

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

IN THE MATTER OF:

**ARNIE GRUENES dba TRIPLE A
PUMPING**

Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2011-AFO-2.8

TO: Arnie Gruenes
Triple A Pumping
17565 County Highway 43
Richmond, Minnesota 56368

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Arnie Gruenes dba Triple A Pumping (Triple A Pumping) for the purpose of resolving violations resulting from a manure discharge from the land application of manure. 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
1900 N. Grand, Gateway North-Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

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; Iowa Code chapters 459 and 459A and the rules adopted or permits issues

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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

Triple A Pumping neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Farmers Co-Operative is a cattle facility, permitted for 14,000 head of finishing cattle. The facility has 5,000 head of confinement cattle and 9,000 head of open lot cattle. The facility is located at 317 3rd Street NW in rural Sioux Center, Iowa. Triple A Pumping, a commercial applicator service, had four certified representatives and all of its employees received their manure applicator certification training on November 12, 2010.

2. Farmers Co-Operative hired Triple A Pumping to land apply liquid cattle manure onto crop ground owned by Jim Joffer. The application field is located in the SE ¼ of Section 24, Plato Township, Sioux County. The application field was approximately 34 acres.

3. On November 22, 2010 and November 23, 2010, Triple A Pumping land applied 24,000 gallons of liquid manure per acre in a single pass utilizing an umbilical line and injection knives. The application took place from approximately 7:00 pm on November 22, 2010 until 6:00 am on November 23, 2010. The manure came from the basin that stored both the open lot and confinement manure from the Farmers Co-Operative facility.

4. On November 23, 2010 at approximately 11:20 am, Mr. Joffer contacted DNR Field Office 3 and stated that the manure that had been land applied to his crop ground by Triple A Pumping from Farmers Co-Operative was starting to run off the field and the runoff was heading toward the creek (an unnamed tributary of Six Mile Creek). Mr. Joffer stated that Farmers Co-Operative was at the field trying to incorporate the manure into the soil.

5. At approximately 12:05 pm, Jennifer Christian, DNR Field Office 3 environmental specialist, arrived at the application field and observed the manure flowing from the field to the Garfield Avenue road ditch, through a culvert and discharging into a water of the state on the west side of Garfield Avenue. Ms. Christian met with Mr. Joffer and representatives from Farmers Co-Operative. Farmers Co-Operative and Mr. Joffer were taking steps to prevent the manure from going to the creek, including building an earthen dam in front of the culvert. While the group waited for the machinery to arrive to begin the construction of the earthen dam, Ms. Christian conducted field tests and collected water samples. Ms. Christian went upstream of where the manure was entering the creek (north side of 370th

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Street). The water was clear with no odor. The field test indicated an ammonia concentration of 0.2 ppm. The laboratory sample indicated an E. Coli concentration of 20 MPN/100ml, a total suspended solids (TSS) concentration of 2 mg/L, an ammonia concentration of <0.1 mg/L, and a biochemical oxygen demand (BOD) concentration of <2 mg/L. Ms. Christian then went to the location where the manure was entering the creek. The water was dark brown with a manure odor. The field test indicated an ammonia concentration of 300 ppm. The laboratory sample indicated an E. Coli concentration of 140,000 MPN/100mL, a TSS concentration of 13,000 mg/L, an ammonia concentration of 730 mg/L, and a BOD concentration of 14,000 mg/L.

6. Ms. Christian stopped the water sampling when the machinery arrived. It was determined that a dirt berm would be constructed and manure would be pumped out of the area and taken back to the facility. The manure stopped flowing into the creek at approximately 12:45pm. At this time manure was still flowing off of the field and into the ditch. The Farmers Co-Operative's employees continued to pump the manure out of the ditch as well as the pooled area in the southwest corner of the field. It was discovered that ground water was flowing out of the ground on the edge of the crop field into the same ditch as the manure was entering. This was due to a city water line.

7. Once work had begun on the berm area, Ms. Christian, along with two other DNR Field Office 3 personnel continued the investigation downstream of the discharge area. Ms. Christian went approximately 50 feet downstream of where the manure was entering the creek. The water was brown and cloudy and had a manure odor. The field test indicated an ammonia concentration of 25 ppm. The laboratory sample indicated an E. Coli concentration of 2,000 MPN/100mL, a TSS concentration of 140 mg/L, an ammonia concentration of 22 mg/L, and a BOD concentration of 200 mg/L. Ms. Christian continued downstream approximately one mile. The laboratory sample indicated an E. Coli concentration of 1,700 MPN/100mL, a TSS concentration of 120 mg/L, an ammonia concentration of 21 mg/L, and a BOD concentration of 190 mg/L.

