

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

IN THE MATTER OF:

DENVER DAIRY FARM, L.L.C.
Facility #60163

Bremer County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO-05

TO: William Shafer, Registered Agent
204 West State Street – PO Box 779
Williamsburg, Iowa 52361

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Denver Dairy Farm, L.L.C. (Denver Dairy) for the purpose of resolving environmental violations at the Denver Dairy facility. 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:

Sue Miller, Field Office 1
Iowa Department of Natural Resources
909 West Main Street, 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 459 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. Denver Dairy is located at 2233 270th Street, Denver, Iowa. Denver Dairy is owned by Jan Jelsma. The facility consists of a confinement operation consisting of two barns with the capacity of 700 cattle (980 animal units). This facility is considered a concentrated animal feeding operation by federal regulations. The barns have an east – west orientation on the top of a hill with an earthen manure storage basin located south of the barns. Manure is flushed from the west end of the barns and is carried to a sand settling lane just south of the barn and north of the earthen storage basin. The manure enters the sand settling lane on the west end and flows to the east. Sand settles out during this flow and is recovered for reuse. The recovered sand is piled on the hill between the south confinement barn and the settling lane so that any runoff from the recovered sand flows into the settling lane and thereby remains in the manure control system. The settling lane has a concrete floor and the walls are constructed of concrete blocks backed by soil. Liquid that has flowed the length of the settling lane to the east enters a pipe for transfer to the earthen storage structure.

2. On January 1, 2009, at 3:09 pm, Jeff Rottinghaus contacted DNR Field Office 1 to inform the DNR of a manure release from Denver Dairy. Mr. Rottinghaus prepares the facility's manure management plan and was contacted by a Denver Dairy employee earlier in the day on January 1, 2009. Mr. Rottinghaus stated that sometime during the night of December 31, 2008, an unknown amount of manure was released from a plugged line in the sand recycling system at the facility. He stated that when the employee arrived at Denver Dairy between 4:00 am and 5:00 am on January 1, 2009, manure was overflowing the sand lane. Mr. Rottinghaus was not aware of any impact on a waterway. DNR Field Office 1 informed Mr. Rottinghaus that field office personnel would visit the site the following day.

3. On January 2, 2009, Sue Miller, environmental specialist DNR Field Office 1, and Tom McCarthy, environmental specialist senior DNR Field Office 1, began the investigation at Denver Dairy. Ms. Miller and Mr. McCarthy met with Bo Ruzicka and Joel Rosas, facility personnel. Mr. Ruzicka took the field office personnel to the area that was impacted by the release. The dairy barn utilizes a sand bedding system and has an unformed manure storage structure. Water from the unformed manure storage structure is used to wash the sand bedding out of the barn. The water/sand mixture flows out of the barn into a sand lane where the sand collects and the water flows back through a line to the unformed manure storage structure. The sand lane must be cleaned out daily or the line that carries the water back to the structure becomes plugged. The field office personnel noted that it appeared the line had become plugged resulting in the overflow from the line across the ground and grassed waterway.

4. Ms. Miller and Mr. McCarthy travelled to Midway Avenue, approximately ¼ mile southwest of the facility. The culvert at this site contained manure and the field test indicated a high concentration of ammonia at this site. The laboratory test results indicated an ammonia concentration of 182 mg/L. The field office personnel discovered a tile in the grassed waterway that had likely broken and allowed manure to enter an unnamed tributary

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of Quarter Section Run, which flows into the Cedar River. Ms. Miller and Mr. McCarthy continued downstream and at several locations downstream field tests indicated high levels of ammonia. At the site north of East Marquis Road, the water in the stream was dark and smelled of manure. Laboratory test results at this location indicated an ammonia concentration of 42.2 mg/L.

5. The field office personnel contacted the facility personnel and instructed them to dam the water in the Midway Avenue culvert and to pump the manure from the stream as soon as possible. The facility personnel did dam the water with sand and the flow had almost been stopped by mid-day on January 2, 2009.

6. Ms. Miller contacted Mr. Jelsma and explained the situation. Mr. Jelsma confirmed that a tile line begins at the west side of the earthen storage structure and extends from the field south of 270th Street to Midway Avenue. Following this conversation, Ms. Miller returned to the facility and noted that a pumping company was on site and began pumping. The water was being pumped into a tank wagon and then hauled to an adjacent field for land application.

7. On January 3, 2009, Mr. Ruzicka contacted Ms. Miller by telephone and informed her that the creek had been pumped and the water was running clear as it entered the culvert. Mr. Ruzicka stated the cold temperatures were making it difficult to remove the manure on site. Mr. Ruzicka also stated that a broken tile line had been discovered that lead to the culvert at Midway Avenue.

