

**IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER**

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| IN THE MATTER OF: TOM & RHONDA BRAKKE D/B/A PINE RIDGE HUNTING LODGE Davis County, Iowa | EMERGENCY ORDER NO. 2013-HP- |
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TO: Tom and Rhonda Brakke, Owners of Pine Ridge Hunting Lodge
22529 Balsam Ave.
Clear Lake, IA 50428

I. SUMMARY

This Emergency Order is issued by the Director of the Iowa Department of Natural Resources (“DNR”) to Tom and Rhonda Brakke D/B/A Pine Ridge Hunting Lodge (“the Brakkes”) for the purpose of resolving violations which occurred when the Brakkes removed portions of the fence surrounding the premises they manage or have managed as a hunting preserve, Pine Ridge Hunting Lodge, an area under quarantine for chronic wasting disease (“CWD”). This Emergency Order requires the Brakkes to stop immediately the deconstruction of the fence surrounding the Pine Ridge Hunting Lodge hunting preserve (“Quarantined Premises”); to restore immediately the portions of the fence so removed or degraded; to maintain the fence as an adequate quarantine around the Quarantined Premises for a period of five years; to close immediately and keep closed all gates to return the Quarantined Premises to a closed state; to authorize DNR to access the Quarantined Premises for a limited duration for the purposes of depopulating any deer that may be present; and to submit and agree to execute a plan designed to prevent the spread of CWD from the Quarantined Premises.

Questions regarding this Emergency Order should be directed to:

Relating to technical requirements:

Dr. Dale Garner, Wildlife Bureau Chief
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515-281-6156

Relating to legal requirements:

Kelley Myers, Attorney for the DNR
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515-281-5634

Angie Bruce, Wildlife Bureau Executive Officer
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515-281-8070

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II. JURISDICTION

Pursuant to Iowa Code section 484C.4, which requires the Director to enforce the hunting preserve program and requirements; Iowa Code section 456A.23, which requires the DNR to protect wild animals and enforce by proper actions and proceedings the laws, rules and regulations relating to them; Iowa Code section 456A.25, which authorizes the Director to issue an order after investigation has occurred to secure compliance with the laws and rules DNR is entrusted to enforce; 571 Iowa Administrative Code (“IAC”) section 115.10, requiring the Brakkes to maintain the quarantine for a period of at least five years; and 561 IAC section 7.18, which is incorporated by reference in 571 IAC chapter 7, which authorizes the Director to issue an emergency order requiring cessation of an activity and requiring an affirmative action when necessary to prevent or avoid immediate danger to the welfare of the state, DNR has jurisdiction to issue this Emergency Order.

III. STATEMENT OF FACTS

1. The wild deer hunting industry generates approximately \$200 million annually for Iowa’s economy and is responsible for the creation of over 2000 jobs, annually. In addition, the tax revenue for the state and federal governments attributed to this wild deer hunting industry in Iowa is approximately \$30 million combined, annually. In addition, wild deer are native to the State of Iowa and constitute a public resource held in trust by the state of Iowa.

2. Iowa Code authorizes the establishment and management of hunting preserves. These facilities are fenced facilities wherein customers traditionally pay the operator to participate in a hunt on the fenced property. The deer within the hunting preserve are whitetail and considered preserve deer. Wild animals may not be caught to populate the hunting preserve (except for some remaining deer upon the initial erection of the fences and after diligent efforts to remove those wild deer); instead, the hunting preserves are populated by natural breeding on the preserve grounds and by introduction of farm deer provided by breeding facilities.

