

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

IN THE MATTER OF:

**RYAN ROBERTSON d/b/a
ROBERTSON FARMS**

Jefferson County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2007-AFO-30

TO: Ryan Robertson
Robertson Farms
2314 110th Street
Fairfield, IA 52556

I. SUMMARY

This administrative consent order is entered into between Ryan Robertson d/b/a Robertson Farms and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge which took place at 2314 110th Street, Richland, Iowa 52858 and legally described as the W1/2, NW1/4, Sec. 8, T73N, R9W (Penn Township) Jefferson County. 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:

Paul Brandt, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353
Phone: 319/653-2135

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 or Iowa Code chapter 459, and the rules adopted or permits issued pursuant thereto, and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Ryan Robertson d/b/a Robertson Farms owns and operates a hog operation and commercial manure application business located in Fairfield, Iowa. Mr. Robertson, manager of the manure application business and employer of five certified applicators, was responsible for the application of manure at a farm in Jefferson County. Because of less than optimal conditions at the application site a manure release occurred and run-off from the release entered the waters of the state of Iowa.

PAST VIOLATIONS

2. In March 2004, Ryan Robertson was issued a Notice of Violation (NOV) letter for conducting construction activities at 1376 Peach Ave (SW ¼, Sec. 22, T73N, R9W, Jefferson) without a storm water permit.

3. On July 9, 2004, Ryan Robertson was issued a NOV for failure to use Best Management Practices to control erosion and sedimentation. This violation was referred to the Iowa Attorney General for further enforcement and on June 12, 2006, Ryan Robertson entered into an Administrative Consent Order with the Iowa Attorney General which included a civil penalty of \$12,500.00.

CURRENT VIOLATIONS

4. On April 10, 2007, DNR Field Office 6 received a citizen call at approximately 4:30 p.m. concerning a possible manure release near Pleasant Plain. Paul Brandt and Kurt Levetzow, DNR Field Office 6 personnel, investigated the complaint. During the investigation it was determined that a manure release had occurred into a small intermittent stream on David Horras' property. Manure from Mr. Horras' small animal feeding operation had been applied to a field on the west side of his property by Mr. Robertson. Application was performed on April 9th and 10th, however, the application had been completed and all equipment had been removed by the time DNR personnel arrived at the site. Mr. Brandt and Mr. Levetzow observed that the manure had been applied via injection, but had still run down the sloping field at various points and entered the intermittent stream. This stream flows south for approximately one mile before joining North Walnut Creek. DNR personnel took photos and collected samples showing elevated levels of ammonia in the intermittent stream. Neither Mr. Horras nor Mr. Robertson were aware of the release until DNR informed them. They immediately began remediation activities by building a dam. The results of the samples are as follows:

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Laboratory Samples

Location NWC = North Walnut Creek IS = intermittent stream	Date	BOD	NH3	TSS
NWC at Mulberry Ave. (upstream of release)	4-11-07	10 mg/l	1.3 mg/l	180 mg/l
Confluence of NWC and IS	4-11-07	400 mg/l	53 mg/l	1300 mg/l
NWC just downstream of confluence	4-11-07	55 mg/l	8.7 mg/l	370 mg/l
Overflow from notch in dam	4-11-07	400 mg/l	130 mg/l	200 mg/l
NWC at Nutmeg Ave.	4-11-07	200 mg/l	22 mg/l	380 mg/l
NWC at Osage Ave.	4-11-07	140 mg/l	17 mg/l	570 mg/l
NWC at Orange Blvd.	4-11-07	7 mg/l	.25 mg/l	340 mg/l
NWC at Nutmeg Ave.	4-12-07		.62 mg/l	
Overflow from impoundment	4-12-07		9.5 mg/l	

Additionally, getting the manure to the application site required making short trips on the nearby highway with the manure. During the transportation, mud was tracked onto the highway and combined with the large amounts of rain making the road muddy and slick and creating hazardous road conditions.

