

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>GRANT WELLS FACILITY #63349</p> <p>POCAHONTAS COUNTY, IOWA</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2014-AFO-14</p>
--	---

TO: Grant Wells
55560 150th Avenue
Fonda, IA 50540

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Grant Wells and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations and manure control. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Jennifer Christian
IDNR Field Office #3
1900 N. Grand Gateway North, Suite E17
Spencer, IA 50022
Ph: (712) 262-4177
Fax: (712) 262-2901

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty/restitution to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark/Legal Services

II. JURISDICTION

This Order is issued pursuant to Iowa Code §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 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GRANT WELLS**

III. STATEMENT OF FACTS

1. Grant Wells owns and operates a swine confinement operation located in the NW¼ of Section 24, T91N, R34W (Dover Township), Pocahontas County, Iowa (hereinafter, Wells operation). The operation has a capacity of 3,000 head of nursery pigs (300 animal units) and utilizes an earthen basin for manure storage.

2. On September 16, 2013, approximately 10:20 a.m., Department Field Office #3 (FO3) received a phone call from the Pocahontas County Conservation Board Director, Brian Reis. He stated a county employee observed dead fish in Big Cedar Creek at the bridge on County Road C-49, between 140th Avenue and 150th Avenue. The employee also reported brown water in the creek which emitted a manure odor. Mr. Reis further stated that a swine confinement operation with an earthen manure storage basin was located approximately 1.5 miles upstream of the fish kill location.

3. At approximately 12:10 p.m. on September 16, 2013, FO3 staff arrived at the County Road C-49 bridge over Big Cedar Creek between 140th Avenue and 150th Avenue. A manure odor was detected immediately as they exited their vehicle. Many dead fish were observed in Big Cedar Creek and the water was very dark brown or black in color. Water samples were taken at this location. FO3 staff then traveled upstream to locate the source of the manure, stopping at the next two bridges over Big Cedar Creek on 150th Avenue and 560th Street. Manure odor was detected and dead fish were observed at both locations of the creek. Water in the creek was a lighter brown than observed at the C-49 bridge. Water samples were taken at these locations.

4. FO3 staff continued upstream, stopping at the Wells operation at approximately 1:05 p.m. on September 16, 2013. Mr. Wells was not aware of the fish kill and stated he had not recently pumped or spilled any of his swine manure. While there was no evidence of pumps or hoses around the earthen basin, the liquid level of the manure appeared to have recently been lowered due to the damp two-foot perimeter of the inner berm, just above the liquid level. The outer perimeter of the earthen basin was investigated for manure seepage and none was observed on the ground surface. Mr. Wells accompanied FO3 staff as they walked through the adjacent corn field to access Big Cedar Creek, located approximately 500 feet to the east. While FO3 staff waded the creek looking for any drainage tile discharge locations or structures on the steep bank, live minnows and clear, slow moving water were observed. Approximately 400 feet downstream to the south, a manure odor was detected and a metal tile outlet protruded from the west creek bank. Manure was slowly dripping from the outlet onto an eroded area of the creek bank that was covered with a significant amount of manure residue. Downstream of the tile outlet dead fish were observed and the liquid in the creek was dark in color. Lab samples were taken at this location as well as the next bridge upstream on 550th Street. The table below provides the laboratory results for all the samples collected on September 16, 2013.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GRANT WELLS**

Sample Location	E.Coli Bacteria (Col/100mL)	Ammonia Nitrogen as N (mg/L)	Biological Oxygen Demand (mg/L)
C-49 Bridge	990	97	720
560 th St. Bridge	1300	8	14
Tile Outlet Area	2800	4.8	30
Upstream 550 th St.	52	0.47	4

5. In response to the discovery of the tile outlet, Mr. Wells stated that the tile line runs northwest through the corn field, near the earthen manure basin and then toward his building site. Mr. Wells then pointed out an intake for this tile line just south of the earthen manure basin for FO3 staff to inspect. There was no evidence of manure on the ground surface surrounding the intake. However, when the plastic intake was removed to expose the buried tile, the odor of swine manure was detected by FO3 staff and Mr. Wells. This discovery indicated that the earthen manure basin was leaking beneath the ground surface. When Mr. Wells called his employee who was in charge of managing the hogs, the employee stated that the previous weekend, on September 14, 2013, he noticed a drop in the earthen basin's manure level. FO3 staff advised Mr. Wells he must repair the leaking earthen basin and cease discharging manure into Big Cedar Creek. Mr. Wells contacted licensed professional engineer, Ivan Droessler, of I&S Group to assess the situation and propose the methods to repair the basin. He also contacted Tom Mummert and Son Construction to perform the dirt work.