3. Consistent with its statutory and administrative authorities, DNR manages diseases in deer, in particular CWD, because wild deer roam many hundreds of miles and can transmit CWD through saliva, nasal fluid, urine and excrement. The spread of CWD is made more virulent by virtue of the fact that CWD is not a virus or bacteria; it is a disease caused by transmissible spongiform encephalopathies (TSEs) or prions. These prions are infectious and self-propagating, meaning they can live without an animal host in the ground, and no known cure exists. The spread of this disease appears more likely where deer are crowded or congregated, which is why CWD testing is done at hunting preserves in Iowa. Other states that have experienced CWD outbreaks in the wild herd have not been able to stop them. The costs of CWD outbreaks are both financial, in lost hunting revenues for local businesses and farmers and lost tax revenues related to the hunting and traveling associated with hunting, as well as social, with the stigmatizing of one of Iowa’s cherished local traditions.

4. The Brakkes operated the Pine Ridge Hunting Lodge (“Pine Ridge”) as a hunting preserve, authorized by Iowa Code chapter 484C and regulated by 571 IAC chapter 115. DNR issued the most recent license to the Brakkes to operate the hunting preserve at Pine Ridge from July 1, 2012 to June 30, 2013.

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5. On July 16, 2012, DNR received a notice from the Texas Veterinary Medical Diagnostic Lab ("Texas Vet Lab") that a sample from an adult male deer killed at Pine Ridge tested presumptively positive for CWD. (DNR has an agreement with the Texas Vet Lab to run these preliminary tests.) Because the Texas Vet Lab found this presumptive positive result, protocols required the sample to be sent to the National Veterinary Services Laboratory ("National Lab") in Ames, Iowa for final confirmation. On July 18, 2012, the National Lab confirmed the positive CWD result in the deer.

6. On July 19, 2012, DNR notified the Brakkes of the positive test by phone. Mr. Brakke was out of state.

7. On July 23, 2012, DNR met with the Brakkes to initiate an epidemiological investigation. This investigation would help determine where the infected deer came from and make preliminary assessments about the extent of the exposure. The Brakkes provided information including their herd inventory and photographic evidence of the animals killed on the date the infected deer was killed. Also present at this meeting were representatives from the Iowa Department of Agriculture and Land Stewardship ("IDALS"), the United States Department of Agriculture ("USDA") and the Iowa Whitetail Deer Association, an Iowa non-profit organization. IDALS regulates breeding programs that sometimes populate hunting preserves. USDA regulates interstate transport of captive deer; its veterinarian designated as the Area Veterinarian in Charge would have been involved to determine if the diseased captive deer are or may have been moved through interstate commerce and/or transport.

8. Based on information provided by the Brakkes, DNR concluded that captive deer killed on the Hunting Preserve on the same day as the infected deer were located in Florida, New Hampshire, Tennessee and Iowa. Between July 27, 2012 and August 6, 2012, DNR worked with law enforcement officials from those other states to collect samples from the antlers of those deer for DNA testing. These tests would help to identify the origin of the infected deer and verify Brakke's prior documents that the infected deer came from the breeding facility run by the Tom and Rhonda Brakke in Cerro Gordo County, Iowa ("Brakke's Breeding Facility"). These samples were obtained in a manner to preserve the chain of custody.

9. On August 10, 2012, the Wyoming Game and Fish Wildlife Forensic and Fish Health Laboratory ("Wyoming Lab") provided DNR results for the seven specimens provided to it. (DNR has an agreement with the Wyoming Lab to conduct DNA testing.) The results confirmed that the infected deer originated from the Brakke's Breeding Facility.

10. On August 13, 2012, DNR notified the Brakkes of the DNA results by telephone. DNR advised the Brakkes that they would need to meet with DNR to develop a plan to address the CWD infection at the Hunting Preserve. DNR would have also been communicating with IDALS consistent with the Plan.

11. On September 7, 2012, DNR and the Brakkes executed an agreement ("Agreement") to depopulate the Hunting Preserve by January 31, 2013, and to clean and disinfect the Hunting Preserve. It also contained a general Compliance with Laws provision, which required the Brakkes to comply with all applicable federal, state and local laws and regulations, including without limitation the rules described in 571 Iowa Administrative Code section 115.10 related to the maintenance of a

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quarantine on the Quarantined Premises and the prohibition of deer movement in or out of the Quarantined Premises.

