

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

IN THE MATTER OF:

**BRIAN RIESBERG**  
Facility ID# 64296  
Carroll County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2007-AFO-29

TO: Brian Riesberg  
27264 Hawthorne Avenue  
Carroll, Iowa 51401

**I. SUMMARY**

This administrative consent order is entered into between Brian Riesberg and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge at Mr. Rieseberg's facility. 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 Nanfite, 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  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director, Iowa Dept. of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to 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, Subchapter III, or 2005 Iowa Code Supplement Chapter 459A 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.

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**III. STATEMENT OF FACTS**

1. Brian Riesberg owns and operates an open feedlot for hogs as well as two confinement buildings. The facility is located at 27264 Hawthorne Avenue, Carroll, Iowa (Section 32, T83N, R35W, Carroll County, Iowa). The facility has a combined animal capacity of approximately 730 animal units (340 animal units for the feedlot and 390 animal units for the confinements).

2. On Friday, December 16, 2005, DNR Field Office 4 received an anonymous complaint stating manure was flowing into Brushy Creek. DNR Field Office 4 began the investigation the evening of December 16, 2005. Manure liquid was present in Brushy Creek. Due to darkness, the investigation was suspended until Monday, December 19, 2005.

3. On December 19, 2005, DNR Field Office 4 continued its investigation. DNR Field Office 4 personnel observed dead fish, specifically carp, in Brushy Creek at the crossing of State Highway 71. DNR Fisheries were contacted regarding the fish kill.

4. Over the course of next two weeks, DNR Field Office 4 continued the investigation. The investigation included field observations, photographs, and collection of samples. During the investigation manure was tracked upstream of Brushy Creek and to Mr. Riesberg's facility. On December 30, 2005, manure solids from Mr. Riesberg's facility were found in a tributary of Brushy Creek. DNR Field Office 4 staff observed a manure stockpile at Mr. Riesberg's facility with the pit from one confinement building overflowing. The manure was followed to the tributary. A manmade ditch was observed that directed the manure toward the tributary. On January 3, 2006, DNR Field Office 4 visited Mr. Reisberg's facility and took photographs of the manure entering the creek. Mr. Reisberg was required by the DNR Field Office 4 staff to stop the manure solids from entering the creek. Mr. Reisberg stated he might use a dirt berm or stalk bales as interim measures of stopping the manure.

5. On January 18, 2006, DNR issued a Notice of Violation to Mr. Reisberg for the violations noted during the investigation of the Brushy Creek fish kill. The letter cited water quality and prohibited discharge violations. The letter included a copy of the inspection report. Mr. Reisberg was required to make every effort to prevent manure from his facility from reaching a water of the state.

6. On January 31, 2006, Mr. Riesberg contacted DNR Field Office 4 and informed the staff he had cleaned up the manure. Mr. Riesberg was advised to contact Iowa State Extension or NRCS regarding the necessary manure controls that were needed at the facility. On February 15, 2006, Mr. Riesberg informed DNR Field Office 4 a representative from Iowa State Extension would be visiting the facility on March 1.

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7. On February 10, 2006, DNR Field Office 4 staff visited Mr. Riesberg's facility to conduct a follow-up inspection. During the visit, DNR Field Office 4 staff observed stockpiled manure solids and manure liquids from the open hog lot that needed to be moved or land applied to avoid another discharge. In a letter dated February 27, 2006, DNR Field Office 4 provided Mr. Riesberg a summary of the February 10 visit. Mr. Riesberg was required to remove and land apply all of the liquid manure from the open lot and notify the field office by March 15, 2006. Mr. Riesberg was also required to scrape and either land apply or restack the solid manure that had flowed down hill. The solid manure was required to be stored in an area that limits the possibility of runoff. DNR Field Office 4 was to be notified by March 15, 2006, that the solid manure had been moved.

8. On March 2, 2006, Mr. Riesberg informed DNR Field Office 4 that Iowa State Extension had not visited yet. He did state that the manure had been cleaned from the shallow pit of the open lot. This was confirmed by a DNR Field Office 4 visit on March 22, 2006.

9. On June 12, 2006, DNR Field Office 4 visited Mr. Riesberg's facility to conduct a follow-up inspection. At the time of the inspection, Iowa State Extension had visited in April 2006 and Mr. Riesberg was waiting on the recommendations from NRCS. During the visit, the open lot was not populated and Mr. Riesberg was uncertain as to if it would be populated.

