

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Carstens & Sons Farm Partnership &
Carstens Livestock Inc.
Facility # 60612**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO-38**

**TO: Gerald Carstens, President
Carstens Livestock Inc.
2487 Neola Ave
Jefferson, IA
50129**

**Doug Carstens
1229 Pecan Ave.
Bagley, IA
50026-8504**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Carstens Livestock Inc. and Carstens & Sons Farm Partnership (collectively referred to as Carstens Livestock) and the Iowa Department of Natural Resources (Department). Carstens Livestock hereby agrees to pay a penalty in the amount of \$7,000.00 and cease all illegal discharges to waters of the State.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Ted Petersen
IDNR Field Office #5
401 SW 7th Street, Suite 1
Des Moines, IA 50309-4611
515/725-0333

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Carstens & Sons Farm Partnership & Carstens Livestock Inc.**

502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

II. JURISDICTION

This Order is issued pursuant to 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, or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties herby agree to the following statement of facts:

1. Carstens Livestock owns and or operates several confined animal feeding operations in Iowa. The site involved in this case is known as F3 & F4 and is located at Sec 29 T79N R29W Linn Township, Dallas County, Iowa. This property is locally known as 11819 Linden Rd., Linden, Iowa. The facility consists of two hog buildings with shallow below building pits and a steel above ground manure storage structure.¹
2. On November 2, 2009, at approximately 1:00 pm, Doug Carstens, of Carstens Livestock, reported to the Department's emergency response unit that at approximately 12:00 pm liquid manure was discovered leaking from the steel above ground manure storage structure. Manure had reached a tile inlet in the secondary containment structure and flowed to a nearby road ditch. Mr. Carstens indicated that within an hour of discovery the manure had been contained in the secondary containment structure and the manure flow to the tile inlet had been stopped.
3. Upon notification, Ted Petersen, Department Field Office 5 environmental specialist, investigated the spill. Mr. Petersen arrived on site at approximately 2:15 pm. Immediately he observed manure leaking from the east side of the manure storage structure near a seam in the steel wall panels. The liquid level of

¹ The deed to this land is held by Carstens & Sons Farm Partnership, this entity is not registered with the Iowa Secretary of State. However, the name listed by the entity on its manure management plan is Carstens Livestock Inc.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Carstens & Sons Farm Partnership & Carstens Livestock Inc.**

the manure in the structure was approximately two feet above the release point. At that time Carstens Livestock had mobilized land application equipment and was preparing to inject the manure into a field north of the site. Carstens Livestock planned to pump the manure out of the leaking tank and land apply it until the level of the manure in the tank was below the release point.

Next, Mr. Petersen followed the trail of liquid manure from the release point to the south. He observed that the manure flowed to the secondary containment structure. In that structure a tile inlet had been installed to allow water from precipitation events to pass through. A shut-off valve had also been installed. Mr. Carstens stated that the shut-off valve failed to completely shut-off therefore, the manure entered the tile line. The tile line discharges to a road ditch. Manure was observed in that ditch. The road ditch discharges to a culvert and then to a ditch on the east side of the Raccoon River Valley trail. Manure was flowing southeast along the trail where it then entered a small wooded ravine. At the bottom of the ravine is a small drainage ditch which flows west. Eventually the water pools in one area which slowly releases to an unnamed tributary to the Middle Raccoon River. This pooled water was visibly cloudy, had an appearance of manure and a manure odor was detected. However, no manure was yet detected in the unnamed tributary to the Middle Raccoon River.

Following this investigation Mr. Petersen asked Mr. Carstens to construct an earthen dam along the east side of the Raccoon River Valley Trail in order to stop the flow of manure. He also requested that the liquid manure be removed from the ditch along the trail.

At approximately 8:30 pm Mr. Carstens called Mr. Petersen and reported that the liquid level of the manure in the storage tank was below the release point. They planned to clean up the released manure along the trail and around the confinement site over the next few days. Mr. Carstens also stated that the tile inlet in the secondary containment structure would be plugged.

4. On November 3, 2009, at approximately 7:30 am, Mr. Petersen returned to the site to investigate. He noted that the leaking manure had been stopped, an earthen dam had been constructed, the water clarity had improved in the drainage ditch and no manure odor was detected.

5. On November 18, 2009, the Department sent a notice of violation letter to Carstens Livestock for the above discussed violations.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Carstens & Sons Farm Partnership & Carstens Livestock Inc.**

6. Carstens Livestock has had numerous past manure releases. These releases were documented by the Department in 1993, 1996 and 2001. In 2003, the Department issued Administrative Order No. 2003-AFO-02 for a release from its Beaumont Court facility.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. Such a permit has not been issued for this facility therefore, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards relating to the operation and construction of animal feeding operations and the conditions under which the Department shall issue permits to such operations, and relating to the disposal of manure resulting from animal feeding operations. The Commission has done so at 567 IAC Chapters 60-65. Chapter 65, in particular, relates to animal feeding operations.

3. Iowa Code section 459.103 requires the Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC Chapter 65.

4. Iowa Code subsection 459.311(1) and 567 IAC 65.2(3), require that all manure produced in a confinement feeding operation be retained between periods of waste disposal and prohibit the discharge of manure into a water of the State or into a tile line that discharges to water of the State. 567 IAC 65.2(7) requires manure to be removed from control facilities and applied to land so as to not allow surface or ground water pollution. The above facts disclose violations of one or more of these statutory and rule provisions.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Carstens & Sons Farm Partnership & Carstens Livestock Inc.**

objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The above facts indicate a violation of one or more of these criteria.

V. ORDER

THEREFORE, the Department hereby orders and Carstens Livestock consents to do the following:

1. In the future Carstens Livestock shall properly retain its manure;
2. Carstens Livestock shall cease all illegal discharges to waters of the State; and
3. Carstens Livestock shall pay a penalty in the amount of \$7,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

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; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Carstens Livestock saved time and money by not conducting proper maintenance to ensure that the shut-off valve to the tile inlet located in the secondary containment structure was working properly. However, because the Department has decided to handle this matter administratively a penalty is not assessed for this factor.

b. 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 Department has

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Carstens & Sons Farm Partnership & Carstens Livestock Inc.**

decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves actual impact to water quality. Multiple rule and statutory provisions were violated including failure to retain manure, discharge to water of the State, and violation of water quality standards. The violations threaten the integrity of the water quality program and the animal feeding operations program. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the three above-cited violations. Therefore, \$4, 000.00 is assessed for this factor.

c. Culpability. The storing of manure is an activity that poses a substantial environmental threat and therefore, demands the highest level of care. The fact that the shut-off valve to the tile inlet located in a secondary containment structure was not properly working shows failure on behalf of Carstens Livestock to apply the appropriate standard of care. Through routine maintenance and proper oversight the release could have been completely avoided. Therefore, \$3,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Carstens Livestock. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B 191.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Carstens & Sons Farm Partnership & Carstens Livestock Inc.



Gerald Carstens, President Carstens Livestock Inc.

Dated this 20 day of
June, 2010.



Carstens & Sons Farm Partnership

Dated this 20 day of
June, 2010.



RICHARD A. LEOPOLD DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of
July, 2010.

EPA, Field Office 5, Carrie Schoenebaum; Ted Petersen, VIII D. 1 (a) 3 (a) (b).