

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

<p>IN THE MATTER OF:</p> <p>Hillside Ag Inc. Facility ID#- 59921 Lyon County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO-25</p>
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TO: Mark Vant Hul, Registered Agent
Hillside Ag Inc.
3319 Garfield Avenue
Rock Valley, IA 51247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Hillside Ag Inc. (Hillside) for the purpose of resolving a violation of general water quality criteria, a prohibited discharge to a water of the state, and failure to contain manure from a confinement feeding operation. 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:
Brandon Miner, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Avenue
Spencer, IA 51301
Phone: 712/262-4177

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

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

III. STATEMENT OF FACTS

1. Hillside is a 1,200-head confined dairy operation owned and operated by Mark Vant Hul. The facility is located at 2323 Indian Avenue in George, Iowa (NE ¼, Section 13, Garfield Township, Lyon County).

2. On November 11, 2007, DNR issued Hillside Construction Permit # CP-A2006-295 for the construction of three new earthen manure storage ponds and concrete sand settling lanes. Condition 4(f) of Construction Permit # CP-A2006-295 required that written approval be received from the DNR before storing manure in the new earthen basins. On December 17, 2007, DNR sent Hillside written approval for the use of the new earthen basins.

3. On December 11, 2007, Brandon Miner, environmental specialist for DNR Field Office 3, and Paul Petitti, Environmental Engineer, met Mr. Vant Hul at the Hillside facility to check on the construction progress of the earthen manure storage basins and concrete sand settling lane. Upon their arrival, Mr. Vant Hul stated that he had just discovered a manure release from an underground pipe carrying liquid manure from the earthen basin back to the confinement. Mr. Vant Hul stated that the manure release could have been on-going for several days because the last time that he had checked on the pipe that was carrying the manure was four days prior. Upon inspection, it appeared that the manure release was likely on-going for at least a couple of days.

4. During the inspection it was revealed that the manure from the leaking pipe had flowed overland to the northwest where it entered an unnamed tributary which flows to the north approximately ¼ mile before reaching the Little Rock River. The manure flowed down the unnamed tributary, stopping approximately fifty yards from the Little Rock River because of freezing temperatures. It was evident that several tens of thousands of gallons of manure had reached the unnamed tributary.

5. Beginning on December 11, 2007 and continuing on December 12, 2007, Hillside used payloaders and an excavator to dam up the manure flow and to dig and pull manure out of the unnamed tributary and spread it out on the crop field. Despite the cleanup efforts made by Hillside, it was apparent to DNR personnel that some manure would still reach the Little Rock River upon snow melt.

6. On December 14, 2007, Mr. Miner visited the Hillside facility again. Based on observations made during this visit, it appeared that after mixing with water in the unnamed tributary the runoff would be dilute enough to pose little danger to aquatic life in the Little Rock River.

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7. On December 27, 2007, a Notice of Violation letter was sent to Hillside for failing to retain manure between land application periods as required in 567 IAC 65.2(3), for discharging a pollutant into a water of the state without a permit in violation of Iowa Code section 455B.186, and for failing to receive written authorization to use the new earthen basins in violation of Construction Permit # CP-A2006-295. The letter also reminded Hillside of the reporting requirements for a manure release as required by 567 IAC 65.2(9). The letter also informed Mr. Vant Hul the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (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 459.311 and 567 IAC 65.2(3) require that 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 water of the state or into a tile line that discharges to waters of the state. Hillside failed to properly contain and retain manure between periods of land application. As a result, manure from the facility reached an unnamed tributary that flowed into the Little Rock River. The above-mentioned 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. The discharge of manure into the unnamed tributary of the Little Rock River would have been acutely toxic to any aquatic life, it created objectionable color and odor, and it created floating debris and scum. The above-mentioned facts indicate one or more violations of the water quality criteria.

4. Iowa Code section 455B.186(1) prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. The Hillside facility does not have a permit and DNR Field Office 3 found evidence of a discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

5. Condition 4(f) of Construction Permit # CP-A2006-295 requires that written approval be received from the DNR before storing manure in the new earthen basins. Written authorization to use the basins was not sent by the DNR until December 17, 2007, and it was apparent at the time of the December 11, 12, and 14 visits that the basins had been in use for several weeks. These facts indicate a violation of this condition.

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V. ORDER

THEREFORE, the DNR orders and Hillside agrees to do the following:

1. Operate and maintain animal feeding operation structures in compliance with all applicable departmental rules and regulations; and
2. Pay a penalty of \$3,000.00 within 30 days of the date from which 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 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 of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – The release of manure in this case was accidental and Mr. Vant Hul made a concentrated effort to get as much manure as possible out of the unnamed tributary. For these reasons, the DNR has not assessed an amount 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. 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. Hillside was responsible for several tens of thousands of gallons of dairy manure reaching the unnamed tributary of the Little Rock River. Mr. Vant Hul also stored manure in the earthen basins prior to receiving written approval from the DNR. Therefore, \$1,500.00 is assessed for this factor.

Culpability – All confinement 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. Mr. Vant Hul was culpable in that the manure release was on-going for what appeared to be several days. Mr. Vant Hul stated that he had not checked on the pipe in four days. If the pipe had been checked more frequently, the amount of manure release may have been significantly less. Therefore, \$1,500.00 is assessed for this factor.

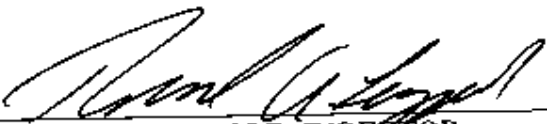
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VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Hillside. For that reason Hillside waives its rights 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.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 22 day of
July, 2008.


Hillside Ag Inc.

Dated this 11 day of
July, 2008.

#59921; Kelli Book; Field Office 3; Gene Tinker; EPA; 1.C.1, VIII.A.2, VIII.D.1.a, and VIII.D.3.a

RECEIVED
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