12. The Brakkes depopulated the Hunting Preserve, as specified in the Agreement, from September 10, 2012 to January 31, 2013. As part of this effort, the Brakkes, the staff and their customers killed 199 captive deer and nine captive elk. The DNR obtained 170 CWD samples. (Samples were not taken from fawns and one adult female who was killed in a manner that made sampling impossible.) Of these 199 deer, two additional adult male deer tested positive for CWD. Information provided by the Brakkes confirmed that these two additional deer originated from the Brakke Breeding Facility.

13. DNR installed, with the Brakke's permission, an interior electric fence on October 1 and 2, 2012.

14. The Brakkes cleaned and disinfected, under DNR supervision, the feeders and ground surrounding the feeders on April 5, 2013.

15. On April 26, 2013, the Brakkes hand-delivered a notice to the DNR's Chief of Law Enforcement Bureau, notifying the DNR that they would no longer operate a hunting preserve on the Quarantined Premises. The Brakkes did not reveal any plans to remove the fence around the Quarantined Premises or to remove the gates to and from the Quarantined Premises in this April 26, 2013 letter.

16. On June 3, 2013, DNR became aware that sections of the exterior fence surrounding the Quarantined Premises had been removed and that some, if not all, of the exterior gates to and from the Quarantined Premises were open.

17. On June 4, 2013, DNR received reports from the public in the area that four wild deer were observed inside the Quarantined Premises.

18. On June 5, 2013, DNR conducted a fence inspection, after gaining approval from surrounding landowners, and confirmed that the fenced had been cut or removed in at least four separate locations; that the fence had degraded and was failing to maintain the enclosure around the Quarantined Premises in at least one area; that at least three gates had been opened; and that deer tracks were visible in and around one of the open areas in the sand on both sides of the fence, evidencing movement of deer into the Quarantined Premises.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 484C.3 authorizes the DNR to adopt rules to administer the Preserve Whitetail program authorized by Iowa Code chapter 484C. DNR, through the Natural Resource Commission, has adopted rules in 571 IAC chapter 104 and 115 to limit movement of captive deer, monitor diseases among captive deer and establish requirements for hunting preserves authorized by the Preserve Whitetail program.

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2. Iowa Code section 484C.4 authorizes the DNR to develop, administer and enforce hunting preserve programs consistent with the requirements both in Iowa Code chapter 484C and rules promulgated pursuant thereto.

3. Iowa Code section 484C.6(1) requires fences installed in and around hunting preserves to comply with rules adopted by the DNR; this requirement would include the fencing requirements found in 571 IAC section 115.10 and discussed in paragraph 6 of this section below. The Agreement, through the Compliance with Laws provision, requires the maintenance of a quarantine on the Quarantined Premises and the prohibition of deer movement in or out of the Quarantined Premises; such requirement would survive termination of the Agreement by virtue of being law.

4. Iowa Code section 484C.12(1) requires that any whitetail deer confined in hunting preserves are free of diseases and authorizes DNR to establish a quarantine for the infected whitetail population. The facts stated above demonstrate that CWD was found within the Brakkes whitetail population at the Quarantined Premises and that Brakkes were knowledgeable of such determination.

5. Iowa Code section 484C.12(2) requires the landowner and an epidemiologist appointed by the DNR, to develop a plan in the event a reportable disease, such as CWD, is found. The plan must include the eradication of the reportable disease among the preserve whitetail population as well as a plan both to reduce and eliminate the reportable disease and to prevent the spread of disease to other animals. The plan must comply with the DNR's rules, must be approved by the DNR and must be incorporated into an agreement between the landowner, or the landowner's veterinarian, and epidemiologist appointed by the DNR. The facts stated above demonstrate that the Brakkes worked with the DNR to depopulate the Quarantined Area but that the Brakkes did not develop a future operational plan to address how they would continue to prevent the spread of disease to other animals.

