

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

<p>IN THE MATTER OF:</p> <p>TERRAFAC, INC.</p> <p>Facility ID# 64644 Dickinson County, IA</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO- 34</p>
----------------------------------------------------------------------------------------------------------	----------------------------------------------------------

TO: Troy Ahrenstorff, Manager Michael Vervaecke, Attorney
Terrafact, Inc. Meiny, McManigal, Duffy, Stambaugh & Anderson
1560 110th Street 11 4th Street NE – PO Box 1567
Lake Park, IA 51347 Mason City, IA 50402-1567

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Terrafact, Inc. (Terrafact) for the purpose of resolving water quality violations. 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:
Sheila Kenny, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall, 1900 N. Grand Ave.
Spencer, Iowa 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
Windsor Heights, Iowa 50324
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 459A and the rules adopted or permits issued pursuant thereto and Iowa

RECEIVED
AUG 14 2009

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TERRAFACT, INC.

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

III. STATEMENT OF FACTS

Terrafact neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Terrafact owns an open feedlot with a capacity of approximately 600 head of cattle, as well as a confinement with approximately 270 head of cattle, located at 1560 110th Street, Lake Park, Iowa. Both the confinement and the open feedlot are located at the SE ¼ of Section 12, Silver Lake Township (T-100-N. R-38-W), Dickinson County, Iowa. Troy Ahrenstorff manages the facility.

2. On May 8, 2006, an anonymous complaint was filed with DNR Field Office 3 alleging that manure solids from the Terrafact feedlot were reaching a creek in the NW ¼ of Section 13, Silver Lake Township, Dickinson County. On May 19, 2006, Lois Benson, environmental specialist for DNR Field Office 3, investigated the complaint. Ms. Benson did not observe manure in the creek on the day of the investigation, but she noted that it was possible for manure to reach the creek during a precipitation event. On May 23, 2006, Ms. Benson contacted Troy Ahrenstorff by phone and he indicated that he had been working with an engineer to design a solid settling structure for the feedlot. On May 24, 2006, DNR Field Office 3 sent a letter to Mr. Ahrenstorff in reference to the May 23, 2006 investigation. Mr. Ahrenstorff was reminded that the minimum level of control is the removal of solids and Mr. Ahrenstorff was encouraged to install solid settling structures to prevent possible future violations.

3. On April 10, 2007, DNR Field Office 3 received an anonymous complaint stating that solid manure was running from the Terrafact feedlot into the creek across the road. On April 25, 2007, Environmental Specialists Lois Benson and Sheila Kenny investigated the complaint. At the time of the inspection, no manure was flowing into the creek; however, heavy manure solids were noted in both ditches and the pasture leading to the creek. Photographs were taken during the investigation and a sample of manure was pulled from a pooled area in the south ditch. The results of the laboratory sample concluded that the fecal coliform concentration was very high; and the ammonia level was 140 mg/L. These conditions would have been detrimental to fish and would have greatly impacted the water quality if this runoff had reached the creek.

4. On May 15, 2007, DNR Field Office 3 sent a letter to Mr. Ahrenstorff detailing the complaint investigation results. This letter required that the solids be cleaned out of the ditches and a plan of action be submitted by June 30, 2007, outlining the manure control methods or structures to be implemented at this facility. On June 29, 2007, Ms. Benson spoke with Mr. Ahrenstorff by phone and he indicated that the solids had been removed from the north ditch. He was instructed to also clean the solids out of the south

IOWA DEPARTMENT OF NATURAL RESOURCES
 ADMINISTRATIVE CONSENT ORDER
 ISSUED TO: TERRAFACT, INC.

ditch. Mr. Ahrenstorff again indicated that he was working with Kris Kohl with ISU Extension, to design and construct solid settling structures for the feedlot and that the work would be finished by the fall.

5. On March 20, 2008, DNR Field Office 3 received a call from Dave Strover, Park Ranger at Gull Point State Park. Mr. Strover indicated that he had driven past the Terrafact feedlot and observed manure running down the ditch and entering the creek. DNR Environmental Specialists Sheila Kenny and Don Cunningham investigated the complaint on the same day. There appeared to be no solid settling structures at this facility. The flow of manure was traced from the open feedlot, through a culvert under the road, down the ditch, and into the West Fork of the Little Sioux River. Field and laboratory samples were taken at the location where manure was entering West Fork, as well as upstream at the bridge on 110th Street and downstream on 125th Street. Field samples were analyzed on site. The field and laboratory results were as follows:

Field Samples:

Sample Location	pH	Temperature (°C)	Dissolved Oxygen (mg/L)	Ammonia (mg/L)
Feedlot Runoff	7.9	8.5	*	150
Upstream Bridge	8.4	8	11	0.6
Downstream Bridge	8.1	2	10	0.7

* The samples pulled from the upstream and downstream locations had a light yellowish coloration and no observed odor, while the sample pulled at the location where the manure entered the creek was dark brown in color and had a strong manure odor. This coloration made the Field Staff unable to determine the dissolved oxygen level at the "Feedlot Runoff" sample location.