6. On September 19, 2013 Mr. Droessler and Tom Mummert and Son Construction arrived at the Wells operation. Approximately 30 feet of 5-inch tile was removed up gradient of the tile intake. The tile was also plugged at the intake with expandable foam to prevent any manure from directly discharging to the creek through the remaining field tile. Mr. Droessler stated that the buried tile line angles toward the earthen basin; therefore, they did not continue to remove it until the manure from the earthen basin was pumped out. Mr. Droessler added that the leak would be located and repaired according to Department standards after the basin was pumped out.

7. Mr. Wells stated that he could hold manure in the shallow pits beneath his confinement buildings for a few weeks before having to discharge manure into the earthen basin. He explained that was loading out hogs on September 28, 2013, and the barns would then be empty for two weeks until a new load came in. Mr. Wells also stated he had hired a manure applicator to pump out the earthen basin onto a field that will be harvested by that time.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GRANT WELLS**

8. On September 16 and 17, 2013, the Department's Fisheries Bureau conducted a fish kill investigation, determining that the fish kill in Big Cedar Creek started in Section 24, Dover Township and progressed downstream through sections 25, 26, 35 and 36, Dover Township, and ending in section 11, Cedar Township, for a total affected stream length of 4.79 miles. The investigation concluded that 99,905 fish were killed, valued at \$19,862.81. The Fisheries Bureau investigation costs were \$495.26 and FO3 investigative costs were \$1,791.02.

9. The Department has determined that if the basin is repaired as required in this Order, this will constitute a permanent measure that will eliminate the cause of the discharge described in this Statement of Facts.

IV. CONCLUSIONS OF LAW

1. Iowa Code §459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations. The Commission has done so at 567 IAC Chapter 65.

2. Iowa Code subsection 459.311(1) and 567 IAC 65.2(3) require that each confinement feeding operation retain all manure produced in the confinement enclosures between periods of manure application. A confinement feeding operation is prohibited from discharging manure directly into water of the state or into a tile line that discharges directly into water of the state. The foregoing facts document a violation of these provisions.

3. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Inasmuch as a permit has not been issued for this facility, the foregoing facts establish that this provision has been violated.

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 above facts disclose violation of one or more of these criteria.

5. 567 IAC 65.2(9) requires any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts establish that this provision was violated.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GRANT WELLS**

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 Department for injury caused to a wild animal by the pollution. The amount of restitution shall also include the Department's administrative costs for investigating the incident.

V. ORDER

THEREFORE, the Department hereby orders and Grant Wells consents to do the following:

1. Comply with all manure control requirements.
2. Within 90 days of receipt of this Order, submit to FO3 certification by a professional engineer licensed in Iowa that the earthen basin has been repaired in accordance with Department standards.
3. Pay an administrative penalty of \$1,500.00 and fish restitution of \$22,149.09 in accordance with the following payment plan (The Department will take the administrative penalty from the first payment):
 - \$5,912.28 due July 15, 2014
 - \$5,912.27 due July 15, 2015
 - \$5,912.27 due July 15, 2016
 - \$5,912.27 due July 15, 2017

If any of the foregoing payments are not received by the due date, the remaining balance shall be due immediately.

VI. PENALTY

1. Iowa Code §§455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.
2. Iowa Code §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; 567 IAC Chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty is determined as follows:
 - a. Economic Benefit. 567 IAC Chapter 10 requires the Department to consider the cost saved or likely to be saved by noncompliance. Specifically, 567 IAC 10.2(1) provides, "where the violator

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GRANT WELLS**

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...reasonable estimates of economic benefit should be made where clear data are not available." Mr. Wells saved the cost of land-applying a large, but unknown, quantity of manure. However, he also lost the nutrient value of the manure. While these costs and lost benefits cannot be precisely determined, it is estimated that Mr. Wells did not receive a benefit. Therefore, no amount is assessed for this factor.

b. 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 Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. This matter involves actual harm to the environment due to violation of general water quality standards, including the loss of aquatic life. Therefore, \$1,500.00 is assessed for this factor.

c. Culpability. While Mr. Wells' employee was aware of a drop in the earthen basin manure level two days before the discharge was reported, the Department does not have evidence that Mr. Wells had knowledge of leakage such that he should have undertaken measures to prevent or minimize the discharge. Further, Mr. Wells has undertaken significant remedial measures to prevent future discharge. Therefore, no amount is assessed for this factor.

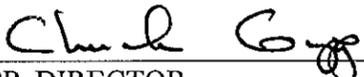
VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Grant Wells. By signature to this Order, all rights to appeal this Order or any part thereof are waived by Grant Wells.

VIII. NONCOMPLIANCE

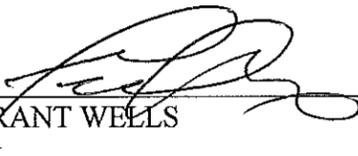
Compliance with section V. ORDER of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GRANT WELLS



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20th day of
June, 2014.



GRANT WELLS

Dated this 16 day of
June, 2014.

Field Office 3(Jennifer Christian); Randy Clark; Ken Hassenius; EPA; VIII. D.1.a, D.3.a