

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

IN THE MATTER OF:

**PET PORK, INC.
Facility #58305**

Hardin County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO-31

TO: Merle Johns, Registered Agent
Pet Pork, Inc.
32072 150th Street
Ackley, Iowa 50601

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Pet Pork, Inc. (Pet Pork) for the purpose of resolving environmental violations at the Pet Pork animal feeding operation located in Section 35, Etna Township, Hardin County, Iowa. 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 15th 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 459 and the rules adopted or permits issued 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. Pet Pork is a 4,143 head (1,657.2 animal units) swine finishing facility located in the NW ¼, NW ¼, Section 35, Etna Township, Hardin County, Iowa. The facility was originally constructed in 1992 and subsequently expanded in 1995, 1998, and 2008. The facility utilizes below-building pits and a formed, outside, below-ground pit for manure storage.

2. On March 5, 2010, Merle Johns, owner of Pet Pork, notified DNR Field Office 2 of a manure spill at the facility. Mr. Johns explained that a frozen line had prevented manure from draining to a storage tank. This caused the manure to back up and discharge from a manhole between a confinement building and the storage tank. Mr. Johns stated the discharge had been stopped, but approximately 5,000 gallons of manure had been discharged and was flowing toward a creek. Mr. Johns was uncertain as to if the manure had reached the creek, but did state that the manure was flowing towards a tile intake. DNR Field Office 2 instructed Mr. Johns to immediately inspect the tile intake and the creek and to take all necessary measures to protect the intake and creek from the manure flow path. Trent Lambert, DNR Field Office 2 environmental specialist, informed Mr. Johns that he was en-route to the facility.

3. Upon Mr. Lambert's arrival at the facility he observed Mr. Johns using a tractor and loader to pull the manure-laden snow from the tile intake; however there remained a large amount of manure around the tile intake. Mr. Lambert noted that manure was discharging to the nearby South Beaver Creek. Mr. Lambert also noted that there was a significant amount of manure flowing with the snowmelt from the area of the manhole, down the driveway and to the tile intake. Mr. Lambert instructed Mr. Johns to dig a sump and use a chopper pump and hose to pump the manure from the sump back to the facility storage pits. Mr. Johns began this while Mr. Lambert began to assess the impact to the creek.

4. Mr. Lambert left the facility and travelled to the first downstream bridge on County Highway S56. The bridge was approximately one mile southeast of the facility. The water in the creek appeared slightly murky, with some organic material and foam present. Mr. Lambert did not detect a manure odor and did not believe the appearance was caused by manure. The field test indicated an ammonia concentration of 0.5 ppm. Mr. Lambert determined that the manure slug had not reached this location yet, so he returned to the facility.

5. Mr. Lambert returned to the tile outfall and observed that it was discharging to the creek. Mr. Lambert collected samples upstream of the outfall. The laboratory results from upstream indicated an ammonia concentration of 0.14 mg/l and a total suspended solids (TSS) concentration of 5 mg/l. Mr. Lambert also collected samples downstream of the outfall. The laboratory results from downstream indicated an ammonia concentration of 64 mg/l and a TSS

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concentration of 730 mg/l. Due to the snow and ice, Mr. Lambert was unable to collect a sample directly from the outfall. Mr. Johns continued to remove the manure and to take steps to stop the flow to the creek. Mr. Johns informed Mr. Lambert that a commercial applicator was on the way with a chopper pump and hose to transfer the manure from the sump.

6. Mr. Lambert went downstream to assess the impact of the manure to the creek. Approximately 250 yards downstream of the facility the water was murky and smelled distinctly like manure. The field test indicated an ammonia concentration greater than 3.0 ppm. At a point approximately ¼ of a mile downstream of the facility the water was murky and smelled of manure. The field test indicated an ammonia concentration greater than 3.0 ppm. The creek was open in a few places, but approximately 80-90% of the creek was iced and drifted in; therefore Mr. Lambert did not observe any live or dead fish. Mr. Lambert determined the manure slug was between the facility and the Highway S56 bridge.

7. Mr. Lambert met with Mr. Johns before leaving the site for the evening. The chopper pump and hose was in place and had pumped the sump down. There was no more manure going to the tile intake. The tile was still slightly discharging. Mr. Johns stated he would continue to remove the manure and Mr. Lambert indicated he would return the following day.

8. On March 6, 2010, Mr. Lambert returned to the Highway S56 bridge. The creek was frozen; however Mr. Lambert was able to break through and collect a field sample. The ammonia concentration was greater than 3.0 ppm, but there was not a manure odor. The laboratory sample indicated an ammonia concentration of 3.4 mg/l. Mr. Lambert determined the manure slug had passed through the area at some point in the night. Mr. Lambert continued to the facility where Mr. Johns was continuing efforts to remove the manure. Due to the cold temperature there was no discharge to the creek. Mr. Lambert travelled to the bridge on Y Avenue, which was the next bridge downstream from the Highway S56 bridge. The water was clear with no manure odor. The field test indicated the ammonia concentration was approximately 3.0 ppm and the laboratory sample indicated the ammonia concentration was 3.1 mg/l. Mr. Lambert continued to the Z Avenue bridge. The water clarity was good, but slightly degraded in comparison to that of the water at the Y Avenue Bridge. The field test indicated an ammonia concentration of greater than 3.0 ppm. The laboratory sample indicated an ammonia concentration of 10 mg/l. Mr. Lambert continued to the C Avenue bridge, which was the second bridge downstream of the Z Avenue bridge. Due to the snow/ice cover, Mr. Lambert was unable to collect a water sample. He could not see anything abnormal to the water clarity. There were some open feedlots near the C Avenue bridge, but Mr. Lambert did not observe any runoff from the feedlots. Mr. Lambert continued downstream to the D Avenue bridge. Water clarity was normal at this location and Mr. Lambert did not detect a manure odor. The field test indicated an ammonia concentration of 0.2 ppm. Mr. Lambert determined the manure slug had not reached this location yet.