10. On July 3, 2006, DNR Field Office 4 sent Mr. Riesberg a letter regarding the June 12, 2006 visit. Mr. Riesberg was informed the discharge to Brushy Creek had not been resolved and the matter was being referred to DNR Legal Services for possible enforcement. Mr. Riesberg was also required to submit a National Pollutant Discharge Elimination System (NPDES) permit within 90 days from receipt of the letter. The letter explained why Mr. Riesberg's facility needed an NPDES permit. Mr. Riesberg received the letter on July 10, 2006. The NPDES permit application is due October 9, 2006. To date the NPDES permit application has not been submitted.

11. As of the date of this administrative consent order, Mr. Riesberg is in the process of selling his facility. See Attachment A. Mr. Riesberg will have no involvement in the operation of the facility.

#### IV. CONCLUSIONS OF LAW

1. 2005 Iowa Code section 459A.401(1) and 567 IAC 65.101(1) require the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state. DNR Field Office 4 observed manure solids from Mr. Riesberg's facility in a tributary of Brushy Creek. The above-facts disclose a violation of this provision.

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2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. A permit has not been issued for this facility and DNR Field Office 4 found evidence of the discharge of untreated pollutants into waters of the state. The above-facts indicate a violation 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. DNR Field Office 4 observed manure solids from Mr. Riesberg's facility in a tributary of Brushy Creek. The above-facts disclose a violation of one or more of these criteria.

4. Iowa Code Section 459.311(1) and 567 IAC 65.2(3) state the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. DNR Field Office 4 observed manure from Mr. Riesberg's facility in Brushy Creek. The above-facts disclose a violation of this provision.

5. Regarding the open feedlot portion of the Riesberg operation 567 IAC 65.103(1) provides that the Department may evaluate any animal-feeding operation that is not defined as a large or medium concentrated animal feeding operation (CAFO) and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. 567 IAC 65.103(3) requires the owner or operator of a designated CAFO to apply for an NPDES permit no later than 90 days after receiving written notice of the designation. Regarding the confinement portion of this operation, 567 IAC 65.5 provides that the DNR may evaluate any animal-feeding operation to determine if manure from the operation: is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control; is causing or may reasonably be expected to cause pollution of a water of the state; or is causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist, the operation is required, upon notification from the DNR, to apply for an operation permit (subject to animal capacity limitations) and institute necessary remedial actions to eliminate the conditions. Based on the foregoing facts and conclusions, the DNR further concludes that one or more of the above-described conditions existed at this facility and that the Riesberg operation is a designated CAFO. Therefore, Mr. Riesberg is hereby notified that he must apply for an NPDES permit as required by 567 IAC 65.5 and 65.103(3) if the facility is not sold by March 1, 2008 or if he is still involved in the operation of the facility as of March 1, 2008.

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**V. ORDER**

THEREFORE, the DNR orders and Mr. Riesberg agrees to do the following:

1. If the facility is not sold by March 1, 2008 or if Mr. Riesberg is still involved in the operation of the facility of as March 1, 2008, Mr. Riesberg shall submit an application for a NPDES permit as provided in 567 IAC 65.6(7) and 65.104(7) and thereafter provide all information and take all actions necessary to obtain an NPDES permit; and
2. Mr. Riesberg shall pay a penalty of \$9,500.00 to the DNR within 30 days of the completion of the sale of his facility, but no later than March 1, 2008.

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191, and 2005 Iowa Code section 459A.502, authorize 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 these rules, 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. The administrative penalty assessed by this administrative consent order is \$10,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure has allowed Mr. Riesberg to save time and money. By failing to install the proper manure controls prior to the discharge, Mr. Riesberg has gained an economic advantage over producers who installed the proper manure controls. Therefore, \$500.00 is assessed for this factor.

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 DNR 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 visual and olfactory observation of impact to Brushy Creek, including dead fish. Multiple rule or statutory provisions were violated including discharge to water of the state, failure to maintain the minimum manure controls, and violation of water

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quality standards. The violations threaten the integrity of the water quality program. Additionally, a large amount of DNR staff time was expended in investigating the Brushy Creek fish kill. Therefore, \$1,600.00 is assessed for each of the four violations cited in this administrative consent order for a total of \$6,400.00 for this factor.

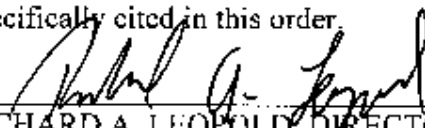
Culpability - All animal feeding operation operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. From the visits to Mr. Riesberg's facility it is apparent the facility had prior manure discharges. There was a channel that followed a path from the confinement buildings to the creek. Mr. Riesberg failed to install proper manure control for the feedlot and failed to properly maintain the storage basin for the confinement buildings. Based on the above considerations, \$2,600.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly by and with the consent of Brian Riesberg. For that reason, Mr. Riesberg waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 12 day of  
October, 2007.

