

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

IN THE MATTER OF:

KENNETH W. KLINE

CONSENT AMENDMENT TO  
ADMINISTRATIVE ORDER  
NO. 2012-AFO-20-A1

To: Kenneth W. Kline  
2316 Lyons Trail  
Missouri Valley, IA. 51555

Administrative Order No. 2012-AFO-20 was issued to Kenneth W. Kline on December 4, 2012, and was timely appealed. In an effort to avoid litigation, the parties have agreed to the following:

1. Section V. ORDER is replaced with the following:

THEREFORE, the Department hereby orders Kenneth W. Kline to do the following:

1. Within 90 days of the date this Consent Amendment is signed by the Director, submit to FO4 an evaluation prepared by a professional engineer licensed in the State of Iowa. The evaluation must include: status or completion date of all bulleted items in paragraph 13, Statement of Facts, above; professional opinion whether all manure runoff from the Kline operation is directed to the basin and, if not, recommendations for modifications to the operation to achieve that condition.

2. By October 1, 2014, submit to FO4 a statement prepared by a professional engineer licensed in the State of Iowa that any modifications to the Kline operation as recommended in the engineer's evaluation required in paragraph 1, above, have been completed.

3. At all times, confine less than 1,000 cattle and less animals than any other "large CAFO" category as defined in 567 Iowa Administrative Code (IAC) 65.100. This prohibition does not apply if Kenneth W. Kline applies for and obtains an NPDES permit prior to confining the animals.

4. Maintain daily inventory records of animals at the operation and submit the records to Department FO4 on a quarterly basis (January-March, April-June, July-September, October-December) by the 10<sup>th</sup> day of the month following each calendar quarter, using a form provided by the Department. This requirement ends after the records due on January 10, 2016, are received by the Department.

5. Remove all settleable solids from open feedlot effluent prior to discharge into a water of the state as required in Iowa Code §459A.401(1) and ensure that any discharge to water of the state does not violate water quality standards as provided in 567 IAC 61.3(2).

6. Pay an administrative penalty of \$3,000.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Consent Amendment.

2. Section VI. PENALTY, paragraph 2, is replaced with the following:

2. Pursuant to the provisions of Iowa Code §455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Consent Amendment. The administrative penalty is determined as follows:

a. Economic Benefit. Time and money were saved by Kenneth W. Kline in avoiding required manure control by not properly removing manure solids and maintaining the overflow tube in the basin. It is estimated that these savings are at least \$1,000.00.

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b. Gravity of the Violation. 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 Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by water quality analysis, and by visual observation of impact to the unnamed tributary. Therefore, \$1,000.00 is assessed for this factor.

c. Culpability. Kenneth W. Kline negligently allowed manure solids to leave his operation and intentionally retained the basin overflow tube. Therefore, \$1,000.00 is assessed for this factor.

3. Section VII. APPEAL RIGHTS is replaced with the following:

This Consent Amendment to Administrative Order No. 2012-AFO-20 is entered into knowingly and with the consent of Kenneth W. Kline. For this reason, Kenneth W. Kline waives the right to appeal this Consent Amendment to Administrative Order No. 2012-AFO-20.

4. Section IX. DISMISSAL OF APPEAL is added, as follows:

By signing this Consent Amendment to Administrative Order No. 2012-AFO-20 Kenneth W. Kline dismisses the appeal of Administrative Order No. 2012-AFO-20 filed by Kenneth W. Kline on January 10, 2013.

5. This Consent Amendment shall not be construed as a release or waiver of the responsibility of Kenneth W. Kline to comply with applicable statutes and rules or as a release of liability for undiscovered violations or violations occurring after the date this Consent Amendment is signed by the Director.

6. In all other respects, Administrative Order No. 2012-AFO-20 remains in full force and effect.

Any questions regarding this Consent Amendment should be directed to:

Randy Clark  
Iowa Department of Natural Resources  
502 East 9th Street  
Des Moines, Iowa 50319-0034  
515/281-8891

Payment should be directed to:

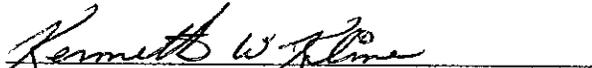
Department of Natural Resources  
Wallace State Office Building  
521 East 9th Street  
Des Moines, Iowa 50319

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ISSUED TO: KENNETH W. KLINE



CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 22<sup>nd</sup> day of  
October, 2013.

  
KENNETH W. KLINE

Dated this 10 day of  
oct, 2013.

Field Office 4; Randy Clark; Ken Hessenius; Gene Tinker; EPA; VIII.D.1a, D.3.a