

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Muller Livestock, L.C. & Jon Kelly
Muller
Cass County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW- 32**

TO: James L. Pray Esq.
666 Grand Avenue
Suite 2000 Ruan Center
Des Moines, IA 50309

I. SUMMARY

This administrative consent order (order) is entered into between Muller Livestock, L.C., and Jon Kelly Muller (collectively referred to as Muller Livestock) and the Iowa Department of Natural Resources (Department). Muller Livestock hereby agrees to cease all illegal discharges to waters of the state and to pay a penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Thad Nanfito
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, IA 50022
712/243-1934

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

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

2009-11-18 10:58 AM

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II. JURISDICTION

The parties hereby agree that this 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 I, and the rules promulgated 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.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Muller Livestock and Jon Kelly Muller own and or operate a livestock transport company located at Section 28 T 74 N, R 36, Noble Township, Cass County, Iowa.¹ At this location the trucks used to transport livestock are washed.

2. On March 18, 2009, the Department received a complaint alleging dead and stressed fish were observed near an abandoned bridge on Spruce Avenue approximately 1 ½ miles northwest of Grant, Iowa. The complainant also alleged that the creek had a sheen, foam was visible and a strong manure odor was present. At approximately 9:15 am Keith Wilken and Thad Nanfito, Environmental Specialists with the Department, arrived at the abandoned bridge (Site #1). Once on site, they observed foam in the water, that the creek was visibly turbid, and detected a manure odor.

Throughout the day Department environmental specialists performed field tests, collected laboratory samples, and took photographs at the following sites:

- Site #1:** Rose Creek Spruce Ave. Bridge (downstream from point of discharge).
- Site #2:** Rose Creek Yankton Bridge (downstream from point of discharge).
- Site #3:** 7 Mile Creek (downstream from point of discharge).
- Site #4:** Rose Creek Bridge (upstream from point of discharge).
- Site #5:** Muller wastewater storage basin

¹ The deed to this land is held by Jon Kelly Muller.

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The following table summarizes results of field tests taken during the March 18, 2009, investigation.

Location	Ammonia (ppm)	Dissolved Oxygen (ppm)	Temperature (Degrees C)	pH
Site #1 (9:15 am visit)	30	Not Taken	46	7.9
Site # 1 (12:05 pm visit)	6-7	8-10	47	Not Taken
Site #2	1-2	6-8	43	7.6
Site #3	3-4	6-8	51	8
Site #4	Non detected	6-8	46	8.1

3. The following table summarizes the laboratory samples taken during the March 18, 2009, investigation. The samples tested for the following pollutants: ammonia Nitrogen as N, fecal coliform, E. coli, total suspended solids (TSS), motor oil and total extractable hydrocarbons (TEH) testing was performed by the University of Iowa Hygienic Laboratory (UHL).

Location	N (mg/L)	Fecal Coliform (Col/100mL)	E. Coli (Col/100 mL)	TSS (mg/L)	Motor Oil (ug/L)	TEH (ug/L)
Site #1 (9:43 am sample time)	29	30,000	28,000	230	Not Tested	Not Tested
Site # 1 (12:23 pm sample time)	Not Tested	Not Tested	Not Tested	Not Tested	720	720
Site #2	1.1	260	430	110	Not Tested	Not Tested
Site #3	2.4	3,100	2,000	650	Not Tested	Not Tested
Site #4	0.32	20	10	120	Not Tested	Not Tested

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Site # 5	Not Tested	Not Tested	260,000	Not Tested	39,000	39,000
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4. After taking a field sample at the location of Site # 4, Department environmental specialists determined that the discharge entered Rose Creek in approximately a one mile radius between Site # 2 and Site #4. Muller Livestock is located within that area. Therefore, Department staff went to Muller Livestock to investigate. Once on site they observed a wastewater storage basin which had been recently emptied. Department staff estimated that the basin was approximately 60 feet across and it had contained approximately 5 feet of wastewater. Therefore, approximately 105,000 gallons of wastewater was discharged. The basin contains a discharge pipe which emptied to a ditch, where a pipe and a hose were observed near the outlet. Department staff observed a discharge path from the basin (via the discharge pipe) to a nearby ditch which flows directly to Rose Creek.

Following the above observations, Mr. Segler and Mr. Robinson, employees of Muller Livestock, were interviewed. They stated that they were instructed by Mr. Kent Muller to drain the basin. Specifically, Mr. Segler was instructed to unplug the discharge pipe. He inserted the small pvc pipe into the discharge pipe and a hose was attached to free obstructions and therefore, allow the release of the manure laden wastewater. He stated that the discharge occurred between 3:00-4:00 pm March 17, 2009.

