

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

IN THE MATTER OF:

**PERRY YODER**

Washington County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2009-AFO-49

TO: Perry Yoder  
2744 540<sup>th</sup> Street  
Kalona, Iowa 52247

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Perry Yoder for the purpose of resolving water quality violations resulting from a manure discharge at Mr. Yoder's open feedlot. 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:      Relating to legal requirements:**

Jim Sievers, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

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 and Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Perry Yoder owns and operates a dairy farm located at 2744 540<sup>th</sup> Street, Kalona, Iowa. The dairy has 36 cows that are kept in open lots or graze on pasture ground. The milk parlor flows into an earthen manure storage structure.

2. On August 11, 2009 at approximately 10:00 pm, a complainant contacted the 24 hour emergency DNR spill line and reported smelling manure in the Picayne Creek near 3294 540<sup>th</sup> Street, Riverside, Iowa. On August 12, 2009, Jim Sievers, DNR Field Office 6 environmental specialist senior, met with the complainant who showed Mr. Sievers the location of the Picayne Creek where the odor has been. There was a small beaver dam in the area and Mr. Sievers observed several dead fish upstream of the beaver dam. The water at the stream had a manure odor and the field test indicated the presence of a high concentration of ammonia. The laboratory samples indicated an ammonia concentration of 11 mg/l and an E. Coli concentration of 88,000/100ml. Mr. Sievers checked the stream downstream at the Maier Street bridge. He did not observe any dead fish, but the field test indicated the presence of ammonia. The laboratory samples indicated an ammonia concentration of 14 mg/l and an E. Coli concentration of 91,000/100ml. Mr. Sievers began to move upstream to determine the source of the elevated ammonia levels. The water at in the creek at the Lackender Avenue bridge had elevated levels of ammonia. The water at the Bayertown Avenue bridge had elevated levels of ammonia. At the James Avenue bridge, Mr. Sievers observed dead fish and the field test indicated the presence of ammonia. The laboratory samples indicated an ammonia concentration of 8.3 mg/l and an E. Coli concentration of 22,000/100ml. Mr. Sievers continued upstream to the bridge at Sharon Center Road. The ammonia level was approximately 1-2 ppm. Mr. Sievers returned to the James Avenue bridge and was joined by Russell Royce, DNR Field Office 6 environmental specialist. Mr. Sievers and Mr. Royce began walking upstream. Approximately a half mile upstream, the field office personnel observed a tile discharge on the south bank of the creek. Field tests indicated a high concentration of ammonia. The laboratory samples indicated an ammonia concentration of 14 mg/l and an E. Coli concentration of 1,000,000/100ml. Dairy cattle were observed a few hundred yards south of the tile discharge. The field office personnel continued upstream and collected laboratory samples approximately 50 yards upstream. The laboratory samples indicated an ammonia concentration of 1.3 mg/l and an E. Coli concentration of 16,000/100ml. As the field office personnel continued further upstream they observed a small feeder stream entering the creek from the south. The water in the feeder stream was clear and the laboratory samples indicated an ammonia concentration of 0.10 mg/l. The field office personnel did observe dead fish at the confluence of the feeder stream and the creek, which was approximately 150 yards upstream of the tile discharge.

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3. Mr. Sievers and Mr. Royce returned to the James Avenue bridge and drove to the dairy farm they observed from the creek. The facility was Mr. Yoder's dairy farm, described in Paragraph 1. Mr. Sievers explained to Mr. Yoder that the field office was investigating a fish kill and that they observed a tile discharge that may have come from the facility. The field office personnel and Mr. Yoder toured the facility. The earthen manure storage basin was located on the west side of the buildings. The basin was full of manure and manure was on top of the berm and had flowed down the outside of the berm. Mr. Yoder stated that the manure in the basin originated from the milk parlor. Northwest of the basin there was a yellow tile intake in a small earthen berm with water pooled around the intake. Some of the water was flowing into the slots of the intake. The water level around the intake had been about two feet deep at one point, but by the time of the inspection the water level was down to only a few inches. Mr. Yoder indicated the tile intake was connected to the tile line that discharged to the creek. Laboratory samples of the water pooled around the tile intake indicated an ammonia concentration of 0.14 mg/l.