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Mr. Lambert stopped at several of the bridge crossings that he had previously checked and only saw less than ten dead fish.

9. Mr. Lambert returned to the spill area and observed the tile outfall. The tile was discharging a trickle of liquid to the stream. Mr. Lambert was able to sample the tile discharge. The laboratory samples indicated an ammonia concentration of 2,400 mg/l and a TSS concentration of 7,800 mg/l. As the temperatures rose throughout the day, Mr. Lambert noted that the amount of manure contaminated water being discharged increased. Mr. Lambert went to view the creek to determine if the fish kill was worsening as a result of the manure discharging to the creek again. Mr. Lambert observe a few more dead fish and determined the slug had reached the D Avenue bridge. At this located the water was murky, but did not have a manure odor. The field test indicated and ammonia concentration of greater than 3.0 ppm. The laboratory samples indicated an ammonia concentration of 18 mg/l and a TSS concentration of 66 mg/l. Mr. Lambert returned to the facility as the facility personnel continued to pump the manure and took measures to insure that the manure would not be discharged from the storage pit. Mr. Lambert and the facility personnel discussed how much manure was released. It was determined that approximately 3,200 gallons of manure had been released. Mr. Lambert instructed the facility personnel to continue to removing the manure and indicated he would return the following day.

10. On March 7, 2010, Mr. Lambert returned to the discharge site. He began at the Highway S56 bridge and did not observe any live or dead fish. He continued checking the downstream bridges and did not observe any live or dead fish. Mr. Lambert returned to the facility. The facility personnel were continuing the clean-up process. The tile discharge was now only a fast drip.

11. On March 8, 2010, Mr. Lambert visited the discharge site. The tile discharge appeared to be clear. There was no visual evidence of manure in the discharge. The water going to the sump also appeared to be clear.

12. On March 8, 2010, Mr. Lambert returned to the discharge site. The tile discharge was a slight trickle of clear water. At this Mr. Lambert determined that the facility had likely taken all the steps it could in the clean-up process and he did not want the facility to continue to pump into the storage structure and compromise the storage capacity. Mr. Lambert returned on May 10, 2010 and determined that the discharge was clear and the creek had increased in flow. He determined that any residual discharge would not have a detrimental impact on the creek.

13. On March 29, 2010, DNR issued a Notice of Violation letter to the facility for the violations discovered as a result of the manure release. The letter cited the facility for a prohibited discharge, failure to retain manure, and general water quality violations. The letter indicated that further enforcement may follow.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to a water of the state. During DNR Field Office 2's March investigation it was determined that a release of manure from the Pet Pork facility went to a tile intake and then into South Beaver Creek. The above facts indicate violations of this provision.

3. 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 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. DNR Field Office 2 documented a discharge of the untreated manure from the Pet Pork facility into South Beaver Creek. The above mentioned facts indicate a violation of this provision.

4. 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 that the creek was turbid and murky with a strong smell of manure as a result of the manure released at the Pet Pork facility. The laboratory results indicated elevated levels of ammonia and TSS that could be acutely toxic to aquatic life. The above mentioned facts indicate several violations of the general water quality criteria.

V. ORDER

THEREFORE, the DNR orders and Pet Pork agrees to do the following:

1. Pet Pork shall take measures to protect the tile intake in the future any time manure is being removed, transferred, or otherwise handled at the facility; and
2. Pet Pork shall pay a penalty of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

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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 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 \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – The discharge was a result of an accidental release during normal and proper manure handling activities. Pet Pork took immediate steps to remediate the discharge. Pet Pork realized little if any economic benefit, therefore no amount 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. DNR Field Office 2 documented a manure discharge to a water of the state. The discharge resulted in water quality violations. Stream turbidity was increased as was the ammonia level of the creek. There was a small number of fish killed by the release. Weather-related stream conditions hampered the DNR's ability to make visual observations during the investigation. It is likely that a larger number of fish were killed by the discharge. Additionally, DNR Field Office 2 expended a large amount of staff time in investigating the manure release and monitoring the clean-up of the manure. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Pet Pork 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. The facility took no steps prior to the release to protect the tile from a possible discharge while the manure was being removed. However, once the facility became aware of the release it was responsive in the clean-up and cooperative with the requests of DNR Field Office 2. Therefore, \$500.00 is assessed for this factor.

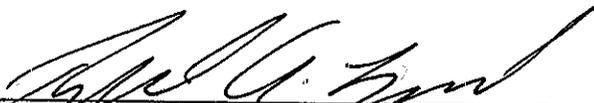
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Pet Pork. For that reason Pet Pork waives the right to appeal this administrative consent order or any part thereof.

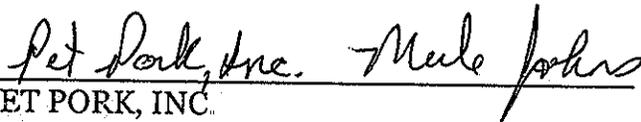
VIII. NONCOMPLIANCE

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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 3 day of
June, 2010.



PET PORK, INC.

Dated this 20 day of
May, 2010.

Facility #58305; Kelli Book; Trent Lambert (DNR Field Office 2); EPA; VIII.D.1.a,
VIII.D.3.a