

IN THE IOWA DISTRICT COURT FOR BUCHANAN COUNTY

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|--------------------------------|---|---------------------------|
| STATE OF IOWA ex rel. IOWA |) | |
| DEPARTMENT OF NATURAL |) | NO. EQCV009001 |
| RESOURCES, |) | |
| |) | |
| Plaintiff, |) | |
| |) | PETITION IN EQUITY |
| vs. |) | |
| |) | |
| JAMES R. FRYE and SUE A. FRYE, |) | |
| |) | |
| Defendants. |) | |
| |) | |

COMES NOW Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources (DNR) and for its claims against Defendants states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Defendants for repeated water pollution and animal feeding operation violations, including but not limited to, the prohibited discharge of a pollutant to a water of the state, violation of the state’s water quality criteria, failure to retain all manure between periods of application, failure to report a manure release, failure to land apply so as not to cause surface or groundwater pollution, and failure to comply with the manure management plan.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

3. Defendants James R. Frye and Sue A. Frye (“the Fryes”) reside at 605 15th Ave. NE, Independence, Buchanan County, Iowa, and own and operate a swine confinement feeder operation located at 1499 Mason Avenue, Hazelton, Buchanan County, Iowa.

JURISDICTION

Water Pollution Control Regulations

4. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The DNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

5. “Water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(39).

6. The Iowa Environmental Protection Commission (EPC) has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6) and 455B.173(2), (3) and (6). The EPC’s rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

7. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR. Iowa Code § 455B.186(1) and 567 Iowa Admin. Code 62.1(1).

8. A “pollutant” means sewage, industrial waste, or other waste. Iowa Code § 455B.171(20).

9. “Manure” means “animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.” Iowa Code § 459.102(39).

10. All Iowa surface waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)“c”.

11. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life. 567 Iowa Admin. Code 61.3(2)“d”.

12. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

13. The Attorney General shall, at the request of the director with approval of the EPC, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of, or to obtain compliance with, part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(5).

Animal Feeding Operations Regulations

14. The EPC has the authority to establish rules relating to the construction, expansion, or operation of animal feeding operations, including related animal feeding operation structures. Iowa Code §§ 455B.173(12) and 459.103(1). Such rules include, but are not limited to, minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing. Iowa Code § 459.103(1). These rules are contained in 567 Iowa Admin. Code 65.

15. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

16. A confinement feeding operation shall not discharge manure directly into a water of the state or into a tile line that discharges into a water of the state. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

17. 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 water or groundwater pollution. Iowa Code § 459.311(3) and 567 Iowa Admin. Code 65.2(7).

18. Any spray irrigation equipment used for applying manure shall be operated in a manner and with an application rate and timing that does not cause runoff of the manure into the property adjoining the property where the spray irrigation equipment is being operated. 567 Iowa Admin. Code 65.3(2)(c).

19. Any 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 the release as soon as possible but not later than six hours after the onset or discovery of the release. 567 Iowa Admin. Code 65.2(9)(a).

20. A “release” is an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting, or land-applying manure. 567 Iowa Admin. Code 65.1.

21. A confinement feeding operation that is required to submit a manure management plan to the DNR must use a certified commercial manure service for land application of manure, and an operation that applies its own manure must comply with certification requirements pertaining to confinement site manure applicators. 567 Iowa Admin. Code 65.3(6).

22. Any commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. 567 Iowa Admin. Code 65.19(1).

23. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I. Iowa Code § 459.601(2)(a). The DNR and the Attorney General may enforce the provisions of subchapter III of chapter 459 in the same manner as provided in section 455B.175. Iowa Code § 459.601(2)(b).

24. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604. Iowa Code § 455B.175(1)(c).

25. A person required to authenticate a manure management plan who is found in violation of the terms and conditions of the plan shall be subject to the assessment of a civil penalty pursuant to Iowa Code section 459.603. Iowa Code § 459.312(14); 567 Iowa Admin. Code 65.17(15).

26. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty, which shall be established, assessed and collected in the same manner as provided in section 455B.109 or 455B.191. Iowa Code § 459.603.

27. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

28. The Attorney General shall, at the request of the director with approval of the EPC, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of, or to obtain compliance with, part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(5).

FACTS

29. The Fryes own and operate a 3,600 head, hog confinement feeding operation consisting of three confinement buildings located at 1499 Mason Avenue, Hazelton, Buchanan County, Iowa. The three confinement buildings were separately constructed in 1997, 1999, and 2005, and manure is collected and stored in pits below the buildings.

30. Pine Creek, a water of the state, flows through the property on which the Frye's confinement feeding operation is located.

31. The 2013 manure management plan for the Frye confinement feeding operation provides for land application of the manure from the three confinement buildings only in the fall. The designated method of application is by soil injection.

32. By mid-September 2015, manure pits for the three confinement building pits had filled up, and on or about September 19, 2015, James Frye borrowed some manure pumping equipment and pumped the first building's pit down about 8 inches (amounting to approximately 48,000 gallons of manure) to a field with standing corn directly west of the confinement buildings.

33. On or about September 21, 2015, Frye pumped the second confinement building's pit down about 4 inches (amounting to approximately 24,000 gallons of manure) to another field with standing corn that was directly east of the northern portion of the confinement buildings.

