

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

IN THE MATTER OF:

MERLYN HEGLAND
Facility #59089
Hamilton County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2012-AFO- 17

TO: Merlyn Hegland
3589 Tollman Avenue
Ellsworth, Iowa 50075

Eldon McAfee
Beving, Swanson & Forrest, PC
321 E. Walnut Street, Suite 200
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Merlyn Hegland for the purpose of resolving violations resulting from a manure discharge from one of Mr. Hegland's animal feeding operations that resulted in water quality violations and a fish kill. 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:

Jeff Vansteenburgh, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

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 chapter 459 and the rules adopted or permits issues pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC)

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chapter 10, which authorize the Director to assess administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. Merlyn Hegland owns and operates several animal feeding operations in Hamilton County, Iowa. The first of the two facilities that are the subjects of this administrative consent order is located at 2847 360th Street, Ellsworth, Iowa (NE 1/4 of the NW 1/4, Section 14, Ellsworth Township, Hamilton County), referred to as Hegland #3. The facility has a swine capacity of 4,800 head of finishers. The other facility is located at 2893 360th Street, Ellsworth, Iowa (SE 1/4 of the SE 1/4, Section 11, Ellsworth Township, Hamilton County), referred to as Hegland #4. The facility as a swine capacity of 4,800 head of finishers. The manure storage structure at Hegland #3 was constructed in 1994. At the time, a contractor was not used and no reinforcements or forms were used during the construction. The structure was constructed by digging a trench and filling it with concrete. The dirt in the middle was dug out and concrete was poured for the floor.

2. On August 4, 2011, DNR Field Office 2 received a report of dead fish in the South Skunk River at the Riverside Lutheran Bible Camp south of Randall, Iowa. Michelle Johnson and Carl Berg, DNR Field Office 2 environmental specialists, arrived at the camp at 4:00 p.m. They stopped first at the R 61 bridge near the camp and observed a few dead fish in the river. They then went to the camp footbridge and observed many dead fish of all sizes and species as well as some struggling fish. The field tests indicated an ammonia concentration of >3.0 mg/L and a dissolved oxygen level of 0.0 mg/L. The laboratory results indicated an ammonia concentration of 9.4 mg/L and a Carbonaceous Biochemical Oxygen Demand (CBOD) of 26 mg/L. The field office personnel continued their investigation proceeding upstream to determine the source of the fish kill. At the 380th Street bridge, there were no live or dead fish, but there was a hog manure odor. The field tests indicated an ammonia concentration of >3.0 mg/L. The field office personnel continued upstream to the 360th Street bridge, where no live or dead fish were observed and the field tests indicated a high ammonia concentration. The field office personnel continued to the Saratoga Avenue bridge where no live or dead fish were observed and the field tests indicated an ammonia concentration of 0.4 mg/L and a dissolved oxygen level of 8.0 mg/L. The laboratory samples indicated an ammonia level of 0.13 mg/L and a CBOD level of 140 mg/L.

3. The field office personnel continued to Hegland #4. The field office personnel observed manure hauling equipment near a concrete formed manure storage structure and noted evidence of recent freeboard violations. The manure had been recently pumped down but the manure level was still almost to the top of the structure. The field office personnel spoke with David Hegland, Merlyn's son. He stated that they moved manure from the site to two other sites on Monday,

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August 1 through Wednesday, August 3. Mr. Hegland told the field office personnel they could look around. The field office personnel observed evidence of past manure spills, including dead grass and erosion gulleys. The field office personnel observed a large burn pile south of the machine shed. The pile contained metal, pallets, plastic, garbage, and other solid waste. Several waste oil barrels were also observed on the property.

4. The field office personnel continued to Hegland #3. Hegland #3 is located to the west of Hegland #4. The field office personnel observed a formed manure storage structure. It had large cracks inside of it, but there was no evidence of a manure spill.

