IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
LAGOON PUMPING & DREDGING, INC. **Crawford County, Iowa**	ADMINISTRATIVE CONSENT ORDER NO. 2011-AFO-18

TO: Aaron Ross, Registered Agent
Lagoon Pumping & Dredging, Inc.
1873 27th Avenue
Columbus, Nebraska 68601

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Lagoon Pumping & Dredging, Inc. (Lagoon Pumping) for the purpose of resolving environmental violations relating to a manure application performed by Lagoon Pumping. 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:
Thad Nanfito, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

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 or 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. NPP, Inc. (NPP) owned an animal feeding operation referred to as Topf Brothers Finisher located in Section 18, Paradise Township, Crawford County, Iowa.[1] The facility is a 4,800 head finishing facility with below building manure storage pits. NPP hired Lagoon Pumping to land apply manure from the facility to an application field located north of Dow City, Iowa (N ½ of the SE ¼ of Section 7, Paradise Township, Crawford County.

2. On December 2, 2010, at approximately 5:35 pm, Aaron Ross, Sr. with Lagoon Pumping contacted DNR Emergency Response to report a manure spill of approximately 3,000 gallons of hog manure. Mr. Ross stated that he was not on site but that his employees had relayed the information to him. He stated that the manure had reached what he called a drainage ditch. DNR personnel spoke with the employees on site via telephone. The employees stated they were land applying manure from the Topf Brothers Finisher facility and a coupling broke releasing 3,000 gallons of manure to a drainage ditch. The employees stated after the break was observed that a dam was pushed up to retain the manure. They did not believe the manure had travelled past the dam. Lagoon Pumping spent the evening pumping the manure.

3. On December 3, 2010, Thad Nanfito, DNR Field Office 4 environmental specialist, met with Aaron Ross Jr. with Lagoon Pumping and Gale Schafer with NPP at the application field and the discharge site which was northwest of the intersection of 170th Street and O Avenue. Mr. Nanfito observed manure flowing from the dam. The dam had been placed across an unnamed tributary of Paradise Creek. Mr. Ross, Jr. stated that the pump had failed at some point in the middle of the night. Mr. Nanfito instructed the men to construct a bigger dam and to get a new pump. The manure appeared to be being washed slowly and continuously to the dam which had limited capacity.

4. Mr. Nanfito continued his investigation and checked downstream to determine if there had been a fish kill. No dead fish were found above or below the O Avenue Bridge crossing or further downstream at the P Avenue Bridge crossing. Mr. Nanfito collected laboratory samples south of the O Avenue Bridge. The water had a slight smell of manure and was turbid. The laboratory results indicated an E. coli concentration of 500 MPN/100mL; a total suspended solids concentration of 17 mg/L; and an ammonia nitrogen concentration of 2.3 mg/L. Mr. Nanfito returned to the discharge site. The water was dark and had a strong manure odor. It was foaming where the discharge entered the creek below the outfall. Mr. Nanfito

[1] The facility was sold to the Maschhoffs on March 3, 2011

collected laboratory samples at the road culvert approximately 300 feet downstream of the dam that had been constructed. The laboratory results indicated an E. coli concentration of 22,000 MPN/100mL; a total suspended solids concentration of 680 mg/L; and an ammonia nitrogen concentration of 180 mg/L.

5. Following the collection of downstream and discharge samples, Mr. Nanfito along with Keith Wilken and Melodie Carr, DNR Field Office 4 environmental specialists who had arrived to assist in the investigation, observed the application field where manure was applied through drainage ways. It also appeared that the manure had not been injected because the ground was frozen. The manure was pooled throughout the application field. Mr. Nanfito contacted Mr. Schafer and explained his findings. Mr. Nanfito stated that it did not appear that manure was injected since the ground was frozen and that manure had been applied well within the 200 feet separation distance to the creek. The manure was applied up to the field borders of the creek. Mr. Schafer stated that equipment would be used to incorporate the manure.

6. The field office personnel conducted a field test at the O Avenue Bridge site and the ammonia levels were 1-2 ppm and the dissolved oxygen levels were between 10-12 ppm. The field tests at the discharge location indicated the ammonia levels were 200-250 ppm and the dissolved oxygen levels were between 10-12 ppm.