34. On or about September 22, 2015, Frye pumped the third confinement building's pit down about 4 inches (amounting to approximately 24,000 gallons of manure) to another field with standing corn that was directly north of the confinement buildings.

35. Between September 19 and September 22, 2015, Frye pumped approximately 96,000 gallons of manure to standing corn in the fields directly adjacent to the confinement buildings.

36. The cornfields used by Frye to apply liquid manure were tiled to drain to Pine Creek. The surface drainage from the fields also flows to the north and east to grassy waterways connected to Pine Creek.

37. Frye was not certified to land apply liquid manure when he applied the manure from September 19 to 22. Furthermore, the application was in direct violation of the Frye's manure management plan in that the manure was not applied at the appropriate rate, it was not injected into the soil, and it was applied before the time designated in the plan.

38. On September 29, 2015, DNR Field Office 1 received a complaint of dead fish in Pine Creek in Buchanan County.

39. DNR personnel investigated the complaint, and observed murky water resulting from an apparent manure release and dead fish in Pine Creek.

40. Water samples collected during the investigation revealed ammonia concentrations in Pine Creek that were high enough to be acutely toxic to aquatic life.

41. DNR personnel conducted a stream survey to determine the extent of the fish kill, and the fish kill assessment determined that 5,459 fish were killed in Pine Creek.

42. The fish appeared to have been dead for several days as decay was advanced and disarticulation of the primary skeletal structure occurred in some specimens during gentle handling.

43. Water samples taken on and near the property containing the Frye's confinement feeding operation indicated the operation was the likely source of the manure release to Pine Creek.

44. On September 30, 2015, DNR personnel met with James Frye at the confinement feeding operation to discuss the manure release, and Frye explained how approximately ten days prior to this visit he pumped manure from the manure pits to the surrounding cornfields and grassy waterway to the north of the confinement buildings because the manure pits were full. Frye explained how the fields were tiled and the tiles discharged into Pine Creek.

45. During the site visit, DNR personnel personally observed manure running out of the middle pit fan on the side of a confinement building. A considerable amount of liquid manure was running north from the confinement buildings and into a grassy waterway that drains to Pine Creek.

46. In addition to manure reaching Pine Creek over the surface of the grassy waterway, DNR staff confirmed two tile outlets on the property were actively discharging water with high concentrations of ammonia directly into the creek.

47. Burco Manure Pumpers, a certified manure service, emptied the pits under the confinement buildings and applied the manure to an off-site field location.

48. On October 1, 2015, DNR personnel returned to the Frye operation, and water samples taken downstream of the operation still contained detectable amounts of ammonia.

49. On October 5, 2015, DNR personnel returned to the Frye operation and water samples taken from the tile line outlets on the property still showed ammonia concentrations greater than 2 ppm.

50. On October 27, 2015, the DNR issued a Notice of Violation letter to the Fries for violations identified during the DNR's investigation.

VIOLATIONS
Water Pollution Control Violations

51. The Fries discharged hog manure from the confinement feeding operation to Pine Creek in violation of Iowa Code sections 455B.186(1), 459.311(1) and 567 Iowa Admin. Code 62.1(1).

52. The discharge of hog manure from the Frye's confinement feeding operation to Pine Creek caused an exceedance of applicable water quality standards in violation of Iowa Admin. Code 61.3(2) "c" and "d."

Animal Feeding Operation Violations

53. The Fryes failed to retain manure generated at their confinement feeding operation in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

54. The Fryes discharged manure from their confinement feeding operation directly into a water of the state and into a tile line that discharges into a water of the state in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

55. The Fryes land applied manure from their confinement feeding operation in a manner which caused surface water and/or groundwater pollution in violation of Iowa Code section 459.311(3) and 567 Iowa Admin. Code 65.2(7).

56. The Fryes land applied manure from their confinement feeding operation in violation of the terms and conditions of their manure management plan.

57. The Fryes failed to use a certified commercial manure service for land application of manure from their confinement feeding operation, and applied manure without complying with DNR with certification requirements pertaining to confinement site manure applicators in violation of 567 Iowa Admin. Code 65.3(6).

58. Defendant James Frye applied liquid manure to land without certification in violation of 567 Iowa Admin. Code 65.19(1).

59. The Fryes failed to notify the DNR of a release of manure from their confinement feeding operation in violation of 567 Iowa Admin. Code 65.2(9).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources requests the Court:

- a. assess a civil penalty against Defendants James R. Frye and Sue A. Frye pursuant to Iowa Code sections 455B.191(2) and 459.603, for violation of Iowa Code sections 455B.186(1), 459.311(1) and 459.311(3); 567 Iowa Admin. Code 61.3(2)“c”-“d”, 62.1(1), 65.2(3), 65.2(7), 65.3(6), 65.2(9), and 65.19(1); and the

applicable manure management plan, not to exceed Five Thousand Dollars (\$5,000.00) per day, per violation, for each day of such violation;

- b. issue a permanent injunction enjoining Defendants James R. Frye and Sue A. Frye from any violation of Iowa Code sections 455B.186(1), 459.311(1) and 459.311(3); 567 Iowa Admin. Code 61.3(2)“c”-“d”, 62.1(1), 65.2(3), 65.2(7), 65.3(6), 65.2(9), and 65.19(1) and the applicable manure management plan.

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to Defendants.

Respectfully submitted,

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