4. On September 11, 2009, DNR issued a Notice of Violation letter to Mr. Yoder for the water quality violations discovered on August 12, 2009. The letter informed Mr. Yoder that he must take immediate action to prevent future discharges and that he must maintain two feet of freeboard in the basin at all times.

5. On September 11, 2009, Mr. Sievers returned to Mr. Yoder's facility. He noted that there were only a few inches of freeboard in the basin, but that the manure was no longer flowing out of the basin. Mr. Sievers told Mr. Yoder to land apply enough manure to maintain two feet of freeboard. Mr. Yoder indicated he would be able to land apply the manure during the next week.

6. On October 13, 2009, Mr. Sievers returned to Mr. Yoder's facility. Mr. Yoder stated he had recently land applied the manure from the basin. There was only a couple of feet of liquid manure in the bottom of the basin, with approximately six feet of freeboard.

7. The fish kill evaluation by DNR Fisheries concluded that 89 fish valued at \$30.19 were killed. The cost of performing this assessment was \$347.18. The complete fish kill assessment totals \$377.37.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules establishing water quality standards and effluent standards and rules relating to the permitting of disposal systems. The Commission has adopted such rules at 567 IAC chapters 60-69. These rules include the standards for animal feeding operations.

2. 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

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any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. Manure overflowed the basin at Mr. Yoder's property and entered a tile intake and was discharged into Picayune Creek. 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 6 observed dead fish and elevated levels of pollutants in the creek as a result of the discharge. The above mentioned facts indicate several violations of the general water quality criteria.

4. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to DNR for injury caused to a wild animal by the pollution. The Natural Resources Commission has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge at Mr. Yoder's site.

#### **V. ORDER**

THEREFORE, the DNR orders and Mr. Yoder agrees to do the following:

1. Mr. Yoder shall prevent future manure discharges from his facility;
2. Mr. Yoder shall maintain two feet of freeboard in the earthen manure storage structure;
3. Mr. Yoder shall contact a consultant within 30 days of the date the Director signs this administrative consent order to develop a plan of action detailing how future manure runoff will be prevented at the facility. Mr. Yoder shall implement the recommendations and submit the written plan of action within 90 days of the date the Director signs this administrative consent order; and
4. Mr. Yoder shall pay an administrative penalty of \$2,500.00 and fish restitution of \$377.37 for a total payment 2,877.37 within 30 days of the date from which the Director signs this administrative consent order.

#### **VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties

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of up to \$5,000.00 per day of violation for each of the 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 10. Pursuant to these rules, 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 – Mr. Yoder has been able to save time and money by not pumping the basin in order to avoid a discharge. He has avoided the costs of the manure application and the delay resulted in a manure discharge. Based on the above considerations, \$500.00 is assessed for this factor.

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 DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Allowing manure to discharge to a water of the state caused water quality violations and contributed to a fish kill. Based on the above considerations, \$1,500.00 is assessed for this factor.

Culpability – Mr. Yoder has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Based on the above considerations, \$500.00 is assessed for this factor.

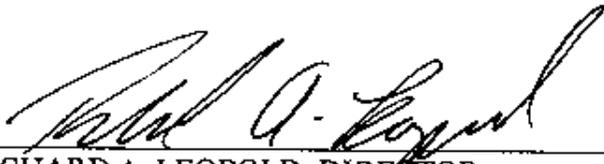
## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Mr. Yoder. For that reason Mr. Yoder waives his rights to appeal this administrative consent order or any part thereof.

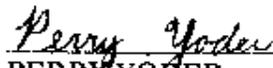
## **VIII. NONCOMPLIANCE**

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 2 day of  
Dec., 2009.

  
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PERRY YODER

Dated this 25th day of  
November, 2009.

No AFO Facility #: Kelli Book; DNR Field Office 6; Gene Tinker; EPA; VIII.D.1.b, VIII.D.3

RECEIVED  
NOV 30 2009