

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

IN THE MATTER OF:

**NPKK PORK, L.L.C.
Facility #59419**

Washington County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO- 56
NO. 2010-SW- 40

TO: Paul Reed, Registered Agent
NPKK Pork, L.L.C.
1806 250th Street
Washington, Iowa 52353

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and NPKK Pork, L.L.C. (NPKK Pork) for the purpose of resolving environmental violations at the NPKK Pork facility. 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:

Mark Heiderscheid, 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 issued pursuant thereto; Iowa Code section 455B.307 which authorize the Director to issue any order

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necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 1 and the rules adopted pursuant to that part; 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

1. NPKK Pork is an animal confinement facility located at 1774 270th Street, Washington, Iowa (Section 29, Franklin Township, Washington County). The facility's 2003 manure management plan (MMP) indicated the facility consisted of finishing buildings with a capacity of 2,500 head that utilized an earthen manure storage structure; a 200 head nursery with a below building concrete manure storage pit; and an open lot with a 280 head capacity. The total number of animal units minus the open lot is 1,020. There is a formed concrete manure structure that released to the earthen structure through a valve located at the bottom of the concrete structure.

2. On December 15, 2009, at approximately 12:27 p.m., Ken Reed, NPKK Pork representative, contacted DNR Field Office 6 to report a manure release from the NPKK Pork facility. Mr. Reed indicated that on December 14, 2009 at approximately 9:00 p.m., an NPKK Pork employee had been pumping manure out of a basin and when the employee returned from hauling a load of manure, the employee noted that the re-circulating gun on the unit used to stir the manure had shifted and was spraying manure into the berm of the lagoon. The employee turned the gun off. Kevin Reed, NPKK Pork representative, arrived at approximately 11:00 p.m. to continue pumping the basin manure. At that time the employee indicated that the gun had shifted. The fact that a release had occurred was not realized until the morning of December 15, 2009.

3. On December 15, 2009, Mark Heiderscheit, DNR Field Office 6 environmental specialist, conducted an inspection at the NPKK Pork facility.

a. Mr. Heiderscheit noted that the manure had sprayed toward the confinement building on the south side of the basin. The manure appeared to follow the storm water diversion ditch around the basin and into the field. The manure then flowed westward several hundred feet where it appeared to stop. Ken Reed stated there was a tile beneath the snow that discharged to an unnamed tributary of Indian Creek several hundred feet south.

b. Mr. Reed and Mr. Heiderscheit proceeded to the tile outfall. Mr. Heiderscheit observed scum and solids on the water. The field test indicated the presence of ammonia and the laboratory results indicated the following: E Coli concentration of 560 MPN/100 mL, total suspended solids (TSS) concentration of 35 mg/L, and ammonia concentration of 8.6 mg/L.

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c. Mr. Heiderscheit and Mr. Reed then proceeded to the confluence of the tributary and Indian Creek. The depth of water in the tributary was no more than a couple feet deep and was ice covered with a few open spots. Indian Creek was completely frozen over. Mr. Heiderscheit collected laboratory samples from the tributary approximately 30 feet upstream from the confluence of the tributary and Indian Creek. The laboratory results indicated the following: E Coli concentration of 63 MPN/100mL, TSS concentration of 2 mg/L, and ammonia concentration of <0.05 mg/L.

d. Mr. Heiderscheit and Mr. Reed returned to the discharge location and observed that NPKK Pork employees had constructed a dam across the tributary. Mr. Reed indicated that they would begin pumping the water. Mr. Heiderscheit instructed NPKK Pork to concentrate on scraping the solids and properly land applying them.