  
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BRIAN RIESBERG

Dated this 4 day of  
Oct, 2007.

#64296; DNR Field Office 4; Kelli Book; Ken Hessenius; EPA; VIII.D.1.b, VIII.D.3.a,  
VIII.D.1.a



7. POSSESSION. If Buyers timely perform all obligations, possession of the Real Estate shall be delivered to Buyers on 9-30-07, with any adjustments of rent, insurance, and interest to be made as of the date of transfer of possession.

8. FIXTURES. All property that integrally belongs to or is part of the Real Estate, whether attached or detached, such as light fixtures, shades, rods, blinds, awnings, windows, storm doors, screens, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment, wall to wall carpeting, built-in items and electrical service cable, outside television towers and antenna, fencing, gates and landscaping shall be considered a part of Real Estate and included in the sale except: (consider: rental items.)

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9. USE OF PURCHASE PRICE. At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

10. ABSTRACT AND TITLE. Sellers, at their expense, shall promptly obtain an abstract of title to the Real Estate continued through the date of acceptance of this offer, and deliver it to Buyers for examination. It shall show merchantable title in Sellers in conformity with this agreement, Iowa law and Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyers when the purchase price is paid in full. Sellers shall pay the costs of any additional abstracting and title work due to any act or omission of Sellers, including transfers by or the death of Sellers or their assignees.

11. DEED. Upon payment of the purchase price, Sellers shall convey the Real Estate to Buyers or their assignees, by Warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in 1. a. through 1. d. Any general warranties of title shall extend only to the time of acceptance of this offer, with special warranties as to acts of Sellers continuing up to time of delivery of the deed.

12. JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE. If Sellers, immediately preceding acceptance of this offer, hold title to the Real Estate in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the Sellers, then the proceeds of this sale, and any continuing or recaptured rights of Sellers in the Real Estate, shall belong to Sellers as joint tenants with full rights of survivorship and not as tenants in common; and Buyers, in the event of the death of either Seller, agree to pay any balance of the price due Sellers under this contract to the surviving Seller and to accept a deed from the surviving Seller consistent with paragraph 11.

13. JOINDER BY SELLER'S SPOUSE. Seller's spouse, if not a titleholder immediately preceding acceptance of this offer, executes this contract only for the purpose of relinquishing all rights of dower, homestead and distributive shares or in compliance with Section 561.13 of the Iowa Code and agrees to execute the deed or real estate contract for this purpose.

14. TIME IS OF THE ESSENCE. Time is of the essence in this contract.

15. REMEDIES OF THE PARTIES.

a. If Buyers fail to timely perform this contract, Sellers may forfeit it as provided in the Iowa Code, and all payments made shall be forfeited or, at Seller's option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of such failure (during which thirty days such failure is not corrected) Sellers may declare the entire balance immediately due and payable. Thereafter this contract may be foreclosed in equity and the Court may appoint a receiver.

b. If Sellers fail to timely perform this contract, Buyers have the right to have all payments made returned to them.

c. Buyers and Sellers also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

16. STATEMENT AS TO LIENS. If Buyers intend to assume or take subject to a lien on the Real Estate, Sellers shall furnish Buyers with a written statement from the holder of such lien, showing the correct balance due.

17. SUBSEQUENT CONTRACT. Any real estate contract executed in performance of this contract shall be on a form of the Iowa State Bar Association.

18. APPROVAL OF COURT. If the sale of the Real Estate is subject to Court approval, the fiduciary shall promptly submit this contract for such approval. If this contract is not so approved, it shall be void.

19. CONTRACT BINDING ON SUCCESSORS IN INTEREST. This contract shall apply to and bind the successors in interest of the parties.

20. CONSTRUCTION. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

21. TIME FOR ACCEPTANCE. If this offer is not accepted by Sellers on or before \_\_\_\_\_ it shall become void and all payments shall be repaid to the Buyers.

22. OTHER PROVISIONS. Attach Addendum.

All household furnishings and machinery are not included in this sale.

Seller to pay for survey.

Buyer responsible for water test and septic and sewer.

Clear title requirements include no DNR special restrictions on this site.

subject to appraisal  
~~and~~ option to buy additional acres  
at \$5400  
subject to loan approval  
B.R. J.R.

Dated: 9-18-2007

Joe Riesberg  
Buyer Joe Riesberg

\_\_\_\_\_  
Buyer

THIS OFFER IS ACCEPTED \_\_\_\_\_

Brian L Riesberg  
Seller Brian Riesberg

\_\_\_\_\_  
Spouse

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Spouse