IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
PAUL EHMEN AND JON EHMEN **Facility #58904**	ADMINISTRATIVE CONSENT ORDER
Palo Alto County, Iowa	NO. 2011-AFO- 24

TO: Paul Ehmen
5517 320th Street
Cylinder, Iowa 50528

Jon Ehmen
4904 310th Street
Emmetsburg, Iowa 50536

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Paul Ehmen and Jon Ehmen for the purpose of resolving violations that occurred because of a manure discharge at Paul Ehmen's animal feeding operation located in Palo Alto 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:
Jennifer Christian, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand/Gateway North, Suite E17
Spencer, Iowa 51301-2200
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:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to 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 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant

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thereto, 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. Paul Ehmen owns an animal feeding operation located in the SW ¼ of the SE ¼ of Section 24, Vernon Township, Palo Alto County, Iowa. The facility is a 3,840 head hog confinement. The facility utilizes an outdoor concrete manure storage structure that is gravity fed from the confinement buildings. Due to the low elevation of the manure structure and surface drainage issues, an eight foot earthen berm was added on top of the concrete structure to prevent surface water from entering the storage structure. In order to access the manure in the storage structure with application equipment, the pump out areas on the west side and on the east side are cut down approximately one foot lower. During heavy precipitation events, the lower areas of the berm allow surface water to enter the manure storage structure unless they are filled in with dirt after manure application. Jon Ehmen manages the facility.

2. On August 30, 2010, DNR Field Office 3 received a complaint alleging that liquid hog manure from Paul Ehmen's facility was entering a tile intake and going to a stream. Jennifer Christian and Krysti Clayton Mostert, DNR Field Office 3 environmental specialists, began an investigation of the complaint. They visited the unnamed tributary of Cylinder Creek noted in the complaint. They observed dead fish and a manure odor. The field test indicated a high level of ammonia.

3. The field office personnel proceeded to Paul Ehmen's facility. They met with Paul and Jon Ehmen. During a tour of the facility, the field office personnel noted pools of manure to the east of the manure storage structure as well as manure that had flowed south of the manure storage structure toward a low, swampy area. Both Paul and Jon Ehmen claimed they were unaware of how and why the manure was on the ground. The tile intake was down gradient of the pools of manure. The field office personnel were able to follow the path of burned grass from the pools of manure to the tile intake. At the time of the inspection the manure was not flowing into the tile intake. The field office personnel noted a strong manure odor at the tile intake. Laboratory samples taken at the tile intake indicated the following concentrations: Ammonia – 970 mg/L; E-Coli – 690,000 mL; Total Suspended Solids (TSS) – 1,300 mg/L; and Total Biological Oxygen Demand (BOD) – 6,600 mg/L. The field office personnel left the facility to further investigate the manure discharge. After the field office personnel left the facility, Paul Ehmen contacted Ms. Christian on her cell phone and stated that after she had left Jon Ehmen admitted that he had been pumping manure out of the structure onto the ground. Paul stated that it had been happening all summer. He stated that Jon had been pumping the previous weekend and that he had just put the hose and pump away. Paul stated that Jon did not realize there was a tile intake down gradient.

4. Following the telephone conversation, the field office personnel continued the investigation of the manure discharge by observing areas upstream and downstream of the facility. The field office personnel conducted field tests and collected laboratory samples at various bridge crossings upstream and downstream of the facility. The observations, results of the field tests, and results of the laboratory tests are summarized in the tables below.

