

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

IN THE MATTER OF:

IOWA SELECT FARMS, LLP
As Operator of
Facility ID#- 59925
Clarke County, IA

ADMINISTRATIVE CONSENT ORDER
NO. 2007-AFO- 41

TO: Iowa Select Farms, LLP
Attn: Dwain Bankson
811 South Oak Street.
P.O. Box 400
Iowa Falls, IA 50126

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Iowa Select Farms, LLP (ISF) for the purpose of resolving an issue pertaining to a prohibited discharge to a water of the state and failure to retain manure. 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:

Ted Petersen, Field Office 5
Iowa Department of Natural Resources
401 SW 7th St., Suite 1
Des Moines, IA 50309
Phone: 515/725-0274

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 I or Iowa Code Chapter 459 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. The M1 Sow Site ("Facility") is an animal confinement facility owned by Iowa Quality Farms, L.C. ("IQF") and is currently operated by ISF. The Facility is located at 3527 Benson Ave. in Weldon, Iowa (SW ¼, NE ¼, Section 26, T71N, R24W, Franklin Township, Clarke County). The site consists of four buildings that utilize shallow pits and an outside concrete storage basin for manure storage.

2. Mr. Dwain Bankson is the Director of Environmental Services for ISF. According to Mr. Bankson, IQF is responsible for all permitting for the Facility, all structural repairs and maintenance at the Facility, all land application of manure from the Facility and meeting the requirements of the DNR manure management plan ("MMP") for the Facility. ISF is responsible for the daily management activities at the Facility.

3. On March 28, 2007, Ted Petersen, environmental specialist for DNR Field Office 5, was notified of a manure release in Clarke County. Mr. Bankson was contacted while at the scene of the release and provided information to Mr. Petersen. The manure release was discovered at 3:00 P.M. on March 28th and manure had reached Chariton Creek via a surface intake through a subsurface tile. Mr. Petersen's initial instructions were to stop the release, contain as much of the manure as possible using earthen dams, and land apply the contained manure where conditions allowed. Mr. Petersen instructed Mr. Bankson to monitor the water conditions and notify him of any dead fish. Mr. Bankson did not observe any fish in the Chariton Creek when monitoring the water conditions of the Chariton Creek.

4. During Mr. Petersen's March 28th investigation, Mr. Bankson stated the manure was released as a result of a faulty pipe connection within the manure collection and transfer system. Manure flowed up around a cleanout portion of the PVC pipe transfer system and flowed on the ground west then north approximately 1,800 feet before reaching a surface intake to a tile line. The subsurface tile then discharged, at a point unknown, into Chariton Creek, in Section 23 of Franklin Township. Chariton Creek flows into the Chariton River in Section 19 of Union Township in Lucas County.

5. ISF personnel constructed a containment dam as instructed and, between 8:00 and 9:00 P.M. on March 28, 2007, began pumping the creek behind the dam and land applying the water on a nearby grass field. Approximately 420,000 gallons of water from behind the dam was land applied.

6. On March 29, 2007, Mr. Petersen arrived on scene and met with Mr. Bankson. It was decided that the pumping should continue at a different field location. Field samples of dissolved oxygen and ammonia were taken near bridges and easy access points from roads to Chariton Creek and Chariton River. A sample was also taken upstream from the containment dam and taken to University of Iowa Hygienics lab for analysis. Pumping and land application that began from behind the existing dam had continued until rain began to fall. Approximately 300,000 gallons were applied during this application period.

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7. On March 30, 2007, Mr. Petersen met with Mr. Bankson and conducted stream sampling at the same points along Chariton Creek and Chariton River that were sampled on March 29th. Approximately 0.5 inches of rain fell on the area overnight. The stream flows were about the same as they were on the March 29th but ammonia levels had fallen below 1.5 ppm. It was decided at that time that the upstream and downstream portions of Chariton Creek were equivalent and the pumping and land application did not need to continue. Mr. Bankson was instructed to completely remove the dam and return that area of the creek back to its original state, which was done. Mr. Petersen visited the Facility. It was determined that manure was released around the cleanout riser between the middle two buildings on the west side of the walkway. Manure was still present on the ground in low lying areas. Mr. Bankson agreed to collect the manure and land apply or pump the manure to the outside concrete storage tank. At the time of the site visit, the outside manure storage tank had approximately 17 inches of freeboard. The required freeboard level of formed structures is 12 inches. According to Mr. Bankson, manure application by IQF was planned as soon as conditions were favorable.

8. On April 16, 2007, a Notice of Violation letter (NOV) was sent to ISF, and copied to IQF for failing to retain manure between land application periods as required in 567 IAC 65.2(3). The NOV also reminded ISF of the written report requirements for a hazardous condition as required in 567 IAC 131.2(2). The written report was due on April 27, 2007.

