

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

|  |  |
|--|--|
| <p>IN THE MATTER OF:</p> <p><b>RICHARD BOCKENSTEDT</b></p> <p><b>Delaware County, Iowa</b></p> | <p style="text-align:center">ADMINISTRATIVE CONSENT ORDER<br/>NO. 2009-AFO- //</p> |
|--|--|

TO: Richard Bockenstedt  
1623 State Highway 38  
Greeley, Iowa 52050

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Richard Bockenstedt for the purpose of resolving violations resulting from the manure runoff that caused a fish kill in Fountain Springs Creek. 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:**  
Doug Hawker, Field Office 1  
Iowa Department of Natural Resources  
909 West Main, Suite 4  
Manchester, Iowa 52057  
Phone: 563/927-2640

**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, Iowa Code chapter 459A or Iowa Code 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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICHARD BOCKENSTEDT

**III. STATEMENT OF FACTS**

1. Richard Bockenstedt owns and operates several open cattle feedlots in rural Delaware County near Greeley, Iowa.

2. On Sunday, September 14, 2008, Doug Hawker, senior environmental specialist for DNR Field Office 1, was notified by Dave Marloff, the Manchester Trout Hatchery manager, of a fish kill in Fountain Springs Creek within Fountain Springs Park located northeast of Greeley. Mr. Marloff stated that an angler had observed numerous dead trout in the park area. Mr. Marloff also contacted Dan Kirby with DNR Fisheries. The three gentlemen met at the Manchester Trout Hatchery and then Mr. Hawker and Mr. Kirby proceeded to the park. On the way to the park, Mr. Hawker observed several bridges upstream of the park. The stream appeared clean and clear, with no indications of an ongoing discharge of manure into the stream. No dead fish were observed at any of the bridges upstream.

3. Once at the park, Mr. Hawker conducted field tests of the stream adjacent to the gate at the park entrance. The field tests indicated a slight presence of ammonia and dissolved oxygen levels of at least 8.0 ppm. The water was clean and clear. Mr. Hawker walked downstream and noted numerous dead trout of varying sizes. The field tests indicated minimal ammonia and high levels of dissolved oxygen. Mr. Hawker and Mr. Kirby concluded that the fish kill had likely occurred a few days earlier and was likely caused by a slug of manure or ammonia based fertilizer discharged into the creek. Mr. Kirby proceeded downstream to determine how far downstream the fish kill had continued. Mr. Hawker worked upstream in an effort to determine the source of the contaminants.

4. Mr. Hawker worked his way west along Oak Road. He noted that the southern tributary coming from Fountain Mill Spring was clear with no ammonia detectable. The tributary coming from the west showed a slight indication of ammonia. Mr. Hawker observed a vegetation-free farm field located immediately to the southeast of an intersection of Oak Road and 238<sup>th</sup> Avenue. The owner of the farm field was later determined to be Mr. Bockenstedt. Mr. Hawker noted that a large amount of cattle manure had been recently surface applied throughout the field. The field was wet due to the recent precipitation events. As Mr. Hawker walked through the field he noted that the precipitation had flushed the ammonia laden water from the field into Fountain Springs Creek through a low spot at the southeast corner of the field. The field tests from several locations in the field where water had pooled indicated high levels of ammonia. Mr. Hawker then proceeded upstream of the discharge to the bridge at 238<sup>th</sup> Avenue. The stream at this location was clear and clean and there were no detectable levels of ammonia. Mr. Hawker then walked to the point in the stream where the field runoff was entering the stream. There was a slow flow of manure contaminated water entering into the stream. The laboratory results indicated a high ammonia concentration of 680 mg/L and a high total suspended solids concentration of 173 mg/L.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICHARD BOCKENSTEDT

5. On September 15, 2008, Mr. Hawker and Tom McCarthy, senior environmental specialist with DNR Field Office 1, met with Mr. Bockenstedt. The field office staff explained that a fish kill had occurred and that it had been caused by the discharge from the farm field. It was explained that the recent precipitation had washed manure out of the southeast corner of the farm field. Mr. Bockenstedt stated he had been land applying manure on the field and thought the buffer strip would prevent the manure from entering the stream. The field office staff asked Mr. Bockenstedt to construct a berm to prevent continued surface water flow; which he did immediately.

