

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

IN THE MATTER OF:

MARK SLABAUGH
Facility #59394

Johnson County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO-17

TO: Mark Slabaugh
2171 500th Street SW
Kalona, Iowa 52247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Mark Slabaugh for the purpose of resolving violations resulting from a manure discharge from manure application. 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:

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

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 459 and the rules adopted or permits issues 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. Mark Slabaugh owns and operates an animal confinement feeding operation located at 2171 500th Street SW, Kalona, Iowa (NE 1/4, T78 N, R8 W, Section 13, Washington Township, Johnson County, Iowa). The facility includes a swine grow to finish operation with a capacity of 4,186 animal units. The facility has several confinement buildings and utilizes an anaerobic storage lagoon for manure storage.

2. On November 14, 2009, Brian Lee, DNR Field Office 6 environmental specialist, received a complaint regarding improper manure application on property located southwest of the intersection of Highway 1 and 500th Street in Johnson County, Iowa. The complainant was concerned that the irrigation of manure on the field was causing manure to be discharged to a nearby waterway.

3. Mr. Lee arrived at the location and observed the irrigation of manure. He located a concrete culvert on the west side of Highway 1 and observed two tile lines that were discharging dark brown liquid to the culvert. Mr. Lee did not observe surface water entering the concrete culvert. Mr. Lee discovered a discharge east of Highway 1. The discharge was dark brown/blackish. Mr. Lee collected laboratory samples from this location. The laboratory results indicated an ammonia concentration of 14 mg/L, a total suspended solids (TSS) concentration of 140 mg/L, a carbonaceous biochemical oxygen demand (CBOD) concentration of 120 mg/L, and a pH of 8.3.

4. Mr. Lee drove to the residence where the irrigation lines had originated. Mr. Lee contacted Mr. Slabaugh and Mr. Slabaugh confirmed that the irrigated manure was from his facility and that the manure was being applied to his field. Mr. Slabaugh immediately turned off the irrigation equipment. Mr. Lee and Mr. Slabaugh went to the discharge area and observed the dark brown tile discharge. Mr. Slabaugh stated he had checked the manure and potential runoff earlier, but that he had not checked the tile lines. At the request of DNR Field Office 6, Mr. Slabaugh agreed to attempt to dam and pump the culvert discharge to a nearby field.

5. Mr. Lee travelled downstream to the receiving waters, Dirty Face Creek, at the bridge on Hazelwood Road. Mr. Lee collected laboratory samples from this location. The field tests indicated elevated levels of ammonia and a dissolved oxygen level of approximately 8-10 mg/L. The laboratory samples indicated an ammonia concentration of 6.1 mg/L, a TSS concentration of 20 mg/L, a CBOD concentration of 6 mg/L, and a pH of 8.3. Mr. Lee travelled further downstream to the Sharon Center Road bridge. The field tests indicated slightly elevated levels of ammonia and a normal dissolved oxygen level. Mr. Lee returned to the tile discharge location and collected field tests. The field tests indicated extremely elevated levels of ammonia and a normal dissolved oxygen level. At the time Mr. Lee was at the discharge location, Mr. Slabaugh had effectively dammed the creek with a straw bale

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and a load of dirt was being delivered as well. A manure pump was being secured and Mr. Slabaugh indicated he would begin to have the manure pumped out. Due to darkness, Mr. Lee was unable to collect samples upstream of the discharge.

6. On November 15, 2009, Mr. Lee returned to the location and observed that both tile lines were running clean. The dam was still intact and holding liquid. The field tests of the tile discharge did not indicate elevated levels of ammonia. Mr. Lee observed the downstream crossings and did not observe any effects of the manure discharge.

7. On November 16, 2009, Mr. Lee collected an upstream sample of Dirty Face Creek. The laboratory samples indicated an ammonia concentration of 0.2 mg/L, a TSS concentration of 16 mg/L, a CBOD concentration of <2mg/L, and a pH of 8.2. Mr. Lee also observed the dam and it was still in place and the liquid was still being retained. Mr. Slabaugh informed Mr. Lee that he had pumped about 3 loads of liquid into a 6,000 gallon tank for a total of about 18,000 gallons.