6. 571 IAC section 115.10 requires a five-year quarantine be placed on a preserve and any remaining animals on the preserve when CWD is found in any animals on a preserve. (Currently CWD is only found in the animal family cervidae, which include deer and elk.) The rules prohibit animal movement in or out of the preserve during the quarantine period. The facts stated above demonstrate that the Brakkes have violated this rule requirement in their removal of the fence and opening of the gates.

7. Iowa Code section 17A.18A authorizes the Director of the DNR to take action necessary to prevent or avoid immediate danger to the public welfare. The Brakke's failure to maintain the quarantine of the Quarantined Premises will allow for the spread of CWD beyond a captive herd. Once wild deer are exposed to CWD that exists on the Quarantined Area, DNR will not have a mechanism to limit the exposure to the remainder of the wild deer population. Iowa's wild deer herd serves a multi-million dollar industry in the state of Iowa and provides over \$15 million in tax revenue to the state. The spread of CWD into the wild population would cripple the whitetail hunting industry in Iowa.

8. 561 IAC section 7.18 (which is incorporated by reference in 571 IAC chapter 7) authorizes the Director of the DNR to issue this Emergency Order to the extent necessary to prevent

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or avoid immediate danger to the welfare of the citizens of Iowa. This authority authorizes the Director of the DNR to require a person or persons to immediately cease an offending activity or take an affirmative action to avoid or mitigate the offending action. This emergency action is necessary for the reasons stated in paragraph 7 of this section.

V. ORDER

THEREFORE, DNR orders the Brakkes to do the following immediately:

1. The Brakkes shall immediately discontinue the deconstruction of the fence surrounding the Quarantined Premises.
2. The Brakkes shall completely restore the portions of the fence surrounding the Quarantined Premises that have been removed or degraded by no later than June 7, 2013.
3. The Brakkes shall maintain the fence surrounding the Quarantined Premises, as an adequate quarantine until December 28, 2017, which is a period of five years from date of the last positive CWD diagnosis on the Quarantined Premises, which was December 28, 2012.
4. The Brakkes shall close by June 7, 2013, and keep closed, all gates to and from the Quarantined Premises to return the Quarantined Premises to a closed state.
5. The Brakkes shall authorize DNR officials to access the Quarantined Premises for a period of four weeks from date the Brakkes satisfy paragraphs 1 and 2 of this section for the purposes of depopulating any deer that may be on the Quarantined Premises. DNR shall recover and test those deer, if any, for CWD and report the findings to the Brakkes.
6. The Brakkes shall submit an operational plan, consistent with Iowa Code section 484C.12(2) that demonstrates how they shall comply with the quarantine requirements imposed by 571 IAC section 115.10. It shall be designed to prevent the spread of CWD to other animals. Such plan shall be reviewed by the DNR and shall be memorialized in an agreement among the Brakkes or the Brakkes' veterinarian, the DNR and the State of Iowa's epidemiologist.

VI. HEARING

Pursuant to Iowa Code section 17A.18A(5), this Emergency Order is being transmitted to the Department of Inspections and Appeals so that the order may be set for immediate hearing before an Administrative Law Judge. You will be promptly notified of the hearing time and place. Consistent with 561 IAC section 7.18(5) (incorporated by reference into 571 IAC chapter 7), you may seek a stay of this Emergency Order consistent with the procedures identified therein.

VII. NONCOMPLIANCE

Failure to comply with this Emergency Order may result in referral of this matter to the Attorney General to obtain injunctive relief, any civil penalties authorized by Iowa Code section 484C.13 and any civil damages attributed to the spread of CWD from the Quarantined Premises to

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the wild and other captive herds in the state or to the Davis County Attorney's Office for criminal prosecution consistent with Iowa Code section 484C.13.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 6th day of
June, 2013.

CC: Kelley Myers