

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

IN THE MATTER OF:

**OAK GROVE CATTLE, L.L.C.**  
**Facility #57030**

**Mitchell County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2010-AFO-07

TO: David Eastman, Registered Agent  
Oak Grove Cattle, L.L.C.  
3339 Highway 9  
Riceville, Iowa 50466

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Oak Grove Cattle, L.L.C. (Oak Grove) for the purpose of resolving violations resulting from manure discharges from the Oak Grove 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:**

Trent Lambert, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street, S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

**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 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

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section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties

**III. STATEMENT OF FACTS**

1. Oak Grove is a 600 head capacity cattle open feedlot located in Section 25, Jenkins Township, Mitchell County, Iowa. The facility also has cow-calf pairs pastured.

2. On May 8, 2009, DNR Field Office 2 received a complaint regarding manure run-off from the Oak Grove facility. The complainant stated that two of the complainant's private ponds were filling with cattle manure from the Oak Grove facility. The ponds discharge to the Wapsipinicon River.

3. On May 19, 2009, Trent Lambert, environmental specialist for DNR Field Office 2, investigated the complaint. Mr. Lambert visited the complainant's two ponds. The complainant was not available at the time of the inspection, but a person who helps the complainant and who was aware of the situation was present and accompanied Mr. Lambert on the inspection. While observing the ponds, Mr. Lambert learned that Oak Grove had installed a tile intake approximately two years prior. The tile intake was in one of the cattle lots and was trenched through the pasture. The tile outfall was immediately up-gradient of the complainant's property. The tile discharge flows under a fence into a culvert under the complainant's lane. The discharge from the culvert flows through a grassed channel and into the complainant's south pond. Mr. Lambert noted a significant amount of accumulated manure solids at the lower end of the grassed channel as it was about to enter the pond. Mr. Lambert noted that the water in the pond was exceptionally dark brown to almost black and appeared septic in nature. There appeared to be a tremendous amount of suspended solids in the pond and brown scum was present on the water surface along the edges of the pond. Both the water and the scum had a strong manure odor. The person who accompanied Mr. Lambert stated that the manure started to appear in the ponds approximately two years prior when the tile intake was installed. Mr. Lambert noted that the south pond discharged to the north to another pond. The water in the north pond was similar in color as the south pond and he noted the appearance of suspended solids and floating brown scum in the north pond. Mr. Lambert did not observe manure solids in the north pond. The water from the north pond eventually enters the nearby Wapsipinicon River. Mr. Lambert noted the water going in to the river was clear and did not observe manure solids.

4. Mr. Lambert then returned to the location of the Oak Grove tile outfall. At the time of the inspection solids were not being discharged, but there was a minute flow of clean water being discharged. Mr. Lambert observed the Oak Grove facility up-gradient and noted that the tile line had been installed through the pasture. The tile path led southwest to the Oak Grove feedlots. In one of the lots, Mr. Lambert observed a tile intake with road stone bermed up around it. Immediately up-gradient of the intake was a sizeable pile of manure and bedding scrapings from the Oak Grove facility. Mr. Lambert noted that during a rainfall

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or snowmelt event, the manure solids would enter the intake and the tile line would serve as a direct conduit to the complainant's ponds.

5. On May 21, 2009, Mr. Lambert and Michelle Johnson, environmental specialist with DNR Field Office 2, returned to the complainant's ponds to conduct water sampling. The water was in the same condition as it was on Mr. Lambert's previous visit and there was only clear water coming from the tile outfall. Ms. Johnson began at the tile outfall and worked down-gradient, while Mr. Lambert began at the river and worked up-gradient. The results of the samples collected by Mr. Lambert and Ms. Johnson are as follows:

Location	Ammonia Nitrogen (NH <sub>3</sub> -N) (mg/L)	Total Suspended Solids (TSS) (mg/L)
Oak Grove Tile Discharge	3.4	N/A
Above the South Pond	3.7	N/A
South Pond	92	220
North Pond Inlet	90	N/A
North Pond	90	220
Grassed Area down-gradient of North Pond	65	N/A
Old Tile Outlet down-gradient of North Pond	12	N/A
Wapsipinicon River	12	N/A

