Holstein, Iowa (Section 19, Logan Township, Ida County). The facility has 950 head of beef cattle in open feedlots. A large concrete runoff control basin captures all the effluent and is located to the west of the open feedlots.

2. On April 2, 2023, Mr. Conover contacted DNR Field Office 3 and stated that a manure release had occurred at his facility during land application. He stated that he started the pump around 8:00 am and noticed the hose had broken on the pump at the storage basin. He stated the manure discharged through a grassed waterway into Battle Creek for an unknown amount of time

3. On April 3, 2023, Jennifer Christian, DNR Field Office 3 environmental specialist senior, and Doyle McKeever, DNR Field Office 3 environmental specialist, travelled to the impacted area. They collected laboratory samples of the impacted area. The laboratory results indicated the following:

| <b>Sample Location</b>             | <b>E.Coli<br/>(MPN)/100mL</b> | <b>Ammonia<br/>Nitrogen<br/>mg/L</b> | <b>BOD<br/>Mg/L</b> |
|------------------------------------|-------------------------------|--------------------------------------|---------------------|
| Upstream of the<br>Discharge Point | 63                            | <0.10                                | <2                  |
| At the Discharge<br>Point          | 11,000                        | 8.7                                  | 320                 |
| Downstream at<br>220th Street      | 2,600                         | 7.0                                  | 180                 |

The field office personnel instructed Mr. Conover to stop the discharge and clean up any of the residual manure.

4. On May 26, 2023, DNR issued Mr. Conover a Notice of Violation letter for the violations noted during the April inspection. The letter stated 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KIM CONOVER

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 3 noted manure being discharged into Battle Creek from land application from Mr. Conover's facility. 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 3 noted manure being discharged into Battle Creek from land application from Mr. Conover's facility and caused elevated pollutant levels. The above-mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 459A.104 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.

5. 567 IAC 65.101(6)(a) states that open feedlot effluent shall be land applied in a manner which will not cause pollution of surface water or ground water. During the April 2023 investigation, DNR Field Office 3 noted manure being discharged into Battle Creek from land application from Mr. Conover's facility. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Kim Conover agrees to do the following:

1. Develop a Plan of Action to monitor the manure pump during land application. The Plan of Action shall be submitted to DNR Field Office 3 within 30 days of the date the Director signs this administrative consent order and implemented immediately upon approval by DNR Field Office 3; and
2. Pay a \$2,000.00 administrative penalty within 30 days of the date the Director signs this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KIM CONOVER

**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." Mr. Conover has gained a minimal economic benefit in costs associated with monitoring the land application and ensuring the equipment was working properly. It is estimated the economic benefit is \$100.00 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. DNR Field Office 3 documented a manure release resulting in 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, \$1,400.00 is assessed for this factor.

Culpability - Mr. Conover 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. Therefore, \$500.00 is being assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KIM CONOVER

**VII. WAIVER OF APPEAL RIGHTS**

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

Dated this 1 day of  
Nov, 2023