

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

IN THE MATTER OF:

DARRYL HUMPAL

Winneshiek County, Iowa
AFO #68823

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-09

TO: Darryl Humpal
2638 210th Street
Ridgeway, Iowa 52165

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Darryl Humpal for the purpose of resolving water quality violations in connection a manure release from Mr. Humpal's animal feeding operation in Winneshiek County. This administrative consent order requires Mr. Humpal to: 1) develop and submit a Plan of Action regarding the operation of his facility and 2) pay an \$8,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jessica Ragsdale, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct, Suite 10
Manchester, Iowa 52057
Phone: 563/927-2640

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

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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. Darryl Humpal owns and operates an animal feeding operation located at 2638 210th Street; Ridgeway, Iowa (Section 4, Calmar Township, Winneshiek County). The facility has 360 head of mature dairy cattle and 260 head of immature dairy cattle in confinement buildings and 60 head of mature dairy cattle and 175 immature dairy cattle in open feedlots.

2. On April 14, 2023, DNR Field Office 1 received a complaint alleging that manure was flowing into the 210th street ditch and down a field drainage toward a creek. This area was near Mr. Humpal's facility.

3. On April 20, 2023, Jessica Ragsdale, DNR Field Office 1 environmental specialist, travelled to Mr. Humpal's facility. Mr. Humpal was using a skid loader to move a silage pile that was located near the road ditch noted in the complaint. Mr. Humpal informed Ms. Ragsdale that recent snow fall had created excess runoff. Ms. Ragsdale was unable to determine the presence of ammonia in the runoff due to the turbidity of the sample. The flow appeared to be coming from the silage pile. The flow continued along the confinement buildings where bedded packed manure was outside the building and along the inside of the road ditch. The flow continued to the solids settling for the two open lots. The solids settling area had become heavily channelized with the water flowing through this area. The water was discolored. This water eventually discharged to an unnamed tributary of Dry Run. Ms. Ragsdale was unable to determine the presence of ammonia in the unnamed tributary due to the turbidity of the sample. The result of the laboratory sample from this location was 39 mg/L ammonia nitrogen. Ms. Ragsdale and Mr. Humpal continued to an area on the north side of the property where a wall to contain manure had been previously constructed. The wall had failed and was not replaced. Ms. Ragsdale noted manure in the grassed area and it appeared the flow from this area went through a grassed area and eventually to the unnamed tributary.

4. On May 17, 2023, DNR issued a Notice of Violation letter to Mr. Humpal for the violations noted during the April investigation. The letter stated the violations may resulted in an enforcement action.

5. On May 31, 2023, Ms. Ragsdale returned to Mr. Humpal's facility to check on the cleanup. She noted that the water running through the culvert was white in color. Mr. Humpal stated that it was the wash water from the parlor. Ms. Ragsdale informed Mr. Humpal the parlor water could not enter a water of the state. Ms. Ragsdale traveled to the unnamed tributary to determine if there had been an impact. The laboratory sample of the unnamed tributary approximately 50 feet downstream of the culvert was 5.1 mg/L ammonia nitrogen and laboratory sample

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from the culvert was 22 mg/L ammonia nitrogen. The laboratory further downstream at the 210th Street bridge crossing was 0.13 mg/L ammonia nitrogen.

6. Mr. Humpal has a past history of manure releases from the facility. In October 2019, he was issued a Notice of Violation letter for failing to maintain manure containment and freeboard. The Notice of Violation letter was a result of an inspection that showed manure solids in the grassed waterway. As a result of this Notice of Violation letter, Mr. Humpal installed the wall noted in paragraph 3. In 2018, Mr. Humpal was issued an Administrative Order for a manure discharge from land application that resulted in water quality violations and a fish kill.

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 and May 2023 investigations, DNR Field Office 1 noted discharges of manure and parlor water entering a water of the state. The above-mentioned facts indicate violations 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 and May 2023 investigations, DNR Field Office 1 noted discharges of manure and parlor water entering a water of the state that caused elevated pollutant levels and discolored water. The above-mentioned facts indicate violations of the general water quality criteria.

4. 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.

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. During the April 2023 investigation, DNR Field Office 1 noted a manure release from Mr. Humpal's facility to a water of the state. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state

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or into a tile line that discharges to waters of the state. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. At no point did Mr. Humpal contact DNR to notify of the actual manure releases. The above-mentioned facts indicate a violation of this provision.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Humpal complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Darryl Humpal agree to do the following:

1. Develop and submit a Plan of Action regarding how the facility will properly manage all parlor waste, confinement manure, and silage leachate/runoff. This shall include, but not be limited to, how the parlor waste will be diverted to the earthen basin, where the silage will be stored, how leachate will be stored, how the solids settling area will be maintained to prevent channelization, and how the wall be maintained. The Plan of Action shall be submitted to DNR Field Office 1 within 60 days of the date the Director signs this administrative consent order and implemented immediately upon approval by DNR Field Office 2; and
2. Pay an administrative penalty in the amount of \$8,000.00 in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining portion of the penalty shall be due immediately.

\$1,000.00 due February 15, 2024;	\$1,000.00 due February 15, 2025;
\$1,000.00 due May 15, 2024;	\$1,000.00 due May 15, 2025;
\$1,000.00 due August 15, 2024;	\$1,000.00 due August 15, 2025;
\$1,000.00 due November 15, 2024;	\$1,000.00 due November 15, 2025.

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

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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 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 \$8,000.00. 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. Humpal gained an economic benefit by failing to properly maintain the wall to assist with the control of the confinement manure. Additionally, Mr. Humpal gained an economic benefit by not properly land applying the parlor waste, but rather allowing to be discharged to a water of the state. Based on the above facts, the economic benefit by Mr. Humpal received was at least \$2,000.00 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. The release of manure and parlor waste from the Humpal facility ultimately resulted in the degradation of water quality and elevated pollutant levels. The noted regulations in this administrative consent order are integral parts of the water quality and animal feeding operation programs and violations of the regulations threaten the integrity of the animal feeding operation regulations. Based on the information above, \$3,000.00 is assessed for this factor.

Culpability – Mr. Humpal has a duty to know the regulations and to be aware that his actions are subject to the regulations. He has been issued a Notice of Violation and an Administrative Order for previous manure releases from the facility. Based on the information above, \$3,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

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



DARRYL HUMPAL

Dated this 26 day of
Jan., 2024.