6. On May 27, 2009, Mr. Lambert returned to the site. There had been a rainfall event during the afternoon of May 26, 2009, overnight, and throughout the morning of May 27, 2009. Mr. Lambert observed a significant discharge of extremely turbid water from the tile outfall as well as a larger volume of over-land flow from the Oak Grove facility discharging onto the complainant's property. The two flows merged immediately before entering the culvert. Mr. Lambert took water samples and the results of the samples are as follows:

Location	NH <sub>3</sub> -N (mg/L)	TSS (mg/L)	Biochemical Oxygen Demand (BOD) (mg/L)
Oak Grove Tile Discharge	39	800	550
Oak Grove Pasture Discharge	26	640	N/A

7. Mr. Lambert proceeded to the Oak Grove facility and met with Dave Eastman, owner of Oak Grove. Mr. Lambert explained the purpose of the visit and Mr. Eastman showed Mr. Lambert the tile intake in the north feedlots. Mr. Lambert observed the tile as well as the manure and bedding stockpile up-gradient of the tile. Mr. Eastman explained that the tile had been installed to dry out the feedlot where the stockpile was located. He stated that he had been trying to remove the manure, but the weather had hampered that effort. At

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the time of the investigation, rainfall run-off was actively leaving the feedlots and entering the tile intake. Mr. Lambert also noted that leachate from the stockpile was running off the feedlots and entering the tile intake. Mr. Lambert explained that the complainant's ponds were considered waters of the State and that Mr. Eastman would need to plug or remove the tile to stop the discharge. Mr. Lambert explained that other requirements might be included as well as a monetary penalty. Mr. Lambert collected a sample from the tile intake. The results indicated a  $\text{NH}_3\text{-N}$  level of 88 mg/L, a TSS level of 1,700 mg/L and a BOD level of 840 mg/L.

8. On June 22, 2009, DNR Field Office 2 issued a Notice of Violation letter to Oak Grove for the prohibited discharge and water quality violations observed by Mr. Lambert throughout May 2009. The letter required that the discharge must be stopped and recommended Oak Grove contact the Natural Resources and Conservation Service (NRSC) to assist in designing a system to control run-off from the facility. Oak Grove was required to submit a plan by July 15, 2009 detailing how the discharges would be eliminated. A plan was submitted July 13, 2009. The letter also informed the facility the matter was being referred for further enforcement.

#### **PAST HISTORY**

9. In June 2001, Oak Grove submitted an open feedlot registration form to the DNR under the Voluntary Registration and Amnesty Program that was in place at the time. In August 2003, the DNR conducted an Environmental Priority Assessment and the facility was classified as a Medium Priority. In August 2005, DNR Field Office 2 performed an on-site assessment inspection at the facility. The field office noted a slightly elevated ammonia level in the run-off from the facility. The field office sent the facility a follow-up letter that included a copy of the regulations regarding manure control for open feedlots. The letter also provided recommendations on how to reduce the run-off, which included seeding the area southwest of the feedlots. The field office included the Statement of Intent Regarding Open Feedlot Operations for the facility to fill out and return. The Statement was returned and the facility acknowledged that the minimum manure control for feedlots without permits is the removal of settleable solids prior to discharge to state waters. By signing the statement on behalf of the facility, Mr. Eastman indicated that he was aware of and understood the DNR's regulations for open feedlots.