7. The field office personnel walked the leg of the unnamed tributary that led to Paradise Creek to determine the extent of any pooled manure given the high levels at the discharge site compared to the downstream site. They discovered impoundments used as a water source for pastured cattle immediately after the entry of the tributary to Paradise Creek. The extra volume of water from these rudimentary dams diluted the manure as it flowed into Paradise Creek, thus lowering the pollutant levels downstream.

8. The field office personnel conducted field tests approximately 1,000 feet above the confluence of the unnamed tributary and Paradise Creek. The ammonia levels were 7-8 ppm and the dissolved oxygen levels were 8-10 ppm. Forty minutes later, the field office personnel conducted field tests approximately 200 feet above the confluence of the unnamed tributary and Paradise Creek. The ammonia levels were 0.1 ppm and the dissolved oxygen levels were between 10-12 ppm. The laboratory samples indicated an E. coli concentration of 160 MPN/100 mL; a total suspended solids concentration of 26 mg/L; and an ammonia nitrogen concentration of 0.06 mg/L.

9. Mr. Wilken and Ms. Carr left the investigation with the samples. Mr. Nanfito noted by late afternoon that the manure had stopped breeching the dam. In the spill area west of the application field dark manure flow was observed headed toward the dammed area. The entire application field contained pooled areas of manure. Mr. Nanfito noted that the application itself impacted the unnamed

tributary. There was a separate leg of the headwaters which branched to the north and had a separate flow from the spill leg of the headwaters. Field tests in this leg of the headwaters indicated ammonia levels of 6-7 ppm.

10. Throughout the weekend of December 4-6, 2010, field office personnel contacted Lagoon Pumping via telephone. The Lagoon Pumping staff reported decreasing turbidity as the staff continued to pump and land apply the manure from the dam. On the evening of December 5, 2010, the Lagoon Pumping staff reported that the water flowing into the dam was clear.

11. On February 17, 2011, DNR issued a Notice of Violation letter to NPP and Lagoon Pumping for the manure discharge. The letter included the following violations: prohibited discharge, failure to maintain the minimum level of manure control, and general water quality violations. The letter informed both parties the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. 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. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 4's investigation determined that manure from NPP's facility that was applied by Lagoon Pumping was discharged into an unnamed tributary of Paradise Creek. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.2(3) describes the minimum level of manure control for confinement feeding operations as the retention of all manure produced in the confinement enclosure between periods of waste disposal. 567 IAC 65.2(3) further states that in no case shall manure from the confinement feeding operation be discharged into a water of the state. DNR Field Office 4's investigation determined that manure from NPP's facility that was applied by Lagoon Pumping was discharged into an unnamed tributary of Paradise Creek. The above-facts disclose violations of this provision.

4. 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. The laboratory results indicated elevated pollutants. Mr. Nanfito observed foamy water that was turbid and had a

manure odor. The above mentioned facts indicate violations of the general water quality criteria.

V. ORDER

THEREFORE, the DNR orders and Lagoon Pumping agrees to do the following:

1. Lagoon Pumping shall submit a written plan to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order. The plan shall detail steps the company will be taken in the event of a manure release; and

2. Lagoon Pumping shall pay an administrative penalty of $3,000.00, 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.

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 $3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Lagoon Pumping has gained an economic benefit from their failure to properly contain all the manure. Lagoon Pumping was able to save time and money by not properly applying and incorporating the manure. However, any economic benefit that Lagoon Pumping may have received was negated by the expense of the clean-up. Therefore, no economic benefit is being assessed.

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 4 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the

regulatory programs because compliance with the animal feeding operation is required of all persons in this state. Therefore, $1,800.00 is assessed for this factor.

Culpability –Lagoon Pumping has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Lagoon Pumping reported that the discharge had gone to a drainage ditch, when the discharge actually went to a spring fed creek, which was an unnamed tributary of Paradise Creek. Therefore, $1,200.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Lagoon Pumping. For that reason Lagoon Pumping 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.

ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 07th day of July, 2011.

LAGOON PUMPING & DREDGING, INC.

Dated this 29 day of June, 2011.

Kelli Book, Field Office 4, EPA, VIII C