Field Test Results

Location	Ammonia (mg/L)	Dissolved Oxygen (mg/L)	Temperature (°C)	pH	Observations
Upstream, 510th Ave	0.8	6.2	20.0	6.9	No odor, live fish
Downstream, 320th St.	1.0	6.2	20.0	6.9	No odor, no live or dead fish
Downstream, 520th Ave	1.7	8.5	22.0	7.5	Manure odor, 5 dead fish, no live fish
Downstream, 330th St.	2.7	5.0	22.0	7/7	Manure odor, no live or dead fish
Downstream, 340th St.	10.0	2.0	24.0	7.8	Manure odor, 2 dead fish, no live fish
Downstream, 350th St.	30.0	1.0	26.5	8.16	Strong manure odor, no live or dead fish
Downstream, 360th St.	10.0	4.0	23.0	7.9	Manure odor, no live or dead fish

Laboratory Results

Location	Ammonia (mg/L)	E-Coli (mL)	TSS (mg/L)	Total BOD (mg/L)
Upstream, 510th Ave	<0.1	<10	<1.0	<2.0
Downstream, 520th Ave	2.6	310	2.0	4.0
Downstream, 340th St.	5.6	530	13	23
Downstream, 350th St.	15	1,200	30	89

5. The field office personnel contacted Paul Ehmen after they conducted the field tests and collected the laboratory samples. They instructed Mr. Ehmen to clean up the manure and to plug the intake. The field office personnel informed Mr. Ehmen that they did not observe many dead fish but did discover the plume of the manure release approximately 5 miles from the facility.

6. On August 31, 2010, the field office personnel returned to the facility and no clean up had been started. They spoke with Jon Ehmen. He explained that he had pumped the manure on the ground because he wanted to have adequate manure storage capacity until after the harvest. He stated the summer rainfalls had significantly increased the liquid levels in the manure storage structure. He explained that he would bring a pump and hose to the site on Saturdays, submerse the pump on the east side of the storage structure, lay the hose over the east berm and pump the manure onto the ground. The pump would run for approximately six to eight hours on Saturdays and on Sundays. Mr. Ehmen stated the process took place from the end of July until August 29, 2010. Mr. Ehmen stated that he was not aware of the tile intake and had assumed the manure was being absorbed into the ground. He stated that he knew what he was doing was wrong and that his brother, Paul, had no knowledge of the pumping activities. The field office personnel was able to estimate approximately how many gallons of manure were pumped out of the storage structure. The pump had a pumping capacity of 5,250 gallons per hours and Mr. Ehmen stated the pump operated 16 hours per weekend. Accordingly, approximately 84,000 gallons of manure were pumped onto the ground each weekend for a total of 336,000 gallons of manure from the 4 weekends.

7. On October 29, 2010, DNR Field Office 3 issued a Notice of Violation and Referral letter to Paul Ehmen and Jon Ehmen. The letter included the water quality and animal feeding regulation violations discovered in August 2010 by DNR Field Office 3 personnel. The letter informed the parties the matter was being referred for further enforcement.

8. In January 2011, Paul Ehmen contacted the DNR and stated that there were no longer animals in the facility and that he did not intend to place animals in the facility. Mr. Ehmen stated he was in the process of looking for a buyer for his facility.

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. The Commission has adopted such rules at 567 IAC chapter 65.

2. 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. During the August 2010 investigation, DNR Field Office 3 found evidence that the manure pumped out of the manure storage structure at Paul Ehmen's facility led to a discharge of manure to an unnamed tributary of Cylinder Creek. The above facts indicate violations of these provisions.

3. Iowa Code section 459.311 and 567 IAC 65.2(3) require, in part, that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced by the operation between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state. Jon Ehmen admitted to intentionally pumping manure from the manure storage structure on the ground. He stated that it happened each weekend from the end of July 2010 until August 29, 2010. The manure then reached an unnamed tributary of Cylinder Creek. The above facts indicate violations of these provisions.

4. 567 IAC 65.2(3) further states that sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application. Further, manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Lastly, to ensure that adequate capacity exists in the manure storage structure to retain all manure produced during periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal area, or other factors), the manure shall be removed from the manure storage structure as needed prior to these periods. Paul Ehmen's facility did not have the proper capacity to store the manure; leading to Jon Ehmen intentionally pumping manure on the ground. The above-facts indicate violations of this provision.