10. In March 2008, DNR Field Office 2 received a complaint regarding feedlot run-off from the Oak Grove facility. In April 2008, DNR Field Office 2 investigated the complaint and documented a discharge of manure liquids and dissolved solids from the feedlot to a tributary of the Wapsipinicon River. The field office noted that instead of seeding the area southwest of the feedlots as recommended in 2005, Oak Grove had put cattle in the area and had constructed an earthen dike around the area that had been recommended for seeding. In May 2008, DNR Field Office 2 issued a Notice of Violation letter to Oak Grove for the water quality violations. The letter cited the DNR's regulations and recommended the facility contact NRCS to design a system to control manure run-off. In

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June 2008, DNR Field Office 2 spoke to the NRCS representative and the NRCS representative stated that Mr. Eastman had contacted the office. Mr. Eastman was advised to move the feedlots and not to dike the area.

11. On June 5, 2008, DNR Field Office 2 observed run-off from the Oak Grove facility. The field test indicated an elevated level of ammonia. The laboratory samples also indicated elevated levels of NH<sub>3</sub>-N and TSS.

**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. 567 IAC 65.100 defines water of the state as any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state. The complainant's ponds are considered a water of the state. The tile discharge from the Oak Grove facility discharged manure run-off into the complainant's ponds. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 65.101(1) states that all settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state. DNR Field Office 2 noted manure solids in the complainant's south pond. The above-mentioned facts indicate a violation of this provision.

3. 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 2 observed the discharge run-off from the Oak Grove feedlots caused manure solids deposits, floating scum, discolored water, manure odor, and high levels of NH<sub>3</sub>-N, TSS, and BOD in the complainants' ponds. The above-facts disclose a violation of one or more of these criteria.

4. 567 IAC 65.103(4)(b) provides that if DNR determines that settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonable be expected to cause pollution of a water of the state, the open feedlot operation shall institute necessary remedial actions within a time specified by the DNR to eliminate the conditions warranting the determination, if the operation receives the written notification from the DNR of the need to correct the conditions. The DNR further concludes that one or more of the above-described conditions existed and Oak Grove is hereby notified that it must conduct remedial actions as specified in Section V (1), (2), and (3) below.

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**V. ORDER**

THEREFORE, the DNR orders and Oak Grove agrees to do the following:

- 1: Oak Grove shall immediately cease the tile discharge and any other unidentified discharges of manure or other pollutants to a water of the state;
- 2: Oak Grove shall retain the services of either a licensed engineer or NRCS personnel to design effective controls for eliminating the discharge of manure and contaminated water to a water of the state within 30 days of the date the Director signs this administrative consent order and shall implement the recommendations by July 1, 2010. The plan shall be submitted to DNR Field Office 2 within 10 days after it has been completed and DNR Field Office 2 shall be notified within 10 days after the controls have been implemented;
- 3: Oak Grove shall clean-up the complainant's ponds by pumping out the contaminated water and cleaning out the accumulated manure solids by July 1, 2010. The contaminated water and manure solids shall be properly land applied; and
- 4: Oak Grove shall pay an administrative penalty of \$2,500.00 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.

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 \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Oak Grove has gained an economic benefit from the violations stated in this administrative consent order. It has avoided the costs of proper manure controls and solids settling structures for many years. 567 IAC 10.2(1) states, “reasonable estimates of economic benefit should be made where clear data are not available.” While the corrective action Oak Grove will need to do has not been quantified yet, a reasonable estimate is that

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Oak Grove has gained an economic benefit of at least \$500.00 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. Manure run-off from Oak Grove has caused a water of the state to become polluted. The run-off caused discoloration, manure odor, floating scum and high levels of pollutants in the ponds. The water quality violations threaten the integrity of the water quality program. Additionally, DNR Field Office 2 has expended a large amount of time in working with Oak Grove in coming into compliance with the regulations. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Oak Grove 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. Oak Grove has been notified of the requirements on numerous occasions and Oak Grove has been issued Notice of Violations letters for similar violations in the past. 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 Oak Grove. For that reason Oak Grove 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 19 day of  
Feb., 2010

  
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OAK GROVE CATTLE, L.L.C.

Dated this 8 day of  
February, 2010

Facility # 57030; Kelli Book, Trent Lambert(Field Office 2), EPA, VIII.D.1.b, VIII.D.3.a