9. A written report was received from ISF as required in the April 16, 2007 NOV. The report stated that a PVC cleanout pipe became unattached from the underground sewer line. The PVC pipe has a screw cap in place. Pressure caused the pipe to pop out of the Y-joint below the ground, causing the manure release.

10. In the spring of 2007, ISF conducted an assessment of the Facility to determine the cause of the release. As a result of the assessment, it was determined that the level of manure in the outside formed storage structure at the Facility did not contribute to the manure release. Rather, it was determined that the release was likely caused by a lawn mower or other vehicle or equipment striking the above-ground portion of the PVC clean out pipe that failed, causing the underground connection to the PVC clean out pipe to crack below the surface, eventually resulting in the manure release.

11. In order to address the cause of the manure release, ISF has agreed, without waiving any rights as against IQF, to implement the following: (a) ISF staff will excavate around all above-ground PVC cleanout pipes to inspect the underground connection between the PVC cleanout pipes and sewer lines to determine if any are compromised; (b) if any of the underground connections from the PVC cleanout pipes to the underground sewer lines are compromised, ISF staff will proceed with repairs accordingly; (c) ISF will provide a certification of results to DNR Field Office 5 when the foregoing inspection (and, if required, repair) is completed; (d) after inspection, ISF will place one inch rock in the area immediately around each above-ground cleanout pipe and shall further install metal bollards around each above-ground cleanout pipe to protect the clean out pipes from being struck by a lawn mower or other type of vehicle or equipment; (e) once the rock and bollards have been installed, ISF will provide a certification of completion to DNR Field Office 5; (f) ISF staff will be instructed to walk the perimeter of each building and the outside storage structure at the Facility at least weekly when

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not transferring manure from the buildings to the outside manure storage structure and daily whenever manure is being transferred as long as ISF is in charge of daily management activities at the Facility, and will keep a log of such inspections at the Facility, available for examination by DNR field staff.

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 459.311 and 567 IAC 65.2(3) requires 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. There was a failure to properly contain and retain manure between periods of land application. As a result, manure from the Facility reached a surface intake to a tile line that discharged into Chariton Creek and flowed into the Chariton River. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. Manure was discharged into Chariton Creek and Chariton River rather than land applied. The above-mentioned facts indicate a violation of this provision; however, the DNR acknowledges that ISF specifically disputes that any discharge permit is required or that the above facts constitute a violation of the permit requirement.

V. ORDER

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

1. Pay a penalty of \$2,500.00 within 60 days of the date from which the Director signs this administrative consent order; and
2. Comply with all requirements for retention of manure at an animal feeding operation and proper manure application.

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.

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2. Iowa Code section 455B.109 authorizes the Environmental Protection 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 \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Any economic benefit related to not bearing the cost of applying manure was minimal and was outweighed by the cost of manure collection and pumping from the stream and the cost of inspecting the PVC cleanout pipes and installing rock and bollards to prevent future releases from the same type of event that led to the release in question; therefore, 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. The Facility discharged pollutants to waters of the state and failed to maintain minimum manure controls. However, the Facility has clearly been able to retain manure between application periods for most of its history, the cause of the release was immediately remedied and there was no fish kill as a result of this manure release. Moreover, while ISF is responsible for day to day operation of the Facility, the release was caused by a structural defect that ISF disclaims responsibility for. Therefore, \$2,500.00 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. ISF is responsible for the daily management activities at the Facility, and must take the necessary actions to ensure manure is properly contained and retained until land application. ISF is and was knowledgeable of the DNR's requirements and is and was alert to the probability that ISF's conduct was subject to the DNR's rules. The manure release was caused by a structural defect, not any action by ISF; therefore, there was no degree of culpability involved in the manure release on the part of ISF. ISF immediately upon learning about the manure release reported the manure release to the DNR as is required by the DNR's rules. Furthermore, ISF took steps to remedy the damage caused by the release and has agreed to take additional steps to address the underlying cause of the release; therefore, the DNR has not assessed an amount for this factor therefore.

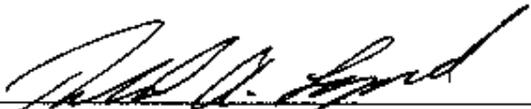
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of ISF. For that reason ISF waives its rights to appeal this administrative consent order or any part thereof.

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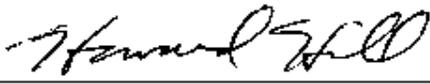
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent 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. 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 administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 20 day of
December, 2007.



AUTHORIZED REPRESENTATIVE
Iowa Select Farms, LLP
By: Iowa Select Farms, Inc.
Its: General Partner

Dated this 10 day of
Dec., 2007.

Facility #59925; Kelli Book; Field Office 5; Ted Petersen; VIII.D.1.a

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