

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

IN THE MATTER OF:

Loren Van Regenmorter
Facility ID #56295

Sioux County, IA

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO- 41

TO: Loren Van Regenmorter
3881 Eagle Avenue
Sioux Center, IA 51250

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Loren Van Regenmorter for the purpose of resolving environmental violations at a cattle operation located at 3381 Eagle Avenue, Sioux Center, 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: **Relating to legal requirements:**

Brandon Miner, Field Office 3
Iowa Department of Natural Resources
Gateway Mall North – 1900 North Grand
Spencer, Iowa 53101
Phone: 712/262-4177

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 Iowa Code chapter 459A 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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II. STATEMENT OF FACTS

1. Loren Van Regenmorter owns and operates an open lot beef cattle operation and a confined hog operation located at 3381 Eagle Avenue, Sioux Center, Iowa. The beef cattle operation is comprised of two open feedlots located in the SE ¼, Section 31, Plato Township, Sioux County, Iowa. The southern feedlot of this operation (hereinafter "South Feedlot") was not covered by a National Pollution Discharge Elimination System (NPDES) permit. Directly to the north of the South Feedlot is another open feedlot (hereinafter "North Feedlot") that is under common management/ownership. Mr. Van Regenmorter has a NPDES permit on file (Permit # 8400040) for the North Feedlot. Runoff from the North Feedlot is contained in a settled open feedlot effluent basin (SOFEB) that is located approximately 1,100 feet from the perimeter of the South Feedlot cattle pen. Manure containment systems are considered part of a feedlot and feedlots must be separated by at least 1,250 feet to be considered separate operations. Since the containment basin is less than 1,250 feet away from the South Feedlot pen, Mr. Van Regenmorter's feedlots must be considered one operation and the NPDES permit needs to be amended as such. Mr. Van Regenmorter stated that he intended to amend his current NPDES permit to include the South Feedlot, construct manure controls at the South Feedlot, and expand the South Feedlot.

2. On April 12, 2010, Brandon Miner, DNR Field Office 3 Environmental Specialist, and Paul Petitti, DNR Environmental Engineer, visited the Van Regenmorter operation to inspect the South Feedlot. At the time of inspection, the South Feedlot contained 970 head of cattle and the North Feedlot contained 2,387 head of cattle. Upon arrival, the Field Office 3 personnel met with Mr. and Mrs. Van Regenmorter. From inspection of the solids settling structure and grassed filter strip, it was apparent that the open lot runoff was flowing to an unnamed tributary. The banks of the creek were covered with manure solids and there were solids in the creek bed, though no solids were observed floating in the stream. It appeared to the Field Office 3 personnel that the flow had been greater in previous weeks. Samples of the runoff as it entered the creek were taken as was a downstream sample. It was impossible to obtain an upstream sample since the creek starts at the grassed filter strip. Field Office 3 personnel observed that the stream was very turbid and had a cattle manure smell.

3. The following table summarizes the field tests taken during the investigation on April 12, 2010.

Location	Ammonia (mg/L)	Dissolved Oxygen (mg/L)	Temperature (°C)	pH
Runoff	25	10	9	7.1
Downstream	0.5	15	10	7.8

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The following table summarizes the results of the laboratory samples taken during the inspection. Fecal coliform, E. coli testing, ammonia nitrogen (NH₃-N), and biochemical oxygen demand (BOD) testing was performed by the University of Iowa Hygienic Laboratory in Ankeny, Iowa.

Location	NH ₃ -N (mg/L)	E. Coli (Col/100 mL)	Fecal Coliform (Col/100 mL)	BOD (mg/L)
Runoff	19	2,300,000	2,500,000	760
Downstream	0.16	2,000	3,200	4

4. On May 10, 2010, the DNR issued a Notice of Violation to Mr. Van Regenmorter for the violations discovered on April 12, 2010. The violations included (1) violation of general water quality criteria, (2) discharge of a pollutant to a water of the state, (3) failure to maintain a minimum level of manure control for an open feedlot, and (4) unpermitted discharge of open lot manure to waters of the state. The Notice of Violation letter stated that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 and Iowa Code section 459A.104 provide 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. Iowa Code section 455B.186 states 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. The laboratory sample results and the visual observations made by DNR Field Office 3 during the April 12, 2010 investigation confirm that cattle manure from the Van Regenmorter facility was not adequately treated or solids settled prior to being discharged to a water of the state. The above mentioned facts indicate a violation of this provision.

3. 567 IAC 65.2(1) states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state. The creek bank contained manure solids, and it was evident on the date of inspection that the solids had not been settled properly before discharging into the unnamed tributary. The above mentioned facts indicate a violation of this provision.

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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. The laboratory results indicated elevated ammonia, BOD, fecal coliform, and E. Coli in the tributary. The elevated levels would be considered acutely toxic to aquatic life. Additionally, the discharge of manure created an objectionable color and odor. The above mentioned facts indicate violations of the general water quality criteria.

5. 567 IAC 65.101(3) states that an open feedlot operation which has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation which is a large CAFO shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the DNR. The DNR may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system. The Van Regenmorter Feedlot facility is classified as a large CAFO because it houses a total of 1,000 animal units or more in confinement barns and open feedlots. During the April 12, 2010 inspection, DNR Field Office 3 observed open feedlot manure documented on the bank of the tributary and manure runoff in the tributary. At the time of the inspection, the proper runoff controls were not in place and the NPDES permit did not cover both feedlots in this operation. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Loren Van Regenmorter agrees to do the following:

1. Loren Van Regenmorter shall operate and maintain animal feeding operation structures in compliance with all applicable departmental rules and regulations;
2. Loren Van Regenmorter shall obtain a construction permit for a SOFEB at the South Feedlot and submit an application to amend the current NPDES permit for the North Feedlot to include the South Feedlot 90 days from the date the Director signs this administrative consent order;
3. Loren Van Regenmorter shall complete construction of the required open feedlot runoff controls at the South Feedlot by November 1, 2010;

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4. Loren Van Regenmorter shall immediately cease discharging any runoff from the production areas to the creek; and
5. Loren Van Regenmorter shall pay a penalty of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

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 \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Loren Van Regenmorter saved time and money by failing to construct the required manure controls for the open feedlot operation and allowing unsettled cattle manure to reach the unnamed tributary. It is estimated that Loren Van Regenmorter has gained an estimated economic benefit of at least \$3,000.00. Therefore, \$3,000.00 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. DNR Field Office 3 documented a manure discharge to a water of the state. By failing to properly construct the containment and allowing manure to discharge to the tributary, Loren Van Regenmorter endangered the water quality of the tributary. Therefore, \$1,000.00 is assessed for this factor.

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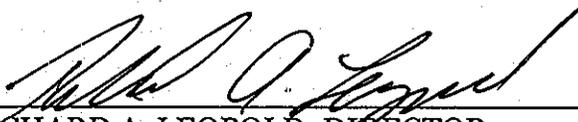
Culpability – Loren Van Regenmorter has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. As discussed above, the feedlots are not separated by 1,250 feet and must be considered one operation. This is a large facility with a total of over 3,200 beef cattle. 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 Loren Van Regenmorter. For that reason, Loren Van Regenmorter 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 12 day of
August, 2010.



LOREN VAN REGENMORTER

Dated this 28 day of
July, 2010.

Facility #56295; Kelli Book, Brandon Miner (DNR Field Office 3), EPA, VIII.A.2,
VIII.D.1