5. Ms. Johnson proceeded upstream and checked two bridges on Tollman Avenue and one bridge on Highway 175. At the Tollman Avenue bridge the water was clear and no fish were observed. The field tests indicated an ammonia concentration of 0.3 mg/L and a dissolved oxygen level of 6.0 mg/L. The laboratory samples indicated an ammonia concentration of 0.14 mg/L and a CBOD level of <2.0 mg/L. At the Tollman Avenue North bridge the water was clear and no fish were observed. The field tests indicated an ammonia concentration of 0.2 mg/L and a dissolved oxygen level of 6 mg/L. At the Highway 175 bridge the field tests indicated an ammonia concentration of 0.2 mg/L and a dissolved oxygen level of 5 mg/L. Mr. Berg walked downstream to look for the source of the manure. It was getting dark and Mr. Berg was unable to locate the source of the manure prior to nightfall. He was able to locate a river fork approximately 1,650 feet from the 360th Street bridge. The field test from the west branch indicated a high level of ammonia and the field test from the north branch indicated a low level of ammonia. Prior to nightfall, the field office personnel continued downstream to the park in Story City. The field office personnel observed fish struggling to swim and mouthing at the surface for air. The field test indicated an ammonia level of >3.0 mg/L and the laboratory test indicated an ammonia concentration of 4.2 mg/L.

6. On August 5, 2011, Ms. Johnson, along with Mr. Berg and Jeremy Klatt from DNR Field Office 2 returned to the area around the 360th Street bridge to continue the investigation. The water was turbid with a manure odor and there were no fish observed. The field tests indicated an ammonia concentration of >3.0mg/L and a dissolved oxygen level of 3.5 mg/L. Mr. Klatt began walking along the railroad tracks on the west side of Hegland #3 and Mr. Berg and Ms. Johnson walked the river again from the 360th Street bridge. They tested the water the river fork again. The field test from the north branch indicated a low level of ammonia and the field test from the west branch indicated a high level of ammonia. They proceeded along the west branch of the river. The water was dark in color and smelled of manure. Approximately 1,350 feet along the west branch, the field office personnel observed a large tile outfall that was flowing. The water flow had a strong manure odor and the field test indicated an ammonia level of >3.0 mg/L. The laboratory samples indicated an ammonia concentration of 2,600 mg/L and a CBOD level of 13,000

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mg/L. The manure laden water was flowing along both sides of a sandbar, near the tile outfall to the river and was a definitive grayish, brown color against the clear water upstream. The manure had dried up next to the riverbank and pooled in the open water farther downstream. The field office personnel determined that the source of the manure could be the Hegland #3 facility that was south of the outfall. Ms. Johnson contacted David Hegland and explained the situation to him. He agreed to trench around the manure storage tank to determine if it was leaking.

7. Mr. Klatt spoke to the manure applicator, Roy Bervan. Mr. Bervan stated that between August 1 and August 3, he had transferred approximately 7,700 gallons of manure from Hegland #4 to Hegland #3. He stated that the manure level in the tank at Hegland #3 rose 6-8 inches.

8. Prior to the trenching, the field office personnel observed the tank at Hegland #3 and noted that the manure level had dropped 1-2 inches from the previous day. During the trenching, a tile flowing with manure was found on the north side of the structure. The leak entered a tile line and eventually made it to the large tile outfall on the river that the field office personnel discovered. The laboratory sample from the tile indicated an ammonia concentration of 2,900 mg/L and a CBOD concentration of 28,000 mg/L. The tile was plugged and the leak was packed with clay. The field office personnel instructed the Heglands to remove the manure from the tank and repair the leak. The field office personnel tested the water downstream at the 360th Bridge and observed turbid water, no fish, and detected a manure odor. The field tests indicated a dissolved oxygen level of 3.0 mg/L and laboratory samples indicated an ammonia concentration of 8.1 mg/L and a CBOD concentration of 55 mg/L. The field office personnel also tested the water upstream at the Saratoga Avenue Bridge. The field tests indicated a dissolved oxygen level of 8.0 mg/L. The laboratory samples indicated an ammonia concentration of 0.09 mg/L and a CBOD level of <2.0 mg/L.

9. At the same time as Field Office 2 was conducting its investigation near the Hegland facilities, Jeff Theobald and Ted Petersen with DNR Field Office 5 assisted with the investigation and investigated the discharge downstream. On the morning of August 5, 2011, they started their investigation downstream of the facility and worked their way up to the facility. They spot checked the river crossings as they moved upstream. They began their investigation at the South 16th Street bridge on the south side of Ames, Iowa and observed live fish, clear water, and no odor. The field tests indicated no detectable ammonia. The next location that the Field Office personnel checked was at Riverside Road at the Sleepy Hollow Access. The water was clear, fish were present, and no odor was detected. The field tests indicated no detectable ammonia. Field Office 5 personnel next went to the 170th Street bridge at the Sopers Mill Access. The water was clear, fish were present and no odor was detected. The field tests indicated no detectable ammonia. Field Office 5 personnel continued to the 150th Street Anderson Access and observed clear water, fish near the surface, and no odor was detected. The field tests indicated an ammonia

