

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

IN THE MATTER OF:

C&M Hogs LLC

Lee County Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-16

TO: Albert James Cresswell
C&M Hogs LLC
1432 37th Street
Fort Madison, Iowa 52627

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and C&M Hogs LLC (C&M Hogs) for the purpose of resolving water quality violations resulting from a manure release from the C&M Hogs facility. This administrative consent order requires C&M Hogs to: 1) develop and implement a permanent remedy to prevent future manure releases and 2) pay an \$6,700.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jon Ryk, 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 to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division

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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. C&M Hogs owns and operates a two building 4,890 head swine confinement feeding operation with below-building pits for manure storage. The operation is located at 1963 230th Street; Donnellson, Iowa (Section 3, Charleston Township, Lee County). Albert James Cresswell is the operation's contact person.

2. On December 2, 2023, DNR Field Office 6 received a telephone call from a person hunting on property near Painter Creek by 2374 Hillcrest Road. The caller stated that the creek was black and had a strong manure odor. Dead minnows were also observed in the creek. DNR Field Office 6 contacted the DNR Fisheries Bureau, who then contacted DNR Conservation Officer, Hunter McAnich. Officer McAnich travelled to the location and noted that the water under the bridge near 2408 Hillcrest Road was black and smelled of manure. Officer McAnich informed DNR Field Office 6 that the only animal feeding operation upstream was C&M Hogs.

3. Kurt Levetzow, DNR Field Office 6 supervisor, and Jon Ryk, DNR Field Office 6 environmental specialist, traveled to the location of the first reported impacted portion of the creek. They observed dead fish and minnows along Painter Creek. The creek had a strong manure odor. The field tests conducted at this location indicated a high ammonia concentration. Laboratory samples collected from the area of the creek where impacts were first reported (~1/4 mile south of the residence at 2374 Hillcrest Road) indicated the following concentrations: E.Coli – 2,300 MPN/100ml; Ammonia – 280 ppm; TKN– 330 ppm; BOD – 210 ppm; and Organic Nitrogen – 48 ppm.

4. The field office staff also observed impacted areas of the Painter Creek at the Hillcrest Road bridge. The water was black and had a strong manure odor. They also noted dead minnows in this area. The laboratory samples from Painter Creek at the Hillcrest Road Bridge indicated the following concentrations: E.Coli – 3,700 MPN/100ml; Ammonia – 110 ppm; TKN – 150 ppm; and Organic Nitrogen – 33 ppm.

5. The field office staff continued to the C&M Hogs facility and observed liquid manure flowing out of the storage pit of the northern most building at the facility. The manure flowed to the secondary containment structure where the manure flowed out the discharge pipe to Painter Creek. The laboratory samples from the liquid flowing from the pipe indicated the following concentrations: E.Coli – 81,000 MPN/100ml; Ammonia – 1,900 ppm; TKN – 2,400 ppm; BOD – 1,500 ppm; and Organic Nitrogen – 500 ppm.

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6. Following the visit to the facility, Mr. Levetzow traveled the J62 Bridge. At the time of his visit the area by the J62 Bridge did not appear to be impacted.

7. On December 3, 2023, Mr. Ryk spoke to Mr. Cresswell about the incident and Mr. Cresswell indicated that the overflow may have been caused by a wet dry feeder they were having issues with and that he noticed a hose was off the wet dry feeder and leaking into the pit of the north building when he arrived at the facility after being notified of the overflow. Mr. Cresswell also indicated that he spoke with Mr. Levetzow and had moved the pump from the south building so he could pump from the overflowing pit in the north building to the south building until the pits were about level. Following the call, Mr. Ryk texted Mr. Cresswell and asked him to block off the intake to the drain tile from the secondary containment and send photos of the pumped down pits and the blocked off intake following completion. Later in the day, Mr. Cresswell called Mr. Ryk to inform him that he has emailed pictures of the pits and the blocked off intake from the secondary containment structure. After seeing that the level in both manure pits was very high (about 3 inches from overflowing) Mr. Ryk responded to the email received from Mr. Cresswell asking whether he has a contingency plan to keep the pits from overflowing again. Following the email, Mr. Ryk received a text from Mr. Cresswell that the tank was ready to go to the field as soon as the field would allow. Mr. Ryk reminded Mr. Cresswell no additional manure was to be released to the creek and to notify the DNR if another release occurs.

8. On December 4, 2023, Mr. Ryk and Jeff Prier, DNR Field Office 6 environmental specialist senior, returned to the area and travelled to a location upstream of the C&M Hogs facility and noted that the water in Painter Creek was clean and clear. The laboratory samples from the upstream location indicated the following concentrations: E.Coli – 720 MPN/100ml; Ammonia – 0.32 ppm; TKN – 1.3 ppm; BOD – 3 ppm; and Organic Nitrogen – 0.99 ppm.