5. 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. During the August 2010 investigation, DNR Field Office 3 found evidence of general water quality violations including manure odor, turbid waters, and elevated pollutants. The above facts indicate violations of this provision.

6. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land applying manure from a confinement feeding operation who becomes aware of a release shall notify the DNR of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. Jon Ehmen admitted to intentionally pumping manure from the manure storage structure on the ground. He stated that it happened each weekend from the end of July 2010 until August 29, 2010. At no point did Mr. Ehmen notify the DNR of the releases. The above facts indicate violations of this provision.

7. 567 IAC 65.2(7) requires that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. The intentional pumping of the manure by Jon Ehmen was not proper land application and the intentional pumping led to a discharge into an unnamed tributary of Cylinder Creek. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Paul Ehmen and Jon Ehmen agree to do the following:

1. Restore the diversion berm after each time manure is removed to prevent water from flowing into the manure storage structure; and

2. Pay a penalty of $4,500.00 in accordance with the following payment plan. If any of the payments are not made in accordance with the plan, the remainder of the penalty shall be due immediately.

$187.50 due September 1, 2011	$187.50 due September 1, 2012
$187.50 due October 1, 2011	$187.50 due October 1, 2012
$187.50 due November 1, 2011	$187.50 due November 1, 2012
$187.50 due December 1, 2011	$187.50 due December 1, 2012
$187.50 due January 1, 2012	$187.50 due January 1, 2013
$187.50 due February 1, 2012	$187.50 due February 1, 2013
$187.50 due March 1, 2012	$187.50 due March 1, 2013
$187.50 due April 1, 2012	$187.50 due April 1, 2013
$187.50 due May 1, 2012	$187.50 due May 1, 2013
$187.50 due June 1, 2012	$187.50 due June 1, 2013
$187.50 due July 1, 2012	$187.50 due July 1, 2013
$187.50 due August 1, 2012	$187.50 due August 1, 2013

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize 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 these rules, 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. The administrative penalty assessed by this administrative consent order is $4,500.00. Paul Ehmen and Jon Ehmen are jointly and severally liable for the penalty assessment. The administrative penalty is determined in accordance with the following:

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." Jon Ehmen pumped approximately 336,000 gallons of manure on the ground rather than properly land applying. This allowed Jon Ehmen and Paul Ehmen to avoid the costs associated with manure application including applicator fees, transportation costs, and equipment cost. It is estimated this avoided cost is at least $2,000.00 and that amount is assessed for this factor.

Gravity of the Violation – 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. The intentional and repeated discharges of manure from Mr. Ehmen's facility ultimately resulted in significant degradation of the water quality in the unnamed tributary of Cylinder Creek. Jon Ehmen's intentional actions and the resulting violations threaten the integrity of the animal feeding operation regulations. The DNR regulates producers on many levels and violations such as those of Mr. Ehmen undermine the entire program. Based on the above considerations, $1,000.00 is assessed for this factor.

Culpability – Jon Ehmen and Paul Ehmen have a duty to know the regulations and to be aware that their actions are subject to the regulations. Jon Ehmen's intentional actions resulted in severe environmental harm. He admitted he knew that he should not have pumped the manure onto the ground, yet he did it repeatedly. He took no action to monitor the pumping and did not actively seek out alternatives to pumping the manure on the ground. Paul Ehmen, as the owner of the facility, has a responsibility to ensure that his employees are operating the facility within the regulations. Based on the above considerations, $1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Paul Ehmen and Jon Ehmen. For that reason, Paul Ehmen and Jon

Ehmen waive 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 the 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.

ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of September, 2011.

Paul Ehmen

Dated this 19TH day of AUGUST 2011.

Jon Ehmen

Dated this 19TH day of AUGUST 2011.

#58904; Kelli Book; Field Office 3; Gene Tinker; EPA; VIII.D.1.a, VIII.D.2.d, VIII.D.3