8. Following the collection of the water samples, Ms. Christian spoke to Brian Eisenschenk, a representative for Triple A Pumping. Mr. Eisenschenk stated that Triple A Pumping had applied the manure at a rate of 24,000 gallons per acre in a single pass with injection knives. He stated that toward the end of the application it was getting more difficult to pull the knives through the ground since the ground was freezing up. Mr. Eisenschenk stated that all manure was able to be knifed into the ground and there was no surface application.

9. Ms. Christian spoke with the Farmers Co-Operative representatives regarding the capacity at the facility. She asked if there were capacity concerns since the manure was being applied at 24,000 gallons per acre onto ground in unfavorable conditions. The Farmers Co-Operative representatives explained that there was not

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a capacity issue and that the lagoon was approximately 40% full. They stated they were pumping the lagoon down to meet the DNR's requirement that the manure must be pumped down to 10% prior to the winter season. At the conclusion of the investigation on November 23, 2010, Farmers Co-Operative continued to build up the berm and pump the manure out.

10. On November 24, 2010, Ms. Christian spoke with the Farmers Co-Operative representation on the telephone. The representative stated that the cleanup had begun at sunrise and that no manure had flowed around or through the berm overnight. Jeff Prier and Amber Wolf from DNR Field Office 3 went to the site at approximately 11:00 am. Farmers Co-Operative was on scene pumping manure from the ditch. The manure flow from the field had slowed but the ground water was still flowing heavily into the ditch. The field office personnel conducted a field test on the pooled liquid behind the berm. The field test indicated an ammonia concentration of 3 ppm. After a few more loads of manure were pumped out of the area, the field test indicated the ammonia concentration dropped to 1.7 ppm. Farmers Co-Operative was allowed to discontinue the pumping since the ammonia level had dropped.

11. On November 24, 2010, Farmers Co-Operative sent Ms. Christian the manure management plan recordkeeping form. The form indicated that 810,250 gallons of manure were applied to 34 acres at an application rate of 23,830 gallons/acre.

12. On January 12, 2011, DNR issued Notice of Violation letters to Farmers Co-Operative and Triple A Pumping for the violations discovered during the investigation on November 23 and 24, 2010. The violations included a prohibited discharge, general water quality violations, and failure to apply open feedlot effluent in a manner that would not cause pollution of surface water or groundwater.

IV. CONCLUSIONS OF LAW

Triple A Pumping neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. 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. During Ms. Christian's investigation it was determined that manure that had been land applied was discharged to the unnamed tributary of Six Mile Creek. The above-mentioned facts indicate violations of these provisions.

2. 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

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watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Ms. Christian observed cloudy brown water that was turbid and had a manure odor. The above mentioned facts indicate violations of the general water quality criteria.

3. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. The land application of the manure from Farmers Co-Operative's basin that contained both open lot and confinement manure caused pollution to surface water. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.101(6)"a" states that open feedlot effluent shall be land-applied in a manner which will not cause surface water or groundwater. The land application of the open lot effluent caused pollution to surface water. The facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Triple A Pumping agree to do the following:

1. Triple A Pumping shall pay an administrative penalty in the amount of \$5,000.00 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 \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit –Triple A Pumping gained an economic benefit by land applying the manure in just one pass which saves fuel costs, salary expenses, and equipment cost. 567 IAC 10.2(1) states, "reasonable estimates of economic benefit should be made where clear data are not available." A reasonable estimate is that

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Triple A Pumping gained an economic benefit of at least \$500.00 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. DNR Field Office 3 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 \$3,000.00 is being assessed for this factor.

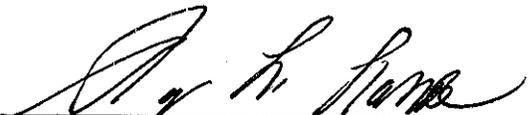
Culpability – Triple A Pumping has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The maximum culpability is not being assessed because of the weather conditions as well as the additional water from the city main line that contributed to the amount of the discharge. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

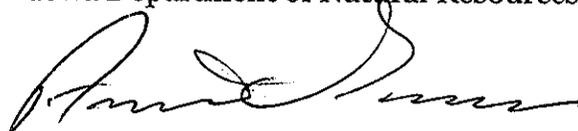
VIII. NONCOMPLIANCE

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 11 day of Nov, 2011.



Arnie Gruenes dba Triple A Pumping

Dated this 11-13-11 day of _____, 2011.

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Kelli Book, DNR Field Office 3, EPA, VIII.D.1.a and VIII.D.3.a