

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

IN THE MATTER OF:

**FARMERS CO-OPERATIVE SOCIETY,  
SIOUX CENTER, IOWA  
Facility #60404**

**Sioux County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2009-AFO- 51

IO: Kenneth Ehrp, Registered Agent  
Farmers Co-Operative Society  
317 3<sup>rd</sup> Street, N.W.  
Sioux Center, Iowa 51250

Garret Englin, Manager  
Farmers Co-Operative Society  
2818 390<sup>th</sup> Street  
Sioux Center, Iowa 51250

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Farmers Co-Operative Society, Sioux Center, Iowa (Farmers Co-Operative) for the purpose of resolving violations of the facility's National Pollutant Discharge Elimination System (NPDES) permit and of a Consent Order, Judgment and Decree (Consent Order) dated December 11, 2006. 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:**

Jennifer Christian, Field Office 3  
Iowa Department of Natural Resources  
1900 Grand Avenue  
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

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; 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.

**III. STATEMENT OF FACTS**

1. Farmers Co-Operative is a 14,000 head beef cattle open feedlot located in the SW ¼ of Section 36, Plato Township, Sioux County. The feedlot utilizes a settled open feedlot effluent basin.

2. On May 16, 2006, NPDES Permit No 2-84-00-0-12 was issued to the facility. Section VI, Paragraph A of the permit requires that all monitoring results shall be reported to the DNR on a quarterly basis. The quarterly reports shall cover the periods January through March, April through June, July through September and October through December. The quarterly report for each period shall be submitted by the 10<sup>th</sup> day of the month following the quarter being reported. Section VI, Paragraph B of the permit requires that the facility must submit a federally mandated yearly report by January 10 of the following year to the DNR.

3. On December 11, 2006, Farmers Co-Operative entered into a Consent Order with the State of Iowa to resolve manure discharge violations that occurred in September 2005 and January 2006 as well as improper land application in February 2006. In the Consent Order Farmers Co-Operative was permanently enjoined from further violations of Iowa Code sections 455B.186, 459.311(1), and 459.314(2); 567 IAC 61.3(2), 65.2(3), 65.101(6), 65.101(9); Administrative Order No 98-AFO-21/98-HC-07; and NPDES Permit No. 2-84-00-0-12. The Consent Order also included a \$40,000.00 civil penalty.

4. The 2008 yearly report for the facility was due on January 10, 2009. Farmers Co-Operative failed to submit the yearly report by January 10, 2009. On January 26, 2009, DNR Field Office 3 issued a Notice of Violation letter to Farmers Co-Operative for failing to submit the 2008 annual report. The 2008 annual report was submitted February 3, 2009.

5. The second quarter monitoring results for the facility were due July 10, 2009. Farmers Co-Operative failed to submit the second quarter monitoring results by July 10, 2009. On July 31, 2009, DNR Field Office 3 issued a Notice of Violation letter to Farmers Co-Operative for failing to submit the second quarter monitoring results. The letter informed the facility the matter was being referred for further enforcement.

6. On August 3, 2009, DNR Field Office 3 received the second quarter monitoring results via facsimile from Farmers Co-Operative. On August 3, 2009, the facility manager contacted DNR Field Office 3 and stated he had faxed the second quarter monitoring results on July 6, 2009. DNR Field Office 3 did not receive the facsimile and Farmers Co-Operative did not have a facsimile receipt to provide to the DNR.

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7. Farmers Co-Operative has a past history of violations. In addition to the 2006 Consent Order, Farmers Co-Operation was issued a Notice of Violation letter on January 23, 2007 for violations resulting from a manure spill at the facility. On December 9, 1998, Administrative Order No. 98-AFO-21/98-HC-07 was issued to Farmers Co-Operative for manure discharge and water quality violations, including a fish kill. The order included a \$2,000.00 administrative penalty and fish restitution in the amount of \$1,398.32.

**IV. CONCLUSIONS OF LAW**

1. 567 IAC 65.104(9)"e" states that a facility with an NPDES permit must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The Consent Order entered into on December 11, 2006 required Farmers Co-Operative to comply with the facility's NPDES permit. Farmers Co-Operative's NPDES permit required that all monitoring results shall be reported to the DNR on a quarterly basis. The quarterly reports shall cover the periods January through March, April through June, July through September and October through December. The quarterly report for each period shall be submitted by the 10<sup>th</sup> day of the month following the quarter being reported. Farmers Co-Operative failed to submit the second quarter report to DNR Field Office 3 by July 10, 2009. The above-facts indicate a violation of this provision, the Consent Order, and the facility's NPDES permit.

2. 567 IAC 65.104(9)"f" states the facility with an NPDES permit must submit an annual report to the DNR by January 10 of the following year. The Consent Order entered into on December 11, 2006 required Farmers Co-Operative to comply with the facility's NPDES permit. Farmers Co-Operative's NPDES permit required that the facility submit a federally mandated yearly report by January 10 of the following year to the DNR. Farmers Co-Operative failed to submit the 2008 annual report to DNR Field Office 3 by January 10, 2009. The above-facts indicate a violation of this provision, the Consent Order, and the facility's NPDES permit.

**V. ORDER**

THEREFORE, the DNR orders and Farmers Co-Operative agrees to do the following:

- 1: Farmers Co-Operative shall pay an administrative penalty of \$3,000.00 within 30 days from the date the Directors signs this administrative consent 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 each of the water quality violations involved in this matter.

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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:

Economic Benefit – Farmers Co-Operative has gained an economic advantage by delaying the costs associated with the reporting requirements. The economic benefit is estimated to be at least \$100.00 and that amount is assessed for this factor.

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. The reporting dates were required by the regulations, the facility's NPDES permit, and the Consent Order. Failure to comply with the reporting requirements threatens the integrity of the animal feeding operation. Farmers Co-Operative violated the Consent Order by failing to file timely reports. Therefore, \$1,900.00 is assessed for this factor.

Culpability – Farmers Co-Operative has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Farmers Co-Operative was aware of the reporting requirements and has been repeatedly reminded of the requirements. Additionally, Farmers Co-Operative has a history of noncompliance with the environmental regulations it is subject to. Therefore, \$1,000.00 is assessed for this factor.

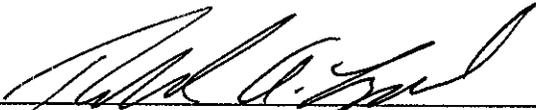
## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Farmers Co-Operative. For that reason Farmers Co-Operative waives the 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.

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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 22 day of  
Dec., 2009.

  
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JENNIFER CHRISTIAN, FIELD OFFICE 3  
FARMERS CO-OPERATIVE SOCIETY,  
SIOUX CENTER, IOWA

Dated this 11 day of  
December, 2009.

Facility # 60404; Kelli Book, Jennifer Christian (Field Office 3), EPA, VIII B.1