

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

<p>IN THE MATTER OF:</p> <p>ROBERT FANGMANN</p> <p>Dubuque County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2009-AFO- 16</p>
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TO: Robert Fangmann
30624 Wentz Road
Dyersville, Iowa 52040

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Robert Fangmann for the purpose of resolving the issues surrounding a prohibited discharge into the North Fork Maquoketa River that resulted in a fish kill. 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:

Iowa Department of Natural Resources
Henry A. Wallace 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, Iowa Code Chapter 459, and 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.

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III. STATEMENT OF FACTS

1. Robert Fangmann owns and operates an animal feeding operation located at 30624 Wentz Road; Dyersville, Iowa (NE ¼ of the SE ¼ of Section 8, New Wine Township, Dubuque County). The swine and cattle operation is a combination of confinement buildings and open lots with a total animal unit capacity of 496.

2. On September 15, 2008, DNR Field Office 1 received a report of a fish kill in the North Fork Maquoketa River near Luxemburg, Iowa. Doug Hawker and Tom McCarthy, environmental specialist seniors DNR Field Office 1, responded to the report. They noted dead fish at several locations along the North Fork Maquoketa River both above and below the Highway 52 bridge. At this point, Mr. Hawker and Mr. McCarthy contacted DNR Fisheries to further investigate the fish kill. DNR Fisheries personnel began its investigation and on the way to the Luxemburg area, DNR Fisheries personnel observed dead fish from the middle of town in New Vienna downstream through New Wine County Park. The field office personnel met with the Fisheries personnel at the park. The field tests from this location indicated high levels of ammonia. Mr. Hawker and Mr. McCarthy checked the river from the New Vienna Road bridge located northeast of New Vienna and did not observe any dead fish. The ammonia level at this area was lower than those detected in New Vienna and in the park.

3. On September 16, 2008, Mr. Hawker returned to the New Vienna area and met again with DNR Fisheries personnel. They met at the New Vienna Road bridge and did not observe any dead fish and there was no detection of ammonia at this location. Dead fish were observed at the northeast edge of New Vienna as the group drove to the bridge. The DNR Fisheries personnel proceeded upstream to locations closer to Luxemburg to complete the fish count. Mr. Hawker began to stop at several farms in the New Vienna area to determine the source of the fish kill. Mr. Hawker noted a portion a tributary to the North Fork Maquoketa River beneath Wentz Road that appeared dark of color and contained a considerable amount of manure. The field test indicated ammonia levels greater than 3.0 ppm. After checking many farms and not noting a source of the manure release, Mr. Hawker arrived at Mr. Fangmann's farm. Mr. Hawker noted that a manure flow from the open lots and a recent discharge from the confinement buildings were the source of manure flowing downhill to a culvert beneath the driveway and then into a ravine leading to the portion of the unnamed tributary of the North Fork Maquoketa River that Mr. Hawker had just visited. Mr. Hawker collected laboratory samples upstream, downstream, and at the discharge point. The laboratory sample results for ammonia were as follows: upstream – 0.32 mg/L, downstream – 0.52 mg/L, and discharge point – 30 mg/L. Mr. Hawker attempted to contact Mr. Fangmann, but was unable to contact him.

4. On September 17, 2008, Mr. Hawker and Mr. McCarthy returned to Mr. Fangmann's facility to discuss the manure discharge from his facility. They noted manure runoff in low spots at the facility from the open lots and the confinement building. They also noted the area where the manure runoff entered the culvert and ultimately to the North Fork Maquoketa River. Mr. Fangmann stated that the manure spill from the confinement

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buildings had occurred recently when a line plugged. Mr. Hawker and Mr. McCarthy explained the seriousness of the situation and that further enforcement would follow. They also requested that Mr. Fangmann take immediate steps to block the culvert to stop the flow of manure. Additionally, it was recommended that Mr. Fangmann contact his local NRCS office for assistance in developing a plan for correcting the manure runoff situation at the facility.

5. On October 9, 2008, DNR issued a Notice of Violation letter to Mr. Fangmann for the water quality and animal feeding operation violations discovered during the September 2008 investigation.

6. On December 22, 2008, DNR Field Office 1 received a letter from Mr. Fangmann stating that he had removed the calves from the facility and no longer had any animals in the outside lots. He also stated that he will be getting out of the swine business.

7. The fish kill evaluation by DNR Fisheries concluded that 9,431 fish valued at \$4,134.08 were killed. The cost of performing this assessment was \$669.88. The complete fish kill assessment totals \$4,803.96.

IV. CONCLUSIONS OF LAW

1. 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. DNR Field Office 1 noted that manure from Mr. Fangmann's facility entered the North Fork Maquoketa River. The above-facts indicate a violation of this provision.

2. 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 1 observed a portion of the North Fork Maquoketa River was dark brown in color with manure in it. The laboratory results indicated an elevated level of ammonia in the tributary, and DNR Fisheries documented a fish kill. The above-facts disclose a violation of one or more of these criteria.

3. 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.

4. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to a water of the state. Mr. Fangmann failed to properly retain manure between periods of land application and manure from the

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confinement building was discharged to the North Fork Maquoketa River. The above-mentioned facts indicate a violation of this provision.

5. 567 IAC 65.2(9) states that a person storing, handling, transporting or land applying manure from an animal feeding operation who becomes aware of a release shall notify DNR of the occurrence or release as soon as possible but not later than six hours after onset or discovery of the release. Mr. Fangmann was aware of the manure release from his confinement building but did not notify the DNR. The above-mentioned facts indicate a violation of this provision.

6. Iowa Code 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 1 observed manure from Mr. Fangmann's facility in the North Fork Maquoketa River. The above-facts disclose a violation of this provision.

7. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the 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 13. 571 IAC 13 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 discharge at Mr. Fangmann's facility.

V. ORDER

THEREFORE, it is hereby ordered and Robert Fangmann agrees to do the following:

1. Robert Fangmann shall submit a written long term plan to DNR Field Office 1 for approval within 30 days of the date the Director signs this administrative consent order. The plan shall outline the steps Mr. Fangmann has taken and will continue to take in order to prevent future manure releases;
2. Robert Fangmann shall pay restitution in the amount of \$4,803.96 within 30 days of the date the Director signs this administrative consent; and
3. Robert Fangmann shall pay a penalty of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 455B.191, 459.603, and 459A.502 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 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 \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Robert Fangmann has saved time and money by failing to properly contain the manure at his facility. Therefore, \$500.00 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. DNR Field Office 1 observed a discolored tributary and laboratory samples indicated elevated levels of ammonia. The discharge from Mr. Fangmann's facility resulted in a fish kill. Additionally, Mr. Fangmann failed to notify the DNR of the manure release and did not take immediate actions to stop the discharge. This prohibited the DNR from being able to quickly respond to the release and may have led to further environmental harm. Based on the above considerations, \$2,500.00 is assessed for this factor.

Culpability – Mr. Fangmann 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. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Robert Fangmann. For that reason, Robert Fangmann waives the right 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 sections 455B.191 and 459A.501.

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RICHARD A. LEOPOLD
Iowa Department of Natural Resources

Dated this 1 day of
May, 2009.



ROBERT FANGMANN

Dated this 23 day of
APRIL, 2009.

#No Facility Number; Kelli Book; Field Office 1; Gene Tinker; EPA; VIII.D.1, VIII.D.3.a

RECEIVED
APR 24 2009