4. On December 16, 2009, Mr. Heiderscheit returned to the NPKK Pork facility.

a. When Mr. Heiderscheit arrived he spoke with Ken Reed who stated an estimated 4,000-5,000 gallons of manure had been lost. Mr. Heiderscheit informed Mr. Reed that he was going to check the freeboard of the formed concrete structure and the earthen basin. The measurement for the concrete structure was measured from the top of the crust in the structure and measured about nine inches. Mr. Reed stated that the top of the crust was foam and not the water level. The measurement for the earthen basin was measured from the ice cover near the bank and measured between 22 and 24 inches.

b. Mr. Heiderscheit and Mr. Reed continued to the site of the discharge. It was noted that the manure had been scraped and then was spread over the adjoining field. There were a few thick areas that Mr. Heiderscheit recommended be scraped again.

c. Mr. Heiderscheit and Mr. Reed proceeded to the facility's compost pile. Dead hogs were observed on the west side of the pile. Mr. Reed indicated that they had just been placed on the pile that morning. Mr. Heiderscheit also observed fleshy parts of the animals protruding from the east side of the pile and skeletal remains on top of the pile. Mr. Heiderscheit reminded Mr. Reed that the rules required all fleshy parts and skeletal remains to be covered at all times.

d. Mr. Heiderscheit and Mr. Reed continued to the dam that had been constructed across the tributary. Mr. Reed stated that the area had been pumped several times the night before. The water appeared clearer and the field test indicated the ammonia concentration was approximately 0.8 mg/L.

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e. Mr. Heiderscheit and Mr. Reed drove south to the fence line where the timber started and walked the creek. They observed dead fish in the open water as they walked the creek bank. At that point, Mr. Heiderscheit contacted DNR Fisheries to conduct a fish kill investigation. The field test of this area indicated the ammonia concentration was approximately 0.8 mg/L.

f. Mr. Heiderscheit and Mr. Reed returned to the NPKK Pork facility where Mr. Heiderscheit met Vance Polton, DNR Fisheries. Mr. Heiderscheit and Mr. Polton proceeded to the confluence of the tributary and Indian Creek. Mr. Heiderscheit collected a field sample in the same area of the tributary as he had the day before. The field test from the tributary approximately 30 feet upstream from the confluence of the tributary and Indian Creek indicated an ammonia concentration of approximately 3.0 mg/L. The laboratory result indicated an ammonia concentration of 7.5 mg/L. Mr. Heiderscheit also collected a water sample from approximately 120 feet downstream of the confluence of the tributary and Indian Creek. The laboratory result indicated an ammonia concentration of 3.4 mg/L. Mr. Heiderscheit collected a water sample from upstream of the confluence. The laboratory result indicated an ammonia concentration of <0.05 mg/L. At this point in the investigation Mr. Polton continued his investigation while Mr. Heiderscheit returned to the facility to inform the facility of the presence of ammonia at the confluence.

5. On January 7, 2010, Mr. Heiderscheit conducted a file review of the NPKK Pork MMP file. The MMPs submitted between 2003 and 2008 list the animal species/capacity as 2,500 swine over 55 pounds and 200 head between 15-55 pounds for an animal unit total of 1,020. The 2009 MMP update did not include the 200 head nursery and listed only 2,450 head over 55 pounds for an animal unit total of 980. There was no explanation for the change in capacity in the file or the MMP.

6. On January 14, 2010, a Notice of Violation letter was issued to NPKK Pork for the violations discovered during Mr. Heiderscheit's December 2009 investigation. The letter included the following violations: failure to comply with the minimum manure control requirements, a prohibited discharge, general water quality criteria violations, failure to notify of a discharge, improper disposal of dead animals, and improper composting. The letter informed the facility the matter was being referred for further enforcement.

7. Mr. Polton led the fish kill assessment and his assessment determined that the manure discharge from NPKK Pork's facility caused a 2.86 mile fish kill on an unnamed tributary to Indian Creek. The assessment calculated the number of fish killed was 88, with a monetary value of \$21.10. The total Fisheries' investigative cost equated to \$106.44. The total fish restitution equated to \$127.54.

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8. During an unformed manure storage inspection in October 2009 at the NPKK Pork facility, DNR Field Office 6 observed that the unformed manure storage structure had less than two feet of freeboard. On October 27, 2009, DNR Field Office 6 issued a Notice of Violation letter to NPKK Pork for the freeboard violation.

9. On January 4, 2010, NPKK Pork filed a manure release report with DNR Field Office 6. In the report NPKK Pork indicated that it would require an employee to be at the basin at all times during any manure pumping or agitation. Additionally, NPKK Pork indicated that it would require a more thorough and immediate investigation of future problems.