Laboratory Samples:

Sample Location	Ammonia (mg/L)	E. Coli (CFU/100mL)	Fecal Coliform (CFU/100mL)
Feedlot Runoff	220	700,000	400,000
Upstream Bridge	0.72	220	20
Downstream Southwest Lot	0.63	130	40

6. On March 25, 2008, Mr. Cunningham conducted a follow-up visit to the site and noted that there appeared to be a significant increase in the amount of manure on the north side of the road since the initial visit on March 20, 2008. No measures had been taken

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TERRAFACT, INC.

to stop the flow of manure into the creek and there were no visible improvements made to the site since the initial visit.

7. On March 26, 2008, Ms. Kenny spoke with Mr. Ahrenstorff by telephone. Mr. Ahrenstorff indicated that he had cleaned the solids out of both ditches the previous fall and was still working with Kris Kohl to install concrete solid settling structures. Mr. Ahrenstorff was instructed to take action to stop the current discharge and install planking to prevent further manure from leaving the lots. On April 4, 2008, Mr. Cunningham visited the facility and noted that some planking has been installed. Photographs were taken.

8. On April 14, 2008, Ms. Kenny conducted a follow-up visit to the site. Manure was no longer flowing but there was evidence of manure solids down the ditches, on the edge of the pasture, and in the water at the edge of the creek.

9. On April 18, 2008, a report of investigation was sent to Terrafact detailing the noted violations and informing the facility that the violations were being referred for further enforcement.

10. In October 2008, Terrafact notified DNR Field Office 3 that it had completed construction of solids settling structures meeting the requirements of 567 IAC 65.

IV. CONCLUSIONS OF LAW

Terrafact neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 459A.401(1) and 567 IAC 65.101(1) require that 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. Terrafact did not remove all solids from areas that would have the potential to discharge and as a result, manure solids were present in the pasture, down the south ditch, and into the West Fork of the Little Sioux River. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 61.3(2) states that such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits; such waters shall be free from substances attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions; and such water shall be free from substances attributable to wastewater discharges or agricultural practices in concentration or combinations which are acutely toxic to human, animal, or plant life. Lab analysis results of water samples collected during the investigation indicated the presence of animal wastes, best exemplified by the relatively high concentration of ammonia in the creek. The location where the manure entered the creek was dark brown in color and had a strong manure odor. The above-facts indicate a violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TERRAFACT, INC.

3. Iowa Code section 455B.186 prohibits the discharge of pollutants to a 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 3 found evidence of a discharge of untreated pollutants into the West Fork of the Little Sioux River. The above-facts indicate a violation of this provision.

V. ORDER

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

1. Terrafact shall pay a penalty of \$2,500.00. This penalty payment was received by the DNR on November 4, 2008.

V. PENALTY

Terrafact neither admits nor denies the Penalty and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the 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 of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Terrafact saved time and money by not constructing adequate solids settling or runoff control structures to protect the water quality in the West Fork of the Little Sioux River. Terrafact has further saved time and money by not having to land apply the portion of manure that was discharged to the West Fork of the Little Sioux River. A significant amount of time was also saved by not properly managing the manure at this facility. Terrafact has since constructed solids settling structures; any economic benefit has since been mitigated. Therefore, no economic benefit is being 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. Allowing manure to discharge to a water of the state is a water quality violation and can cause serious harm to the aquatic life therein. It is likely that the discharge would have resulted in a fish

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TERRAFACT, INC.

kill if it had occurred during lower flow conditions. Moreover, failure to install and properly maintain manure control at an open feedlot threatens the integrity of the regulatory program. Based on the above considerations, \$1,200.00 is assessed for this factor.

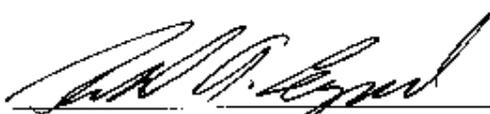
Culpability – Terrafact has a duty to remain knowledgeable of the DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Proper handling of manure and installation of adequate control structures could have prevented this discharge of manure to a water of the state. The manager of the facility, Mr. Ahrenstorff, was repeatedly instructed over the last three years to install proper solid settling structures. Based on the above considerations, \$1,300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Terrafact. For that reason Terrafact 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 455.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 21 day of
August, 2009.



AUTHORIZED AGENT
Terrafact, Inc.

Dated this 11 day of
August, 2009.

Facility # 64644;Kelli Book; Sheila Kunny; Gene Tinker. EPA; VIII.D.1.b