

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

IN THE MATTER OF:

**GARY RUPIPER**  
Facility ID #56697  
Carroll County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2007-AFO- 12

TO: Gary Rupiper  
314 3<sup>rd</sup> Avenue  
P.O. Box 111  
Templeton, Iowa 51463

**I. SUMMARY**

This administrative consent order is entered into between Gary Rupiper and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge at Mr. Rupiper'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:**  
Matt Rhodes, 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 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.

**RECEIVED  
MAY 08 2007**

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GARY RUPIPER

**III. STATEMENT OF FACTS**

1. Gary Rupiper owns and operates an open cattle feedlot located at 17709 280<sup>th</sup> Street, Carroll, Iowa (Section 32, T83N, R35W, Carroll County, Iowa). The feedlot has approximately 850 animals. Mr. Rupiper's feedlot is located near a county road and in an attempt to reduce runoff, Mr. Rupiper installed berms between the feedlot and road.

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. Rupiper's feedlot. On December 23, 2005, manure liquids and solids were observed flowing from Mr. Rupiper's feedlot through a grassy waterway to a tributary of Brushy Creek. Samples of the discharge from Mr. Rupiper's feedlot were taken. The laboratory analysis of the three samples yielded the following results: membrane fecal coliform 120,000 /100ml, 150,000/100 ml, 15,000/100 ml; ammonia, 34 milligrams per liter (mg/L), 430 mg/L, 12 mg/L; carbonaceous biochemical oxygen demand (CBOD), 6,300 mg/L, 21,300 mg/L, 190 mg/L; total suspended solids (TSS), 1,180 mg/L, 440 mg/L, 38 mg/L.

5. On December 29, 2005, DNR Field Office 4 conducted open feedlot assessment of Mr. Rupiper's feedlot. During the observation of the feedlot DNR Field Office 4 staff noted manure from the feedlot had entered the road ditch. Manure solids were not found in the creek at the time of the assessment, but the proximity to the creek and the limitations of the manure controls suggest manure could reach the unnamed tributary of Brushy Creek during periods of precipitation. DNR Field Office 4 staff also noted liquid from the runoff control basins was flowing into the road ditch and through a grassy waterway to the creek. Additionally, DNR Field Office 4 staff noted a drain tile that empties into the creek. The drain tile is not located on property owned by Mr. Rupiper. On January 18, 2006, DNR sent Mr. Rupiper a summary of the findings from the December 29, 2005 assessment. The letter required Mr. Rupier to submit a Plan of Action to DNR Field Office 4 by May 1, 2006. The Plan of Action was to address the issues discovered during the assessment.

6. On January 12, 2006, DNR issued a Notice of Violation to Mr. Rupiper for the violations noted during the investigation of the Brushy Creek fish kill. The letter cited water quality and prohibited discharge violations. The letter informed Mr. Rupiper the field office would be contacting him to discuss the prevention of manure reaching the water. The

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GARY RUIPIPER

letter also informed Mr. Rupiper further enforcement action may follow. On January 13, 2006, DNR sent a copy of the inspection report to Mr. Rupiper.

7. On January 26, 2006, Mr. Rupiper sent Field Office 4 a letter stating he had contacted Iowa State Extension as well as NRCS to begin planning for future controls. Construction of the controls would be delayed due to weather conditions. Mr. Rupiper stated he would scrape and clean the lots on a daily basis to avoid runoff until proper controls could be installed. On May 3, 2006, Mr. Rupiper sent DNR Field Office 4 a letter providing a status of the construction. At the time of the letter the construction of the controls was in progress and was on schedule. On June 12, 2006, DNR Field Office 4 visited Mr. Rupiper's feedlot to observe the installation of the solid settling structures; at the time of the inspection the structures were not completed.

**IV. CONCLUSIONS OF LAW**

1. 2005 Iowa Code Supplement 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. Rupiper's facility in a tributary of Brushy Creek. The above-facts disclose a violation of this provision.

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. Rupiper's facility in a tributary of Brushy Creek. The above-facts disclose a violation of one or more of these criteria.

**V. ORDER**

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

1. Mr. Rupiper shall complete the installation of the manure controls within 60 days from the date the Director signs this administrative consent order. Mr. Rupiper shall notify DNR Field Office 4 within 10 days of completing the installation of the manure controls; and
2. Mr. Rupiper shall pay a penalty of \$8,000.00 to the DNR within 30 days from the date the Director signs this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GARY RUPIPER

**VI. PENALTY**

1. 2005 Iowa Code Supplement section 459A.502 and Iowa Code section 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 \$8,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure has allowed Mr. Rupiper to save time and money. By failing to install the proper manure controls prior to the discharge, Mr. Rupiper has gained an economic advantage over producers who installed the proper manure controls. Therefore, \$1,000.00 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 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, \$1,900.00 is assessed for each of violations cited in this administrative consent order for a total of \$5,700.00 for this factor.

Culpability – All feedlot 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. Prior to the investigation, Mr. Rupiper had started to install some manure control structures at his feedlot; however, the structures were inadequate in preventing manure solids from entering Brushy Creek. Based on the above considerations, \$1,300.00 is assessed for this factor.


IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GARY RUPIPER

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly by and with the consent of Gary Rupiper. For that reason, Mr. Rupiper 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.

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 14 day of  
May, 2007.

  
\_\_\_\_\_  
GARY RUPIPER

Dated this 7 day of  
May, 2007.

#56697; DNR Field Office 4; Kelli Book; Ken Hessenius; EPA; VIII.D.1.b, VIII.D.3.a