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. On December 15, 2009, DNR Field Office 6 observed that manure from the NPKK Pork facility had been released and had reached a water of the state. The above mentioned facts indicate a violation 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. On December 15, 2009, DNR Field Office 6 noted that manure from the NPKK Pork facility had been discharged and through a tile outlet had reached an unnamed tributary to Indian 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. On December 15, 2009, DNR Field Office 6 observed scum and solids in the tributary from the manure discharge at the NPKK Pork facility. Additionally, laboratory results indicated elevated levels of

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ammonia, TSS, and E. Coli in the tributary due to the manure discharge. The above mentioned facts indicate violations of the general water quality criteria.

5. 567 IAC 105.6(6) states that dead farm animals shall be incorporated into the composting process within 24 hours of death. An adequate base layer with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times. On December 16, 2009, DNR Field Office 6 observed a compost pile that had dead animals and skeletal remains around the pile that were not completely incorporated. The above mentioned facts indicate a violation of this provision.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge at the NPKK Pork facility.

V. ORDER

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

1. NPKK Pork shall implement procedures to ensure there are no further discharges of manure to waters of the state;
2. NPKK Pork shall notify DNR within six hours of any manure releases;
3. NPKK Pork shall develop a written emergency response plan for responding to releases and shall submit the plan to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order;
4. NPKK Pork shall train all personnel on how to investigate, respond, and report any manure releases;
5. NPKK Pork shall not leave equipment used in the handling or transporting of manure unattended while it is operating;
6. NPKK Pork shall maintain a minimum freeboard of two feet or more in the earthen basin and one foot or more in the formed concrete structures at all times;
7. NPKK Pork shall measure and record freeboard on a monthly basis. The records shall be maintained and available for review;

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8. NPKK Pork shall properly maintain its compost pile in accordance with 567 IAC 105.6(6);
9. NPKK Pork shall properly dispose of all solid waste;
10. NPKK Pork shall consult an engineer and conduct an evaluation of earthen basin. The engineer and facility shall work with DNR Field Office 6 on the contents of the evaluation. The evaluation shall be conducted within 30 days of the date the Director signs this administrative consent order and an evaluation report shall be submitted to DNR Field Office 6 within 60 days of the date the Director signs this administrative consent order;
11. NPKK shall submit a signed affidavit certifying the animal numbers at its facility and the affidavit shall be submitted to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order;
12. NPKK shall pay fish restitution in the amount of \$127.54 within 30 days of the date the Director signs this administrative consent order;
and
13. NPKK shall pay an administrative penalty in the amount 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. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste 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:

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Economic Benefit – The economic benefit received by NPKK Pork is considered minimal. NPKK Pork took immediate steps to remedy the discharge. Therefore, economic benefit is not being assessed.

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 6 documented a manure discharge that led to documented water quality violations and a fish kill. Failing to properly compost the dead animals creates the potential for a discharge as well as threatens the water quality. These violations threaten the integrity of the regulatory programs because compliance with the animal feeding operation and solid waste regulations is required of all persons in this state. Additionally, DNR Field Office 6's investigative costs included \$175.00 in testing as well as personnel time in investigating the violations. Therefore, \$2,500.00 is assessed for this factor.

Culpability – NPKK 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. NPKK Pork's employee failed to properly investigate as to whether a discharge had occurred. Therefore, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

VIII. NONCOMPLIANCE

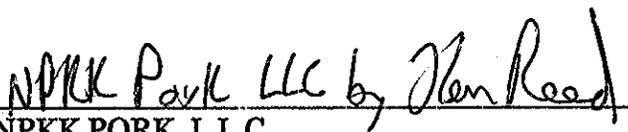
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B.307.

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PATRICA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 27 day of
December, 2010.



NPKK PORK, L.L.C.

Dated this 21 day of
November, 2010.

Facility #59419; Kelli Book; Mark Heiderscheit; EPA; VI.C, VII.C.1, VIII.D.1,
VIII.D.2.a, and VIII.D.3.a