

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

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<p>IN THE MATTER OF:</p> <p><b>CURTIS FOX</b> <b>Facility #70893</b></p> <p><b>Mitchell County, Iowa</b></p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2024-AFO-18</p>
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TO: Curtis Fox, Owner  
3423 Walnut Avenue  
Elma, Iowa 50628

Ted Fox, Facility Contact  
3151 350<sup>th</sup> Street  
Osage, Iowa 50461

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Curtis Fox for the purpose of resolving violations resulting from a manure release from Mr. Fox's animal feeding operation located in Mitchell County. This administrative consent order requires Mr. Fox to: 1) obtain a professional engineer to design a manure control system for the facility; 2) construct and maintain the manure control system; and 3) pay a \$5,000.00 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:**

Jeremy Klatt, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**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

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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. Curtis Fox owns an open feedlot operation with the capacity of 650 head of finishing cattle. The facility is located at 3423 Walnut Avenue; Elma, Iowa (Section 34, Douglas Township, Mitchell County). The facility is operated by Ted Fox, son of Curtis Fox.

2. DNR Field Office 2 has conducted multiple inspections at the Fox feedlot. In November 2019, DNR Field Office 2 visited the facility and noted that while a discharge was not documented during the inspection, it appeared that discharges had occurred during heavy or chronic rainfall events. In December 2019, DNR sent a letter to Ted Fox informing him of the findings and informing him that a discharge from the facility without a permit was prohibited. At the time of the inspection Ted Fox stated he planned to construct runoff controls at the facility with the assistance of NRCS.

3. Following the 2019 inspection, the coronavirus pandemic began, the NRCS office was closed, and the construction planning was halted. In December 2020, DNR Field Office 2 visited the facility and noted that the conditions had not changed. In December 2020, DNR sent a letter to Ted Fox informing him that a discharge from the facility without a permit was prohibited and future discharges may result in an administrative enforcement action with a monetary penalty. In April 2022, DNR Field Office 2 visited the facility and noted a likely tile discharge from the facility. In May 2022, DNR sent another letter to Ted Fox and reminded him that a discharge from the facility without a permit is prohibited and a future discharge would result in an administrative enforcement action with a monetary penalty.

4. On May 15, 2023, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, conducted an inspection at the Fox feedlot. During the inspection, Mr. Klatt and Ted Fox observed the creek where the feedlot runoff discharges to. Mr. Klatt noted that a discharge of approximately 25 gallons per minute was occurring. The water was slightly discolored and was creating foam in the creek. A field test of the water indicated an ammonia concentration of greater than 3 ppm. Mr. Klatt and Ted Fox discussed the 2022 discharge, and Ted Fox acknowledged that the feedlot runoff was entering the tile and discharging to the creek. Ted Fox stated he had the tile plugged and Mr. Klatt confirmed that the water coming from the tile was clear and had little to no ammonia in the water. Samples were taken of the discharge, the tile, upstream, and downstream of the discharge in the creek. The results indicated the following pollutant concentrations:

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<b>Location of Sample</b>	<b>BOD mg/L</b>	<b>Total Kjeldahl Nitrogen mg/L</b>	<b>Ammonia mg/L</b>	<b>E.Coli MPN/100ml</b>
Surface Discharge	22	8.8	4.6	>24,000
Tile Discharge	<2	1.2	0.15	-
Upstream of Discharge	<2	1	0.16	1,200
Downstream of Discharge	<2	1.3	0.26	4,800

Following the discussion with Ted Fox, Mr. Klatt walked the waterway from the creek up to the feedlot and noted that bales had been placed across the waterway to settle the manure solids. Mr. Klatt noted that manure from the feedlot had entered the waterway during recent rainfall events. Mr. Klatt also noted that water was entering the waterway from the road culvert and feedlot drainage from the east side of the road was entering the waterway through the culvert. A field test of the water indicated an ammonia concentration of greater than 3 ppm. Ted Fox indicated he had a contractor lined up to construct manure controls during the summer.

5. On June 1, 2023, DNR issued Ted Fox a Notice of Violation letter for the multiple violations discovered during the May inspection. The letter stated the violations would be referred or 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 May 2023 investigation, DNR Field Office 2 noted open effluent from the Fox feedlot was being discharged into the waterway. 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 May 2023 investigation,

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DNR Field Office 2 noted open effluent from the Fox feedlot was being discharged into the waterway causing discolored water, foam, and elevated pollutant levels. The above-mentioned facts indicate violations of the general water quality criteria.

**V. ORDER**

THEREFORE, the DNR orders and Curtis Fox agrees to do the following:

1. Mr. Fox shall obtain a professional engineer to design a manure control system for the facility. He shall construct and maintain the manure control system within 60 days of the date the Director signs this administrative consent order and
2. Mr. Fox shall pay a \$5,000.00 administrative penalty in accordance with the following payment plan. If any of the payments are not made in accordance with the plan, the remaining portion of the penalty shall be due immediately.

\$2,500.00 due May 15, 2024 and \$2,500.00 due May 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.

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 \$5,000.00. 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. Fox has gained a substantial economic benefit in delaying the costs of the manure controls at the facility. The delayed costs included engineering fees, construction costs, and maintenance costs. It is also noted that if the facility had installed proper manure controls that they

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would have captured the feedlot effluent that would have needed to be land applied. Mr. Fox avoided the costs associated with proper manure application for multiple years. The economic benefit calculated is estimated to be greater than \$90,000.00; however, the DNR has decided to retain this as administrative action. Therefore, \$1,000.00 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 2 documented a manure release that resulted in water quality violations and the facility has a history with manure control issues. 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, \$2,500.00 is assessed for this factor.

Culpability – Curtis and Ted Fox have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Ted Fox has been warned of the potential discharges from the facility in the past and what the result of discharges would be. Therefore, \$1,500.00 is being assessed for this factor.

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

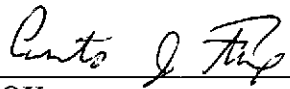
This administrative consent order is entered into knowingly and with the consent of Curtis Fox. For that reason, Curtis Fox waives the right to appeal this administrative consent order or any part thereof.

## **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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CURTIS FOX

Dated this 15 day of  
April, 2024