

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

<p>IN THE MATTER OF:</p> <p><b>KRKL CATTLE INC.</b> <b>Facility #64082</b></p> <p><b>Sioux County, Iowa</b></p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 2011-AFO-01</p>
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TO: KRKL Cattle Inc  
3316 Elmwood Avenue  
Rock Valley, Iowa 51247

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and KRKL Cattle Inc. for the purpose of resolving environmental violations at a cattle operation located at 3316 Elmwood Avenue, Rock Valley, 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:**

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

**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 Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. KRKL Cattle, Inc. owns and operates a feedlot located at 3316 Elmwood Avenue, Rock Valley, Iowa (Section 4, Plato Township, Sioux County). The facility consists of both open lots and confined animals. In 2008, KRKL Cattle, Inc. applied for a National Pollutant Discharge Elimination System (NPDES) permit, but in January 2009 DNR returned the application because it was incomplete.

2. On March 18, 2010, Brandon Miner, DNR Field Office 3 environmental specialist, and Paul Petitti, DNR environmental engineer, visited the KRKL Cattle, Inc. feedlot to conduct an inspection of the manure containment facilities and to discuss the possible construction/expansion plans of runoff controls for the open feedlot operation. During the visit, Mr. Miner and Mr. Petitti met with Kenneth Kooima, Kurt Kooima, and Nic Rowe, with ProAg Engineering. Kurt Kooima stated that the 1,100 head cattle confinement building was filled to capacity and the open feedlot operation contained greater than 1,000 head of cattle at the time of the visit. Kurt Kooima indicated that he had plugged the outlet of the solids settling structure for the open feedlots at some point prior to the inspection. Mr. Miner proceeded to the solids settling structure at the south end of the feedlot. Mr. Miner observed that even though the outlet to the settling basin was plugged, that manure runoff from the solids settling structure was flowing down the grassed waterway. The grassed waterway contained manure solids. The grassed waterway led to an unnamed tributary of Rock River. Mr. Miner followed the manure discharge through the grassed waterway to the unnamed tributary, where he observed manure solids on the banks of the tributary. The runoff off water was going into the tributary. Mr. Miner observed water discoloration and could see the runoff water mix with the clean water in the creek. He also noted a manure odor in the tributary. No fish, alive or dead, were observed at this area.

3. On March 19, 2010, Mr. Miner and Jeff Prier, DNR Field Office 3 environmental specialist senior, returned to the KRKL Cattle, Inc. feedlot. They conducted field tests and collected laboratory samples of the runoff water where it entered the tributary, upstream of the discharge, and downstream of the discharge. The field tests indicated the following:

Location	Ammonia	Dissolved Oxygen
Upstream of Discharge	0.5 mg/L	7 mg/L
Runoff at the Point of Discharge	60-90 mg/L	4 mg/L
Downstream of Discharge	5 mg/L	8 mg/L

The laboratory samples indicated the following:

Location	Ammonia	E. Coli	Total	Biochemical
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	<b>Nitrogen (NH<sub>3</sub>-N)</b>		<b>Fecal Coliform</b>	<b>Oxygen Demand (BOD)</b>
Upstream of Discharge	0.5 mg/L	560 Col/100 mL	3,100 Col/100 mL	3 mg/L
Runoff at Point of Discharge	95 mg/L	250,000 Col/100 mL	460,000 Col/100 mL	640 mg/L
Downstream of Discharge	8.8 mg/L	32,000 Col/100 mL	50,000 Col/100 mL	58 mg/L

4. On April 19, 2010, DNR issued a Notice of Violation to the KRKL Cattle, Inc. feedlot for the violations discovered during the field office's inspections on March 18, 2010 and March 19, 2010. The violations included failure to meet minimum level of manure control for the feedlot, prohibited discharge, and general water quality violations. The Notice of Violation letter stated that the matter was being referred for further enforcement.

5. Following the inspection, the facility submitted the NPDES permit application. On June 18, 2010, DNR issued the construction permit for the manure controls. By August 2010, the construction was complete and the manure controls were in operation. On October 15, 2010, DNR issued the NPDES permit.

**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 March 2010 investigation confirm that cattle manure from the Kooima Feedlot 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 65.101 states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to a discharge to a water of the state. During the investigation on March 18, 2010, Mr. Miner noted a large amount of manure solids in the grassed waterway and on the

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bank of the tributary. Mr. Miner also observed manure solids in the tributary. The above 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. 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 from the KRKL Cattle, Inc. feedlot to the tributary created objectionable color and odor and created floating debris and scum. The above mentioned facts indicate violations of the general water quality criteria.

5. 567 IAC 65.101(3) states that 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 Kooima 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 March 18, 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 an NPDES permit had not been issued. The above facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and KRKL Cattle Inc. agrees to do the following:

1. KRKL Cattle Inc. shall operate and maintain the animal feeding operation structures in compliance with all applicable DNR rules and regulations;
2. KRKL Cattle Inc. shall immediately cease discharging any runoff from the production areas to the tributary; and

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3. KRKL Cattle Inc. 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.” KRKL Cattle Inc. saved time and money by delaying construction of the required manure controls for the open feedlot and the delay in obtaining an NPDES permit. KRKL Cattle Inc. was able to delay the costs and operate without incurring any of the costs associated with the NPDES permit. It is estimated that KRKL Cattle Inc. have gained an estimated economic benefit of at least \$1,500.00. Therefore, \$1,500.00 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, KRKL Cattle Inc. endangered the water quality of the nearby tributary. Therefore, \$2,000.00 is assessed for this factor.

Culpability – KRKL Cattle Inc. have a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. This is a large facility with a total of over 2,100 beef cattle. Therefore, \$1,500.00 is assessed for this factor.

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**VII. WAIVER OF APPEAL RIGHTS**

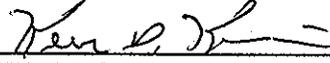
This administrative consent order is entered into knowingly and with the consent of KRKL Cattle Inc. For that reason KRKL Cattle Inc. waives the right to appeal this administrative consent order or any part thereof.

**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.

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

Dated this 6 day of  
January, 2010.

  
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KRKL CATTLE INC.

Dated this 21<sup>st</sup> day of  
December, 2010.

Facility #64082; Kelli Book, Brandon Miner (DNR Field Office 3), EPA, VIII A.2,  
VIII.D.1