8. On January 5, 2009, Ms. Miller returned to the facility and spoke to Mr. Ruzicka. The cold weather was preventing Denver Dairy from completely removing the manure from the site. Ms. Miller informed Mr. Ruzick to monitor the steam daily and to record the observations to ensure the manure was not entering the stream. The following day, Ms. Miller spoke to Mr. Jelsma on the telephone. Ms. Miller reminded Mr. Jelsma that the site would need to be cleaned up as weather permitted and the tile line would need to be repaired.

9. On January 12, 2009, Ms. Miller returned to Denver Dairy and noted that the ground remained frozen. The dam had washed out, but the water was running clear and field tests did not indicate the presence of ammonia.

10. On January 16, 2009, DNR issued a Notice of Violation letter to Denver Dairy for the water quality and animal feeding operation violations observed at the facility during the first two weeks of January 2009. The letter informed the facility that the matter was being referred for further enforcement.

11. On February 9, 2009, Ms. Miller returned to Denver Dairy and noted the stream was brown in color. The warmer weather had resulted in melting of the manure that remained frozen after the spill that occurred on December 31, 2008. Manure was being

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released as the ground thawed. Laboratory tests indicated ammonia levels of 23 mg/L at the culvert at Midway Avenue. Laboratory tests from the site indicated an ammonia level of 35 mg/L.

12. On February 16, 2009, Denver Dairy submitted a summary of the Iowa State University Extension Office's visit to the facility to evaluate the corrective measures to be taken to prevent future discharges. The extension office's follow up letter recommended the construction of an emergency spillway from the sand lane that was one foot deep. The letter also recommended that Denver Dairy should construct earth berms on both sides of the emergency spillway. The extension office stated that the existing earth berm on the east of the sand lane should be reshaped and raised. The extension office recommended a second berm, three feet high, be constructed west of the emergency spillway.

13. On February 19, 2009, DNR issued a Notice of Violation letter to Denver Dairy for the water quality violations discovered on February 9, 2009. The letter required Denver Dairy to do the following: (1) prepare and maintain an emergency action plan, (2) train employees on the proper response to a manure release, and (3) remove all tile lines within 50' of the toe of the slope of the earthen manure storage structure and the sand lane by May 1, 2009 and to submit the documentation to DNR Field Office 1 by May 15, 2009, that the tile had been removed.

14. On February 25, 2009, Gene Tinker, DNR Animal Feeding Operation Coordinator, and Ms. Miller returned to Denver Dairy to evaluate the actions needed at the facility to prevent future discharges. Mr. Tinker and Ms. Miller determined that the transfer pipe from the settling lane to the storage structure has become plugged in the past, causing the settling lane to overflow with a resultant manure discharge.

15. On March 7, 2009, DNR Field Office 1 received a complaint concerning the manure that remained at Denver Dairy. On March 9, 2009, Ms. Miller visited Denver Dairy to investigate the complaint. She met with Joel Rosas, herd manager for Denver Dairy. Ms. Miller noted that the recent rains had resulted in significant ponded water in the pasture west of the confinement lagoon next to a dammed up culvert. Manure stacks in the open lot were exposed to water running off the barn roof. The water was carrying manure off of the manure stacks into the pasture where it ran along the west edge of the pasture to the ponded water. Water was getting through a portion of the culvert. Ms. Miller collected laboratory samples where the manure runoff was leaving the open lot, at 270th Street, at Midway Avenue, at 275th Street, at E. Marquis Road, and at the culvert that crosses under US Highway 63. The laboratory test results at 270th Street, Midway Avenue, 275th Street, and E. Marquis Road indicated the presence of ammonia. Ms. Miller met with Mr. Rosas following the collection of the samples. Ms. Miller required Mr. Rosas to remove the manure from the open lot and to pump the ponded water from the pasture. As Ms. Miller was leaving, the employees were installing the pump. On March 10, 2009, Ms. Miller returned to the facility. Ms. Miller noted that there were no longer cattle in the open lot and the manure had been

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removed from the open lot. Mr. Rosas stated that cattle had been sold and that the manure was moved to the inside of the building

16. On March 17, 2009, DNR Field Office 1 received a complaint regarding the manure still in the pasture at Denver Dairy. Ms. Miller returned to Denver Dairy on March 20, 2009, to investigate the complaint. Ms. Miller observed that the pasture had dried out considerably. She noted that some manure remained in the northwest corner of the pasture and that although the culvert was still dammed up, some water was getting through to the grassed waterway. Ms. Miller met with Denver Dairy employees and told them to remove the manure from the pasture. Ms. Miller instructed the employees to begin to land apply the manure as soon as the field can be entered. Ms. Miller also required them to repair the dams downstream and to open up the culvert area.

17. On March 24, 2009, DNR issued a Notice of Violation letter to Denver Dairy for the water quality violations discovered during the March 2009 inspections. The letter requires the facility obtain a National Pollution Discharge Elimination Systems (NPDES) permit prior to any open lots animals being added to the facility. The letter also stated that the matter was being reviewed for further enforcement.