6. On October 2, 2008, DNR issued a Notice of Violation letter to Mr. Bockenstedt for the water quality violations discovered on September 14, 2008. The letter required a plan of action to be submitted to DNR Field Office 1 that would detail the short term and long term practices that will be implemented to prevent a pollution runoff event in the future.

7. The fish kill evaluation by DNR Fisheries staff concluded that 55 fish valued at \$735.54 were killed. The costs of performing this assessment were \$441.49. The total fish kill assessment totals \$1,177.03.

8. On June 19, 2003, Mr. Bockenstedt was issued Administrative Order No. 2003-AFO-40 for a manure discharge that caused a fish kill in Fountain Springs Creek. A penalty of \$2,000.00 was assessed as well as \$2,827.79 in fish restitution.

#### IV. CONCLUSIONS OF LAW

1. 567 IAC 61.3(2) states that general water quality criteria are applicable to all surface waters of the state. Paragraph "d" states that such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. The manure runoff from Mr. Bockenstedt's farm field caused a fish kill in Fountain Springs Creek. The above-mentioned facts indicate a violation of this provision.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Manure runoff entered Fountain Springs Creek. The above-facts indicate a violation of this provision.

3. 567 IAC 65.103(4)(b) provides that if DNR determines that settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonable be expected to cause pollution of a water of the state, the open feedlot operation shall institute necessary remedial actions within a time specified by the DNR to eliminate the conditions warranting the determination, if the operation receives the written notification from the DNR of the need to correct the conditions. The DNR further

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICHARD BOCKENSTEDT

concludes that one or more of the above-described conditions existed and Mr. Bockenstedt is hereby notified that it must conduct remedial actions as specified in Section V (1) below.

4. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure runoff at Mr. Bockenstedt's farm field.

**V. ORDER**

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

- 1: Mr. Bockenstedt shall develop a Nutrient Management Plan in accordance with 567 IAC 112(8) and (10). The plan shall include all animal feeding operations owned and/or managed by Mr. Bockenstedt; and
- 2: Mr. Bockenstedt shall pay an administrative penalty of \$3,000.00 and fish restitution in the amount of \$1,177.03 in accordance with the following payment schedule. The administrative penalty shall be paid first and the remaining payments shall be applied to the restitution:

|                                |                                   |
|--------------------------------|-----------------------------------|
| \$523.03 due May 1, 2009;      | \$522.00 due May 1, 2010;         |
| \$522.00 due August 1, 2009;   | \$522.00 due August 1, 2010;      |
| \$522.00 due November 1, 2009; | \$522.00 due November 1, 2010 and |
| \$522.00 due February 1, 2010; | \$522.00 due February 1, 2011.    |

If any of the said payments are not received by the due date, the remaining penalty and/or restitution shall be due immediately.

**VI. PENALTY**

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 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 this chapter, 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:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICHARD BOCKENSTEDT

Economic Benefit – Mr. Bockenstedt appears to have received little, if any, economic benefit from the violations noted in this administrative consent order. Therefore, no economic benefit is being assessed.

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. Manure runoff from Mr. Bockenstedt's farm field reached the creek and caused a fish kill in the creek. The water quality violations threaten the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Bockenstedt has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Bockenstedt has been issued a previous administrative order for a manure discharge that led to a fish kill. Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

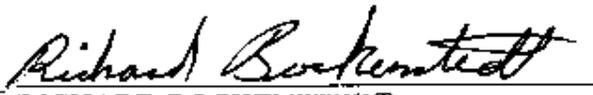
This administrative consent order is entered into knowingly and with the consent of Mr. Bockenstedt. For that reason Mr. Bockenstedt waives his rights to appeal this administrative consent order or any part thereof.

**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 9 day of  
April, 2009.

  
\_\_\_\_\_  
RICHARD BOCKENSTEDT

Dated this 1 day of  
April, 2009.

Kelli Book, Doug Hawker (Field Office 1), EPA, J.C.1 and VIII.D.3.a