

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

IN THE MATTER OF:

DUANE BERGREN, JR.
Facility #71956

Montgomery County

ADMINISTRATIVE CONSENT ORDER
NO. ~~2024-AFO-~~ 2025-AFO-19

TO: Duane Bergren, Jr.
1897 130th Street
Elliott, Iowa 51532

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Duane Bergren, Jr. for the purpose of resolving violations resulting from a manure release from Mr. Bergren's animal feeding operation located in Montgomery County. This administrative consent order requires Mr. Bergren to: 1) comply with the approved Plan of Action; 2) monitor the stream bank and tributary; and 3) pay a \$5,500.00 administrative penalty. 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:
Kaitlynne Henriksen, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Payment of penalty to:

Director of the Iowa DNR
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

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 violations of Iowa Code chapter 455B, Division III, Part 1; and Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative

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

III. STATEMENT OF FACTS

1. Duane Bergren, Jr. owns and operates an animal feeding operation located at 1490 Spruce Avenue, Elliott, Iowa (Section 29, Douglas Township, Montgomery County). The operation has 120 head of cattle in an open feedlot. The feedlot does not have any manure control in place.

2. On October 31, 2024, Brian Hamman, Montgomery County Emergency Management Coordinator, contacted DNR Field Office 4 and stated there was possible manure in a stream located at 1490 Spruce Avenue near Morton Mills, Iowa. Kristi Burg, DNR Field Office 4 environmental specialist senior, and Kaitlynne Henriksen, DNR Field Office 4 environmental specialist, traveled to the area to investigate the call. They observed evidence of manure flowing from the open feedlot into an unnamed tributary of Sevenmile Creek.

3. The field office personnel met with Mr. Bergren at his facility. He assisted the field office personnel to access the stream in his pasture. Mr. Bergren agreed manure from the facility was entering the tributary. The field office personnel identified the manure runoff from the feedlot was entering the tributary. The tributary was discolored with the presence of manure solids.

4. The field office personnel instructed Mr. Bergren to construct berms in the feedlot to prevent more runoff from entering the tributary. They also instructed him to pump the manure from the tributary. The field office personnel collected laboratory samples from the point of discharge near the feedlot, upstream of the feedlot, and downstream of the feedlot where the tributary meets Sevenmile Creek. The results of the samples are noted below:

Sample Location	E. Coli [MPN]/100mL	Ammonia Nitrogen (mg/L)	Biological Chemical Demand (mg/L)	Total Suspended Solids (mg/L)
Upstream of Discharge Point	1,000,000	0.29	20	76
Discharge Point	>2,400,000	5.3	190	230
Downstream of Discharge Point	>2,400,000	2.2	74	64

5. On November 1, 2024, Ms. Henriksen and Brent Martens, DNR Field Office 4 environmental specialist, returned to the facility. At the time, Mr. Bergren was installing berms along the south edge of the feedlots and was beginning to pump

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manure from the tributary. Mr. Bergren also moved the cattle to a different location until a long-term solution could be completed for the feedlot. On November 6, 2024, Ms. Henriksen returned to the facility after a heavy rain. The berms were holding back the manure-laden water and preventing additional runoff from entering the tributary. On November 13, 2024, Ms. Henriksen checked the berms and they continued to hold back the water.

6. On November 21, 2024, DNR issued a Notice of Violation letter to Mr. Bergren for the violations discovered during the October 2024 investigation. The letter informed Mr. Bergren that the violations would be referred for further enforcement.

7. On January 16, 2025, Mr. Bergren submitted a Plan of Action to DNR Field Office 4 detailing how further discharges will be prevented. After revising, Mr. Bergren submitted his final Plan of Action on January 30, 2025. The plan states that the pens will be seeded and managed as pasture rather than an open feedlot. Cattle will be in the pens less than 45 days in a 12-month period. If the pens are converted back into an open feedlot, manure controls will be installed.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the October 2024 investigation, DNR Field Office 4 noted that a manure release from Mr. Bergren's open feedlot entered an unnamed tributary of Sevenmile Creek. The above-mentioned facts indicate a violation of these provisions.

3. 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 October 2024 investigation, DNR Field Office 4 noted that a manure release from Mr. Bergren's open feedlot entered an unnamed tributary of Sevenmile Creek elevated pollutant levels. The above-mentioned facts indicate a violation of the general water quality criteria.

4. Iowa Code section 459A.104 provides that the Commission shall adopt rules related to the construction or operation of animal feeding operations, including

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permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

5. 567 IAC 65.2(1) states that a person storing, handling, transporting, or land-applying manure from an animal feeding operation who becomes aware of a release shall notify the DNR of the release as soon as possible but not later than six hours after the onset or discovery of the release. Mr. Bergren failed to notify the DNR of the release. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.200(1) states that all settleable solids from open feedlot effluent shall be removed prior to a discharge to a water of the state. During the October 2024 investigation, DNR Field Office 4 noted that manure solids from Mr. Bergren's open feedlot in the unnamed tributary of Sevenmile Creek. The above-mentioned facts indicate a violation of this provision.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Bergren complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Mr. Bergren agrees to do the following:

1. Comply with Plan of Action noted in Section III, Paragraph 7;
2. Monitor the stream bank and the tributary for manure runoff at all times and notify DNR Field Office 4 within 6 hours if a release occurs; and
3. Pay an administrative penalty in the amount of \$5,500.00 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

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administrative penalty of \$5,500.00. 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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Bergren has gained an economic benefit by delaying the cost associated with the construction of proper runoff manure controls at the facility. It is estimated the economic benefit is \$2,000.00 and that amount 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 4 documented a manure release from the facility that resulted in water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Mr. Bergren 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. Mr. Bergren was cooperative and took immediate actions after the field office began its investigation to remedy the manure release. Therefore, \$1,000.00 is being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Duane Bergren, Jr. For that reason, Mr. Bergren 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

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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

DUANE BERGREN, JR.

Dated this 16th day of
April, 2025