

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

IN THE MATTER OF:

**MOREPORK, LLC
Facility ID# 65653**

Woodbury County, Iowa

**ADMINISTRATIVE CONSENT ORDER
NO. 2009-AFO- 53**

TO: Tim Beeler
Morepork, LLC
11 Central Avenue PO Box 40
LeMars, Iowa 51031

David Updegraff, Registered Agent
Morepork, LLC
505 5th Street, Suite 204
Sioux City, Iowa 51101

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Morepork, LLC (Morepork) for the purpose of resolving issues pertaining to a manure discharge at the Morepork facility in Woodbury County. 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:

Nate Young, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
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
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 or Iowa Code chapter 459A and the rules adopted or permits issued

RECEIVED

DEC 14 2009

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MOREPORK, LLC

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

Morepork neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Morepork is a swine farrow to finish facility, located in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 21, Oto Township, Woodbury County. The facility was constructed in 2005 and has a combination of open and confined swine buildings. There are four open access gestation barns, with a capacity of 1,880 head, for a total animal unit capacity of 752. The open lot gestation barns have a slope for runoff to go to a center aisle. All of the runoff is controlled to the north of the facility into a concrete pit. All clean water is diverted. The confined farrowing barns have an animal capacity of 320 combined head, for a total animal unit capacity of 128. The farrowing buildings are total confinement for three weeks at a time. The buildings have wire floors with shallow scrapers and the manure then flows to the confinement pit. The combined animal unit capacity for the facility is 880 animal units. The facility is situated approximately 200 yards from the top of a tributary to the Little Sioux River. During rain events, the tributary starts at the facility. The Little Sioux River is approximately two and a half miles from the facility.

2. On August 31, 2008, DNR Field Office 3 was contacted by DNR Conservation Officer, Steve Griebel. Mr. Griebel stated he had received a complaint about dead fish in a private pond owned by Rose Cloud located in the SW $\frac{1}{4}$ of Section 20 in Oto Township. The complainant first noticed the dying fish on August 28, 2008. The areas received approximately four inches of rain on the night of August 27, 2008. The complainant suspected that manure from the Morepork facility was the cause of the dead fish. The pond is approximately a $\frac{1}{2}$ mile west of the Morepork facility.

3. On September 2, 2008, Don Cunningham and Nate Young, DNR Field Office 3 environmental specialists, investigated the complaint. They visited the Morepork facility to determine if manure had been released. The field office personnel spoke to Sue Cook, a representative of the management company Stockdale Family Farms. She was not aware of a manure release at the facility. The concrete effluent basin was close to overflowing, but the facility personnel had bermed up a foot of soil around the basin to keep the manure contained. They were also pumping effluent out of the basin into the solids settling area as additional storage. Bedding and solid manure were used to dam the picket fence structures and an entrance on the west end. The temporary storage area had approximately three inches of liquid in it. The field office personnel noticed liquids leaching through and running off the piled manure in the entrance. The liquid was flowing to the north and then through a cut in the bank to the tributary. All runoff from the back of the facility including the manure storage areas flowed through the cut to the tributary and then to the pond where the dead fish

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MOREPORK, LLC

were reported. The tributary water at the bridge before the water entered the pond was brownish in color and field tests indicated ammonia levels of 1.5 mg/L.

4. Mr. Young and Mr. Cunningham collected samples of the manure in the temporary pit and at the overfall. Field tests at the overfall revealed ammonia levels of 30 mg/L. Runoff was flowing at the time because it was raining. The field office personnel then proceeded to the pond. They met with Chuck Cloud, son of the pond's owner. At the pond, the field office personnel could smell manure in the water and observed poor water quality. They also noted a large number of dead fish along the shoreline. They collected samples of the pond water on the east shoreline. The field tests indicated zero dissolved oxygen and 6 mg/L of ammonia. The field office personnel proceeded to the outlet of the pond where the water discharges to the creek and field tests indicated 6.6 mg/L dissolved oxygen and 10 mg/L ammonia. The results of the laboratory tests indicated the following:

Sample Location	Ammonia Nitrogen(mg/L)	Fecal Coliform (Col/100mL)	Biochemical Oxygen Demand (mg/L)	Total Suspended Solids (mg/L)
From the temporary pit	420	47,000,000	3,600	430
From the overfall	24	5,000,000	180	260
From the east shoreline of the pond	5.1	6,300	21	42
From the pond outlet	5.7	5,600	16	23

5. On September 16, 2008, DNR Field Office 3 issued Tim Beeler a Notice of Violation letter for water quality violations for the runoff at the Morepork facility. The letter also informed Mr. Beeler that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

Morepork neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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. Manure from the Morepork facility entered the tributary. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 61.3(2) states that general water quality criteria are applicable to all surface waters of the state. Paragraph "b" states that such waters shall be free from floating

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MOREPORK, LLC

debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to a nuisance. Paragraph "c" states that such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. Paragraph "d" states that such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. The manure discharge from the Morepork facility created objectionable odor and color, created floating debris and scum, and was toxic to fish. The discharge of manure to the tributary from the Morepork facility violates the above-mentioned criteria.

3. 567 IAC 65.5 provides that the DNR may evaluate any animal feeding operation to determine if manure from the operation is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control or is causing or may reasonable be expected to cause a violation of the state water standards. If any of these conditions exist the operation is required, upon notification from the DNR, to institute necessary remedial actions to eliminate the conditions. 567 IAC 65.103(4)(b) provides that if DNR determines that a 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 a 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 at this facility and Morepork is hereby notified that it must conduct remedial actions as specified in Section V (1 & 2) below.

V. ORDER

THEREFORE, the DNR orders and Morepork agrees to do the following:

- 1: Morepork shall submit a Manure Management Plan to DNR Field Office 3 within 90 days of the date the Director signs this administrative consent order. The submittal shall include all applicable fees;
- 2: Morepork shall submit verification to DNR Field Office 3 within 90 days of the date the Director signs this administrative consent order that the facility has adequate storage to retain all manure for a minimum of 180 days;
- 3: Morepork shall immediately cease all manure discharges from the facility; and
- 4: Morepork shall pay an administrative penalty of \$4,500.00, within 30 days of the date the Director signs this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MOREPORK, LLC

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 \$4,500.00. The administrative penalty is determined as follows:

Economic Benefit – Morepork has gained an economic benefit by failing to properly and timely pump out the concrete storage basin. The facility also saved money in not constructing a basin large enough to provide adequate storage for the facility. Therefore, \$1,000.00 is being 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 reached the tributary and caused water quality violations in the tributary and the pond. Morepork's failure to properly contain the manure and the water quality violations threaten the integrity of the water quality program. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Morepork 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. Morepork failed to empty the full storage basin prior to the precipitation and was aware of the potential harm in not doing so. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Morepork. For that reason Morepork 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MOREPORK, LLC

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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 22 day of
Dec., 2009.



MOREPORK, LLC

Dated this 10 day of
December, 2009.

Facility #65653; Kelli Book, Field Office 3, EPA, VIII.D.1 and VIII.D.3.a