5. On April 11, 2007, Mr. Brandt returned to the site with Brent Earley and Bert Noll, DNR Field Office 6 personnel. When DNR staff arrived on site, they observed that the dam which had been built the evening before was unable to contain all of the contaminated water. A notch had formed in the top of the dam and water was escaping at a fast flow rate because of the previous night's rain. Mr. Noll and Mr. Earley conducted further stream sampling in the vicinity, while Mr. Brandt continued discussions with Mr. Horras and Mr. Robertson. Mr. Brandt stressed that they needed to stop the dam from leaking and would also need to pump out the impounded water. Additionally, Mr. Brandt asked how the release happened since they were using the injection application method. Mr. Robertson admitted that the runoff likely occurred because of the wet conditions. He hypothesized that the spill might have happened if the tractors were slipping while the manure continued to pump causing it to overflow the injector trench, or because the conditions were so wet that the workers had to raise the applicator bar to pull through the slick spots. There was also an incident where a tank wagon containing manure got stuck during application. Mr. Robertson and his staff brought in another tank wagon and off-loaded contents in order to get the original tank unstuck. Mr. Robertson stated that no manure spilled during that process. After further discussion, Mr. Robertson hired an excavator to increase the strength and height of the dam. However, despite this action, flow in the intermittent stream following the rain was too much for the dam to contain and contaminated water flowed around the dam for the rest of the week.

6. On April 13, 2007, Mr. Brandt returned to the farm. He observed that the dam was much higher and the pool of water much larger, however, water was still running around the west side of the dam. Mr. Brandt informed Mr. Robertson that he would need to pump water out of the impoundment behind the dam and land-apply it because samples showed the

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water was still contaminated with manure. Although it was not raining, field conditions were wet prohibiting Mr. Robertson from immediately beginning this process.

7. On April 14, 2007, Mr. Robertson began pumping water out of the impoundment behind the dam and land applying it. This process continued through April 16, 2007. Mr. Robertson estimated that approximately 300,000 gallons were pumped and land applied.

8. On May 30, 2007, a NOV was sent to both Ryan Robertson and David Horras, which referenced the manure release and corresponding rule violations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state as defined by Iowa Code section 455B.171, except for adequately treated pollutants discharged pursuant to a permit from DNR. 567 IAC 62.1(1) provides that discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit. A permit was not issued for this facility and DNR found evidence of the discharge of untreated pollutants into waters of the state as defined by Iowa Code section 455B.171.

3. 567 IAC 65.19(8)(b) Certified Commercial Manure Services are obligated to comply with the provision of the manure management plan (MMP). If a manure management plan does not exist, the requirements of 65.2(455B) and 65.3(455B) must still be met.

4. 567 IAC 65.2(3) 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.

5. 567 IAC 65.2(7) 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. Ryan Robertson applied manure from Horras' confinement onto Horras' land during wet, less than optimal conditions. Manure run-off occurred and caused elevated levels of ammonia-nitrogen in the receiving tributary stream which then flowed into North Walnut Creek. The above facts indicate a violation of this provision.

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6. 576 IAC 62.2(9)(a) A person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the DNR of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. This release was not reported by the parties involved in the manure application procedure.

V. ORDER

THEREFORE, the DNR orders and Ryan Robertson d/b/a Robertson Farms agrees to do the following:

1. Ryan Robertson d/b/a Robertson Farms shall, as specified in 567 IAC 65.2(7), comply with proper procedures for land-applying manure in order to avoid future surface or groundwater pollution and;
2. Ryan Robertson d/b/a Robertson Farms shall pay a penalty of \$4,000.00 within 60 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 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 \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Robertson saved time and money, by not hauling the manure to a less saturated location that would have prevented a spill. Based on the above considerations, \$1,000.00 is assessed for this factor.

Gravity of Violation – A large amount of manure and ammonia nitrogen was released into the intermittent stream. The streams were running full at this time and the rain overnight following the release added further dilution, however, DNR staff observed no fish kill. Due to wet conditions at the time, the retention ponds were not able to contain the flow completely. The weather also prevented Mr. Robertson from being able to immediately pump and apply the contaminated water. Therefore, the contaminated water continued to run around the dam and down stream for at least 3 days. DNR staff documented elevated levels

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of ammonia nitrogen in the intermittent stream and in North Walnut Creek as far as 2 miles below the intermittent stream. Further, hauling the manure in these conditions caused the roadway between the confinement and field to become muddy and slick. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – As a certified commercial manure applicator Mr. Robertson has a duty and should have been aware of the requirements and recommended practices for land-applying manure. Typically, manure applied via injection would not have caused much runoff, however, several factors including wet soil conditions and sloping topography contributed to this spill. The conditions were bad enough that there were places it was necessary to raise the tractor tool bar to pull through the muddy conditions and still other places where the tractor slipped several times and even became stuck during the project. It should have been very clear to Mr. Robertson this was not an appropriate time for application. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Ryan Robertson d/b/a Robertson Farms. For that reason, Ryan Robertson d/b/a Robertson Farms waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order 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 violations described in section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring an enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV Conclusions of Law" of the administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
October, 2007.



Ryan Robertson d/b/a Robertson Farms

Dated this 6 day of
October, 2007