9. The field office staff traveled to the C&M Hogs facility and noted that other than putting a bucket over the inlet to the discharge pipe and stopping the overflow, no other clean up had occurred. There was a large amount of ponded manure near the building and a path of manure that flowed to the secondary containment. The field office staff noted that liquid was still leaving the discharge pipe. Following the visit, Mr. Ryk spoke to Mr. Cresswell and informed him that further clean up was needed. Mr. Ryk informed Mr. Cresswell that the pooled areas of manure and the secondary containment area must be cleaned out.

10. The field office staff traveled to the J62 Bridge where the manure had reached this location and the water was discolored and smelled of manure. The laboratory samples from this area indicated the following concentrations: E.Coli – 1,600 MPN/100ml; Ammonia – 42 ppm; TKN – 48 ppm; BOD – 30 ppm; and Organic Nitrogen – 5.3 ppm. They continued to walk the creek until a point where it ended in a sandy creek bed with no continuous water flow. The manure impact was

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all the way to where there was no continuous water flow. Following the inspection of the impacted area, the field office staff spoke to DNR Fisheries Bureau. The Fisheries Bureau determined that due to the time of year and low water flow that a fish kill investigation would not be conducted.

11. On December 5, 2023, Mr. Ryk spoke to Mr. Cresswell. Mr. Cresswell stated that a hose came off the feeder/waterer at the facility and the water was draining into the pit in the north building, causing the overflow. Mr. Cresswell stated that he did not know how long the hose had been off the feeder draining into the pit. Mr. Cresswell also stated that he had never seen a shut off valve for the drain pipe from the secondary containment structure. Mr. Ryk once again reminded Mr. Cresswell that the discharge must not continue and that the area must be cleaned up. When asked if he was out to the facility during the week Mr. Cresswell stated he had not been out to the facility during the week as he was working as a construction foreman in Indiana and that he had a caretaker who was supposed to take care of the day to day activities at the facility. Mr. Cresswell stated that the last time he was at the facility was December 3. Mr. Cresswell stated that he had applied manure the previous weekend. The field office staff later learned that Mr. Cresswell manure applicator certification had expired in March 2023.

12. Later in the day, Mr. Cresswell provided a photograph to Mr. Ryk showing that the pipe from the secondary containment structure had been capped and was no longer releasing liquid.

13. On December 7, 2023, DNR issued a Notice of Violation letter to C&M Hogs for the violations discovered during the field office inspections. The letter informed C&M Hogs that the violations were being referred for further enforcement.

14. Following the issuance of the Notice of Violation, DNR Field Office 6 confirmed that much of the pooled manure and the manure from the secondary containment had been removed. It was noted that the building pits were full. Mr. Cresswell also hired a new caretaker for the facility to ensure that the basins were being properly maintained.

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 December 2023

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investigation, DNR Field Office 6 noted that a manure release from the C&M Hogs facility entered Painter Creek. 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 December 2023 investigation, DNR Field Office 6 noted that a manure release from the C&M Hogs facility entered Painter Creek causing discolored water, dead fish, a manure odor, 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 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 December 2023 investigation, DNR Field Office 6 noted that manure overflowed from the C&M Hogs facility and entered Painter Creek. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.3(6) states that a confinement feeding operation required to submit a manure management plan to the DNR must use a certified commercial manure service for land application of manure and an operation that applies its own manure must comply with certification requirements in 567 IAC 65.19. 567 IAC 65.19(1) states that a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. During the December 2023 investigation, it was determined that Mr. Cresswell applied manure in November 2023, but his certification had expired in March 2023. 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 C&M Hogs complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and C&M Hogs agree to do the following:

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1. Develop and submit a permanent remedy documenting how the manure containment in the pit and the secondary containment structures will be maintained to ensure that no further manure is released from the facility. The plan 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; and
2. Pay an administrative penalty in the amount of \$6,700.00 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 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 \$6,700.00. 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.” C&M Hogs gained an economic benefit by failing to take actions to prevent the manure release from the secondary containment area. The secondary containment pipe did not have a shutoff valve and the facility delayed the cost of the purchase of the valve. Additionally, C&M Hogs gained an economic benefit by not conducting regular visual inspections of the manure storage pit and the secondary containment area. Mr. Cresswell also gained an economic benefit by delaying the applicator certification fees and applied manure without being properly certified. Based on the above facts, the economic benefit the C&M Hogs received was at least \$700.00 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

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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 from the C&M Hogs facility resulted in the degradation of water quality and a fish kill. Manure applicators are required to obtain training and certifications to ensure they are properly trained. Applying manure without the proper training and certification increases the risk a manure related discharge during application. The manure applicator certification and 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, \$3,000.00 is assessed for this factor.

Culpability – C&M Hogs has a duty to know the regulations and to be aware that its actions are subject to the regulations. The facility failed to take proper steps to prevent manure releases and failed to routinely monitor and inspect the facility structures and equipment. Based on the information above, \$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 C&M Hogs. For that reason, C&M Hogs 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 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

C&M Hogs LLC By Albert J. Cramer
C&M HOGS LLC

Dated this 26 day of
February, 2024.