5. The test results and on-site observations indicate that the wastewater released from Muller Livestock's wastewater basin was highly contaminated with cattle manure, motor oil and TEH. Bryan Hayes and Chris Larson, of the Department's Fisheries Bureau, concluded that a total of 1,230 fish were killed, valued at \$110.70 (plus investigation costs of \$178.30).

6. On May 1, 2009, a Notice of Violation letter and Report of Investigation was sent to Muller Livestock for the violations associated with the fish kill. The letter also informed Muller Livestock that these violations were being referred for further enforcement.

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V. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Because no such permit has been issued for this facility, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts show noncompliance with this provision.

3. 567 IAC 64.2(1) states

[n]o person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director[.]

The above stated facts show noncompliance with this provision.

3. 567 IAC 61.3(2) "b", "c" and "e" set out criteria to be met in all surface waters in Iowa:

b. [s]uch waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance.

c. [s]uch waters shall be free from materials attributable to wastewater discharges ... producing objectionable color, odor or other aesthetically objectionable conditions.

...

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e. [s]uch waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate that Muller Livestock violated these general water quality criteria.

4. 567 IAC 131.2 requires the following:

Any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department at (515)281-8694 and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A sheriff or police chief who has been notified of a hazardous condition shall immediately notify the department. Reports made pursuant to this rule shall be confirmed in writing as provided in 131.2(2).

Muller Livestock failed to notify the Department of the release that is the subject of this order. Therefore, the above stated facts show noncompliance with this provision.

5. Iowa Code subsection 481A.151(1) provides a person who is liable for polluting a water of the State in violation of state law is also liable to pay restitution to the Department for injury to a wild animal by the pollution. The amount of the restitution shall also include the Department's administrative costs for investigating the incident.

V. ORDER

THEREFORE, the Department orders and Muller Livestock agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

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1. Muller Livestock shall cease all illegal discharges;
2. Muller Livestock shall immediately cease the use of the wastewater storage basin and not resume use until the permits in paragraph 3 are obtained;
3. Muller Livestock shall obtain a construction permit and a National Pollutant Discharge Elimination System permit for its wastewater storage basin in accordance with 567 IAC 62.1 and 64.2;
4. Muller Livestock shall pay a penalty of \$10,000.00 in accordance with the following schedule:
 - \$3333.33 due 30 days after the date the Director signs this order;
 - \$3333.33 due on October 1, 2010; and
 - \$3333.34 due on October 1, 2011;

If any of the above payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.

5. Muller Livestock shall pay fish restitution of \$289.00 within 30 days of the date the Director signs this order.

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 the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that 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 Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** Muller Livestock saved time and money by failing to obtain the proper permits and by failing to properly dispose of its wastewater. To properly dispose of wastewater a land application permit is required and the wastewater basin would have been emptied approximately 3 times in the last 15 years. Muller Livestock's wastewater basin holds approximately 105,000

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gallons of wastewater and it cost approximately 1.5 cents per gall to land apply the wastewater. Therefore, the estimated economic benefit of failure to properly dispose of the wastewater is \$4725.00. Nevertheless, the Department has decided to handle this matter administratively therefore, \$1,000.00 is assessed for this factor.

3. **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. Actual harm to the environment was documented by water quality analysis, and by visual observation of impact to waters of the State, including dead fish. In addition, Iowa law was violated: unauthorized discharge to waters of the State. And violation of water quality standards. For these reasons, \$5,000.00 is assessed for this factor.

4. **Culpability:** Muller Livestock has a duty to comply with the laws that regulate its business operations. The company failed to identify numerous environmental laws that were applicable to this facility. Moreover, Muller Livestock purposefully released pollutants to waters of the State. Therefore, \$4,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

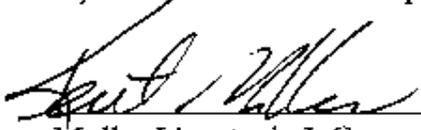
Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Muller Livestock. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties

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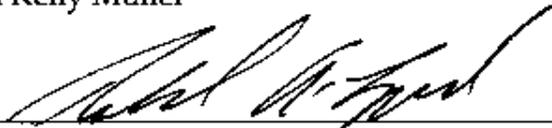
pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


Muller Livestock, L.C.

Dated this 29 day of
OCT., 2009.


Jon Kelly Muller

Dated this 29 day of
Oct., 2009.


RICHARD A LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9 day of
Nov., 2009.

Muller Livestock, L.C., Field Office 4, Carrie Schoenebaum; Thad Nanfito, I.C.1., & I.C.6.a.