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concentration of 1.0 ppm. Field Office 5 personnel continued to the 130th Street Highway E18 Access. The field office personnel observed clear water, no fish, and no odor was detected. The field tests indicated an ammonia concentration of 2.1 ppm. Field Office 5 personnel continued to the Story City Park and observed dead and struggling fish, slightly turbid water, and a musky odor. The field tests indicated an ammonia concentration of > 3.0 ppm and a dissolved oxygen level of 3.0 mg/L. The laboratory samples indicated a CBOD concentration of 9 mg/L and an ammonia concentration of 8.3 mg/L. Field Office 5 personnel continued to the Riverside camp (north of Story City, Iowa and south of Hegland #3) where they observed dead and struggling fish, slightly turbid water, and a musky odor. The field tests indicated an ammonia concentration of >3.0 ppm and a dissolved oxygen level of 5-6 mg/L. The laboratory sampled indicated a CBOD concentration of 20 mg/L and an ammonia concentration of 6.9 mg/L. Field Office 5 personnel returned to a few of the sites later in the day. They returned to the 130th Street Highway E18 Access at approximately 1:50 pm. They observed clear water, no fish and no odor was detected. The field tests indicated an ammonia concentration of 1.3 ppm. They continued to the 150th Street Anderson Access and observed fish near the surface. The field tests indicated an ammonia concentration of 0.9 ppm.

10. On August 8, 2011, Ms. Johnson returned to Hegland #3 and spoke to Merlyn Hegland. He stated no manure had been removed from the tank, but that the removal was going to start that day. Ms. Johnson explained that the removal of the manure was mandatory. She walked the river from the 360th Street Bridge and observed live fish in the west branch of the river. Manure was still running from the outfall at a slow rate and dissipated about 50 feet downstream. The water was clear except for the shoreline of the sandbar near the outfall. The laboratory samples of the water from the tile outfall indicated an ammonia concentration of 89 mg/L and a Biochemical Oxygen Demand (BOD) of 740 mg/L. The laboratory samples from the upstream location of Saratoga Avenue indicated an ammonia concentration of 0.11 mg/L and a BOD concentration of <2.0 mg/L. The laboratory samples from the downstream location of 360th Street indicated an ammonia concentration of 0.16 mg/L and a BOD concentration of 7 mg/L.

11. On August 9, 2011, Ms. Johnson spoke to Merlyn Hegland and informed him of the fish kill findings; 27,456 dead fish for a value of \$38,056.16. Mr. Hegland explained that 10 loads (6,500 gallons/load) of manure were removed from the tank that morning.

12. On August 11, 2011, Ms. Johnson returned to the facility and walked the river from the 360th Street Bridge to the tile outfall. The field tests at the 360th Street Bridge indicated an ammonia concentration of 0.4 mg/L and a dissolved oxygen level of 9.0 mg/L. The laboratory results indicated a CBOD level of 4 mg/L and an ammonia concentration of 0.11 mg/L. At the tile outfall there was a strong manure odor and there was grayish brown water in the tile and directly outside the outfall in the plunge pool. The laboratory results indicated a CBOD level of 2,600

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mg/L and an ammonia concentration of 91 mg/L. Ms. Johnson also visited the site upstream of the facility at Saratoga Avenue. The field tests indicated an ammonia concentration of 0.3 mg/L and a dissolved oxygen level of 7.5 mg/L. The laboratory results indicated a CBOD level of <2 mg/L and an ammonia concentration of 0.09 mg/L. During this visit, Ms. Johnson spoke to Merlyn Hegland regarding the evidence of open burning and the drums that were observed at the beginning of the investigation. Mr. Hegland stated he thought he could burn on his property. Ms. Johnson explained the open burning and solid waste regulations to Mr. Hegland.

13. On August 12, 2011, DNR issued a Notice of Violation letter to Merlyn Hegland for the open burning and solid waste violations observed during the DNR's investigation at Mr. Hegland's facilities. The letter explained the open burning and solid waste regulations. The letter required that the burn pile be removed and the waste oil cleaned up.

14. On August 15, 2011, Ms. Johnson visited with Dan Wetherell, Cargill Pork. Cargill Pork monitored the freeboard levels at Hegland's facilities on a monthly basis. As Ms. Johnson and Mr. Wetherell were observing the tank at Hegland #3, Merlyn Hegland stopped and stated that the manure had been pumped out but that someone scraped the pits, causing more manure to run into the tank. Ms. Johnson and Mr. Wetherell continued to Hegland #4 and observed the tank. They observed a freeboard violation in the tank. They walked the river from the 360th Street Bridge to the outfall. The field tests indicated elevated levels of manure at the outfall.

