

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO-40
KLINT SAMMONS	
WAPELLO COUNTY, IOWA	

TO: Klint Sammons
17230 185th St.
Fremont, IA 52561-9706

I. SUMMARY

In the interest of avoiding litigation, the parties have agreed to the provisions set forth below. This Administrative Consent Order (Order) is entered into between Klint Sammons and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations set forth herein. In the interest of avoiding litigation, Klint Sammons and the Department agree to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Jim Sievers
IDNR Field Office #6
1023 W. Madison
Washington, IA 52353-1623
Ph: (319) 653-2135

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark

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II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue an order addressing any violation of Iowa Code chapter 459, subchapter III, Iowa Code chapter 459A, and the rules adopted or permits issued pursuant thereto, and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Klint Sammons owns and operates a swine open feedlot operation located in the SW¼ of Section 7, T73N, R14W (Richland Township), Wapello County, Iowa. The operation has a capacity of approximately 200 head.

2. On February 9, 2009, Department Field Office #6 (FO6) staff investigated complaints that manure had been applied to the north road ditch adjacent to 170th Street in the SW¼ of Section 7, Richland Township, Wapello County. FO6 staff observed that a strip of manure approximately 15 feet wide and 1,500 feet long had been applied to the road ditch adjacent to and north of 170th Street which is an east/west road at this location. Several utility poles along the road were thickly coated with manure solids. The manure was applied near the headwaters of a large ravine which begins at the road ditch and continues northerly from and perpendicular to 170th Street.

3. When FO6 staff contacted Mr. Sammons via telephone on February 10, 2009, he stated that he applied the manure to the road ditch because his farm fields were too muddy and he didn't have another place to apply the manure.

IV. CONCLUSIONS OF LAW

1. Iowa Code §459A.410 and 567 IAC 65.101(6)"a" require that open feedlot effluent be land applied in a manner which will not cause surface or groundwater pollution. The foregoing facts establish that these provisions were violated.

2. Iowa Code §459.314(2) and 567 IAC 65.101(6)"b" prohibit land application of manure within 200 feet of a "designated area" which includes a "water source." The large ravine referenced above is a "water source" as that term is defined in Iowa Code §§459A.102(27) and 459.102(49). The foregoing facts establish that these provisions were violated.

3. 567 IAC 65.103(4) provides that the Department may evaluate any animal-feeding operation to determine if open feedlot effluent from the operation: is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control; is causing or may reasonably be expected to cause pollution of a water of the state; or is causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist the operation is required, upon notification from the Department, to institute necessary remedial actions to eliminate the conditions. The Department concludes that

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one or more of the above-described conditions may reasonably be expected to occur at this facility and Klint Sammons is hereby notified that he must perform remedial measures as specified in section V.1., below.

V. ORDER

THEREFORE, the Department hereby orders and Klint Sammons consents to do the following:

1. Comply with all requirements pertaining to the land application of open feedlot effluent, including separation distances, and apply manure to crop fields at proper agronomic rates as described in Iowa Code §459A.208(7) and 567 IAC 65.112(8)"a"(2).
2. Pay an administrative penalty of \$2,500.00 to the Department within 30 days after the date the Director signs this Order.

VI. PENALTY

1. Iowa Code §455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code §455B.109 authorizes the Environment 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; 567 IAC chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an administrative Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Assuming it was necessary to remove the open feedlot effluent from his operation, Mr. Sammons saved the costs associated with handling the open feedlot effluent in an alternative manner. While the Department does not have specific information in this regard it is conservatively estimated that \$500.00 was saved. Therefore, this amount is assessed for this factor.

b. 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 Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The proximity of the manure application to a water source threatened harm to the environment. Multiple rule and statutory provisions were violated: separation distance for land application of manure and improper land application of manure. For these reasons, \$500.00 is assessed for this factor for each of the two above-cited violations. Therefore, \$1,000.00 is assessed for this factor.

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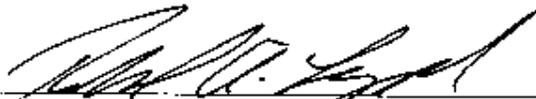
c. Culpability. Mr. Sammons intentionally applied manure to the road ditch. However, due to the size of his operation and the relative lack of regulatory involvement with the Department it is not clear that Mr. Sammons understood the threat posed by his actions. For these reasons, \$500.00 is assessed for this factor for each of the two above-cited violations. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code §455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Klint Sammons. By signature to this Order, all rights to appeal this Order are waived by Klint Sammons.

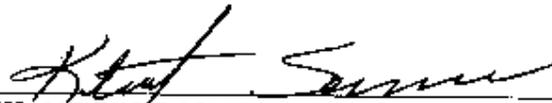
VIII. NONCOMPLIANCE

Failure to comply with this Order 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 §§455B.191 and 459A.502. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of
Oct., 2009.



KLINT SAMMONS

Dated this 10th day of
October, 2009.

Field Office 6; Randy Clark; Ken Hesseniuss; Gene Tinker; EPA;VIII. D.1.b