18. Although Denver Dairy does not have any previous enforcement history in the state of Iowa, a Michigan animal feeding operation owned and operated by Mr. Jelsma was cited seven times between February 2001 and November 2006 for water quality violations at the facility. In December 2003, a consent decree was entered into between Mr. Jelsma's facility and the National Wildlife Federation and Sierra Club for water quality violations at the facility.

IV. CONCLUSIONS OF LAW

1. 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.

2. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure 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. DNR Field Office 1 observed that manure from the Denver Dairy was released into a stream. The above mentioned facts indicate a violation of this provision.

3. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately

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treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. DNR Field Office 2 noted manure from the Denver Dairy facility was released into a stream. The above mentioned facts indicate a violation of this provision.

4. 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 noted that the manure release from the Denver Dairy had discolored the stream and the field and laboratory test results indicated elevated levels of ammonia in the stream. The laboratory results indicated ammonia concentrations that would be considered to be acutely toxic to aquatic life. The above mentioned facts indicate several violations of the general water quality criteria.

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. Denver Dairy employees were aware of the manure release at 4:00 am on January 1, 2009 and the DNR was not notified until 3:00 pm on January 1, 2009. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Denver Dairy agrees to do the following:

1. Denver Dairy shall remove all manure from the grassed waterway and pasture as soon as temperatures allow;
2. Denver Dairy shall monitor the stream for any future manure runoff from the impacted area until such time as all the manure has been removed;
3. Denver Dairy shall repair the broken tile line as soon as temperatures allow;
4. Denver Dairy must contain all manure in the manure storage structures until the manure is removed and land applied;
5. Denver Dairy shall remove all tile lines within 50' of the toe of the slope of the earthen manure storage structure and the sand land by May 1, 2009 and submit the documentation to DNR Field Office 1 by May 15, 2009, that the tile had been removed;
6. Denver Dairy shall follow the recommendations of the Iowa State University Extension Office referenced in Section III, Paragraph 12. The construction of the emergency spillway and berms shall be completed by May 1, 2009;

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7. Denver Dairy shall have a pump available at all times to remove manure from the emergency spillway and no manure storage shall be allowed in the emergency spillway;
8. Denver Dairy shall properly maintain the emergency spillway to ensure that it can function properly in the event of a manure release;
9. Denver Dairy shall apply for and obtain an NPDES permit for the facility if the capacity is increased or more animals are added to the facility at any time in the future; and
10. Denver Dairy shall pay an administrative penalty of \$8,000.00 in accordance with the following payment plan:

\$341.00 due January 15, 2010;	\$333.00 due January 15, 2011;
\$333.00 due February 15, 2010;	\$333.00 due February 15, 2011;
\$333.00 due March 15, 2010;	\$333.00 due March 15, 2011;
\$333.00 due April 15, 2010;	\$333.00 due April 15, 2011;
\$333.00 due May 15, 2010;	\$333.00 due May 15, 2011;
\$333.00 due June 15, 2010;	\$333.00 due June 15, 2011;
\$333.00 due July 15, 2010;	\$333.00 due July 15, 2011;
\$333.00 due August 15, 2010;	\$333.00 due August 15, 2011;
\$333.00 due September 15, 2010;	\$333.00 due September 15, 2011;
\$333.00 due October 15, 2010;	\$333.00 due October 15, 2011;
\$333.00 due November 15, 2010;	\$333.00 due November 15, 2011;
\$333.00 due December 15, 2010;	\$333.00 due December 15, 2011.

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 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 \$8,000.00. The administrative penalty is determined as follows:

Economic Benefit -- Denver Dairy has saved time and money by not properly maintaining the existing sand recycling system. Additionally, the facility has saved time and money by not having a plan in place to prevent spills from entering the tile line. Therefore, \$2,000.00 is being assessed for this factor.

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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. DNR Field Office 1 documented a manure discharge to the unnamed tributary of Quarter Section Run, which flows into the Cedar River, which caused water quality violations. The facility failed to properly maintain the sand recycling system, which led to an actual manure discharge. Additionally, the facility employees did not immediately inform 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. Denver Dairy's failure to properly contain the manure and its failure to immediately notify the DNR of the release threaten the integrity of the water quality and animal feeding operation programs. \$2,500.00 is assessed for the violations noted in Section IV, Paragraphs 2, 3, and 4 and \$1,000.00 is assessed for the violation noted in Section IV, Paragraph 5 for a total of \$3,500.00 assessed for this factor.

Culpability – Denver Dairy 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. Mr. Jelsma has knowledge of the water quality regulations from operating another facility previously in Michigan and has been previously cited for water quality violations at that facility. Therefore, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Denver Dairy. For that reason Denver Dairy waives its 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 5 day of
Feb., ~~2009~~
2010.



DENVER DAIRY FARM, L.L.C.

Dated this 24 day of
January, ~~2009~~
2010.

Facility #60163; Kelli Book, Sue Miller (DNR Field Office 1), EPA, VIII.D.1.a, VIII.D.3.a