15. On August 15, 2011, DNR Field Office 5 returned to some areas along the river. They conducted field tests from the 130th Street Bridge that indicated an ammonia concentration of 0.52 ppm and a dissolved oxygen level of 8.0 mg/L. At the Story City Park, the laboratory samples indicated a CBOD level of <2 mg/L and an ammonia concentration of 0.30 mg/L. The field tests indicated an ammonia concentration of 0.91 ppm and a dissolved oxygen level of 5.0 mg/L. At the Riverside Camp, the laboratory samples indicated a CBOD level of <2 mg/L and an ammonia concentration of 0.43 mg/L. The field tests indicated an ammonia concentration of 0.91 ppm and a dissolved oxygen level of 4.0 mg/L.

16. On August 18, 2011, Ms. Johnson visited the facility and walked the river from the 360th Street Bridge to the outfall. The area along the bank had been scraped and the area around the outfall had been dammed up to contain the discharge from the tile. The tile was not running, but the field tests from the pooled water below the outfall indicated an ammonia concentration of >3.0 mg/L. Ms. Johnson spoke to Merlyn Hegland. Mr. Hegland said that 5,000 gallons of water was flushed through the tile on August 17, 2011. Ms. Johnson explained that the ammonia levels were still high and tile line should be flushed again. Mr. Hegland stated that he would flush the lines.

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17. On August 18, 2011, DNR issued a Notice of Violation letter to Merlyn Hegland. The letter cited violations caused by the manure discharge from Hegland #3 including failure to retain manure, illegal discharge of a pollutant, and general water quality violations. The letter also included the freeboard violations at Hegland #4. The letter required Mr. Hegland to do the following: 1) submit a manure release report within 30 days; 2) locate and repair the leak in the manure storage structure; 3) submit a written plan of action by September 1, 2011 addressing the replacement of the existing manure storage structure; and 4) submit a written statement detailing how compliance with the freeboard requirements will be achieved. The letter explained that fish restitution would be sought and that the matter was being referred for further enforcement.

18. On August 23, 2011, Ms. Johnson visited the facility and walked the river from the outfall to the 360th Street Bridge. The tile was not running, but there was stagnant water in it. The field tests indicated an elevated level of ammonia in the pooled water. Ms. Johnson called Merlyn Hegland and asked that he scrape up the manure and soil, to remove the residual manure, and place new fill in the area. Mr. Hegland stated that he had flushed the tile on August 18 and August 19 using 5,000 gallons of water each time.

19. On August 26, 2011, Merlyn Hegland contacted DNR Field Office 2 and stated that the leak in the tank had been repaired. On August 26, 2011, Carl Berg, DNR Field Office 2, visited the Hegland #3 facility to verify the repair. Mr. Berg observed the concrete patch on the tank. Mr. Berg observed the tile outfall and it was not flowing at the time. The field tests from downstream of the sandbar indicated an ammonia concentration of 0.4 mg/L. Mr. Berg noted that the manure ponded area of the sandbar had been scraped and cleaned with sand and soil being used for fill.

20. DNR's Fisheries Bureau conducted a fish kill assessment on August 4-6, 2011 of the impacted areas of the Skunk River. The fish kill investigation was led by Scott Grummer who was assisted by Kurt Meek, Dan Fjeld, Ben Dodd, Jeff Kopaska, Jason Euchner, and Anand Hase. The investigation determined that the manure discharge from Hegland #3 caused a 5 mile long fish kill in the Skunk River that traveled through Sections 25 and 26, Ellsworth Township, Hamilton County; Section 31, Scott Township, Hamilton County; Sections 6 and 7, Howard Township, Story County; and Section 12, LaFayette Township, Story County. The fish kill assessment determined that 27,456 fish were killed, valued at \$38,056.16. The Fisheries Bureau investigative costs were \$1,928.83 and the Field Office investigative costs were \$3,816.73 for total DNR investigative costs of \$5,745.56.

21. On September 27, 2011, Mr. Hegland submitted the spill report to DNR Field Office 2.

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22. During the summer of 2012, Mr. Hegland removed the unformed manure storage structure at Hegland #3. The unformed manure storage structure was replaced with a formed manure storage structure.