8. On November 17, 2009, Mr. Lee returned to the discharge location. The tile lines appeared to be discharging clear, clean water.

9. On December 2, 2009, DNR Field Office 6 issued a Notice of Violation letter to Mr. Slabaugh for the violations observed by Mr. Lee during his November investigation. The Notice of Violation letter included the following violations: a prohibited discharge, a water quality violation, and a failure to have a minimum level of manure control at the facility. The letter informed Mr. Slabaugh that the matter was being referred for further enforcement.

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. During Mr. Lee's investigation it was determined that irrigated manure from Mr. Slabaugh's anaerobic lagoon was applied to a crop field, reached drainage tile lines, and was discharged to a water of the state. The above-mentioned facts indicate a violation of this provision.

2. 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 the brownish/blackish discharge from the tile lines and found elevated levels of ammonia, TSS, and CBOD. The above-facts disclose a violation of one or more of these criteria.

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3. 567 IAC 65.2(3) describes the minimum level of manure control for confinement feeding operations as the retention of all manure produced in the confinement enclosure between periods of waste disposal. 567 IAC 65.2(3) further states that in no case shall manure from the confinement feeding be discharged into a water of the state. Manure from Mr. Slabaugh's confinement feeding operation was land applied and reached a water of the state. The above-facts disclose a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Mark Slabaugh agrees to do the following:

- 1: Mr. Slabaugh shall pay an administrative penalty of \$4,000.00 in accordance with the following payment schedule. If any of the payments are not received by the payment date, the remainder of the penalty shall be due immediately.

\$182.00 due May 15, 2010;	\$166.00 due May 15, 2011;
\$166.00 due June 15, 2010;	\$166.00 due June 15, 2011;
\$166.00 due July 15, 2010;	\$166.00 due July 15, 2011;
\$166.00 due August 15, 2010;	\$166.00 due August 15, 2011;
\$166.00 due September 15, 2010;	\$166.00 due September 15, 2011;
\$166.00 due October 15, 2010;	\$166.00 due October 15, 2011;
\$166.00 due November 15, 2010;	\$166.00 due November 15, 2011;
\$166.00 due December 15, 2010;	\$166.00 due December 15, 2011;
\$166.00 due January 15, 2011;	\$166.00 due January 15, 2012;
\$166.00 due February 15, 2011;	\$166.00 due February 15, 2012;
\$166.00 due March 15, 2011;	\$166.00 due March 15, 2012;
\$166.00 due April 15, 2011;	\$166.00 due April 15, 2012.

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 \$4,000.00. The administrative penalty is determined as follows:

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Economic Benefit – Mr. Slabaugh has gained an economic benefit from the violations stated in this administrative consent order. He has avoided certain costs by utilizing the irrigation method of manure application. Transportation and equipment costs were greatly reduced by utilizing a crop field in close proximity to the facility. Mr. Slabaugh could have utilized other crop fields and methods that would have alleviated the excessive application to one specific crop field. 567 IAC 10.2(1) states, “reasonable estimates of economic benefit should be made where clear data are not available.” A reasonable estimate is that Mr. Slabaugh has gained an economic benefit of at least \$1,250.00 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 Mr. Slabaugh’s application field has caused a water of the state to become polluted. The run-off caused discoloration and high levels of pollutants. The water quality violations threaten the integrity of the water quality program. Additionally, DNR Field Office 6 has expended a large amount of time in investigating and completing the follow up inspections. Therefore, \$1,750.00 is assessed for this factor.

Culpability – Mr. Slabaugh has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Mr. Slabaugh was not monitoring all of the discharge points from the application field. 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 Mark Slabaugh. For that reason Mark Slabaugh waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

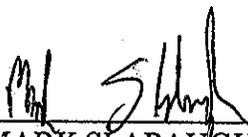
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties 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 6 day of
April, 2010.



MARK SLABAUGH

Dated this 23 day of
March, 2010.

Facility # 59394; Kelli Book, Brian Lee (Field Office 6), EPA, I.C.1 and VIII.D.3 a