IV. CONCLUSIONS OF LAW

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 DNR Field Office 2's investigation it was determined that manure from Mr. Hegland's facility was discharged into the Skunk River. The above-mentioned facts indicate violations of these provisions.

2. 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. During DNR Field Office 2's investigation it was determined that manure from Mr. Hegland's facility was discharged into the Skunk River. The above-facts disclose violations of this provision.

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. The laboratory results indicated elevated pollutants and a fish kill was confirmed. The above mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from Mr. Hegland's facility.

V. ORDER

THEREFORE, the DNR orders and Merlyn Hegland agrees to do the following:

1. Merlyn Hegland shall submit a written plan detailing freeboard monitoring for all his facilities to DNR Field Office within 30 days from the date the Director signs this administrative consent order;

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2. Merlyn Hegland shall pay fish restitution in the amount of \$38,056.16 and investigative costs in the amount of \$2,000.00¹ in accordance with the payment plan noted below;
3. Merlyn Hegland shall pay a penalty of \$10,000.00. \$2,000.00 of the penalty shall be paid to the DNR in accordance with the payment plan noted below. In lieu of payment of the remaining \$8,000.00, Merlyn Hegland shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall include updates at four of Mr. Hegland's other animal feeding operations. The unformed manure storage structures at the four facilities shall be removed and replaced with formed manure storage structures in accordance with the following schedule:

Hegland #1 (#59098; 3621 Saratoga Avenue; Jewell, Iowa) – the unformed manure storage structure shall be removed and replaced by a formed manure storage structure no later than November 15, 2014;

Hegland #5 (#59096; 3602 Deer Run Road; Ellsworth, Iowa) – the unformed manure storage structure shall be removed and replaced by a formed manure storage structure no later than November 15, 2014 ;

Hegland #6 (#59082; 3666 Deer Run Road; Ellsworth, Iowa) – the unformed manure storage structure shall be removed and replaced by a formed manure storage structure no later than November 15, 2016; and

Hegland #2 (#59097; 3646 Saratoga Avenue; Jewell, Iowa) – the unformed manure storage structure shall be removed and replaced by a formed manure storage structure no later than November 15, 2018.

Mr. Hegland shall notify DNR Field Office 2 at the beginning of each of the four projects and shall notify DNR Field Office 2 within 10 days of completion of each of the four projects.

4. Mr. Hegland shall pay the monetary penalty of \$2,000.00; the negotiated investigative costs of \$2,000.00; and the restitution of \$38,056.16 (total \$42,056.16) in accordance with the following payment plan. The administrative penalty of \$2,000.00 shall be paid

¹ For settlement purposes the investigative costs of the Fisheries Bureau personnel and Field Office 2 personnel have been reduced to \$2,000.00. This amount constitutes a negotiated agreement on the reduction of investigative costs for settlement purposes only.

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first and the remaining payments shall be applied to the restitution and restitution costs:

\$14,018.72 due October 1, 2012;
\$14,018.72 due October 1, 2013; and
\$14,018.72 due October 1, 2014.

If any of the said payments are not received by the due date, the remaining penalty and restitution shall be due immediately.

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 Environmental Protection Commission (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 \$10,000.00. 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.” The manure storage structure at Hegland #3 was constructed in 1994 with very little precautions taken during construction. Additionally, the field office personnel observed freeboard violations at Hegland #4 and open burning and solid waste violations at Hegland #4. Mr. Hegland has gained an economic benefit by constructing the storage structures with little or no precautions. Additionally, Mr. Hegland gained an economic benefit by burning the solid waste rather than disposing of it at a landfill. It is estimated that Mr. Hegland has avoided at least \$2,000.00 in the operations of his facilities because of the practices he has employed; therefore 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.

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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 discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. The pollutant levels remained elevated for a long period of time after the discharge. Therefore, \$3,000.00 is assessed for the discharge violations cited in Section IV, Paragraphs 1 and 2 and \$3,000.00 is assessed for the water quality violations cited in Section IV, Paragraph 3, for a total of \$6,000.00 assessed for this factor.

Culpability – Mr. Hegland has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

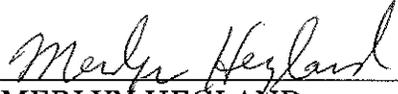
VIII. NONCOMPLIANCE

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.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 29th day of
October, 2012.



MERLYN HEGLAND

Dated this 12 day of
October, 2012.

Facility #59089; Kelli Book, DNR Field Office 2, EPA, VIII.D.1.a and VIII.D.3.a