

STATE OF IOWA, ex rel., IOWA )  
DEPARTMENT OF NATURAL )  
RESOURCES (99AG23542), )

Plaintiff, )

vs. )

HAVERHALS FARMS, INC., and )  
PETER HAVERHALS, )

Defendants. )

LAW NO. CVCV023324

**PETITION AT LAW**

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("IDNR") and for its claim against Defendants Haverhals Farms, Inc. ("Haverhals"), and Peter Haverhals, states as follows:

**INTRODUCTION**

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against the Defendants for discharging manure into a water of the state without a permit; water quality violations; improper land application of manure; and failure to comply with the conditions set forth in Defendant's NPDES permit at Defendants' open feedlot cattle operation located in Sioux County, Iowa.

**PARTIES**

- 2. The State of Iowa is a sovereign state of the United States of America.
- 3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
- 4. Defendant Haverhals Farms, Inc. is an Iowa corporation with its principal place of business at 2320 400<sup>th</sup> St, Hawarden, Iowa 51023. At all times material hereto, Defendant Peter

Haverhals was the president of the corporation.

## DEFINITIONS

5. "Alternative technology settled open feedlot effluent control system" or "AT system" means "use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent." 567 Iowa Admin. Code 65.100.
6. "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).
7. "Open feedlot" means "a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation." Iowa Code § 459A.102(15) and 567 Iowa Admin. Code 65.100.
8. "Open feedlot operation" means "an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation." Iowa Code § 459A.102(17).
9. "Open feedlot operation structure" means "an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an AT system." 567 Iowa Admin. Code 65.100.
10. "Operating permit" means "a permit which regulates the operation of an open feedlot operation as issued by the department or the United States environmental protection agency, including as provided in state law or pursuant to the federal Water Pollution Control Act [Clean Water Act], Title 33, U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 122." Iowa Code § 459A.102(19).
11. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

12. "Release" means "an actual, imminent or probable discharge of process wastewater, manure, open feedlot effluent, settled open feedlot effluent, or settleable solids from an open feedlot operation structure to surface water, groundwater, or an actual, imminent or probable discharge directly to a drainage tile line or intake resulting from storing, handling, transporting or land-applying process wastewater, manure, open feedlot effluent, settled open feedlot effluent or settleable solids." 567 Iowa Admin. Code 65.100.

13. "Settled open feedlot effluent basin" ("SOFEB") means "a covered or uncovered impoundment which is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent." 567 Iowa Admin. Code 65.100.

14. "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(37). Six Mile Creek and its unnamed tributaries are waters of the state as defined in Iowa Code section 455B.171(37).

15. "Water Pollution" means "the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life." Iowa Code § 455B.171(38).

## **JURISDICTION**

### **Water Pollution Control Regulations**

16. 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).

17. The State is authorized to implement the Clean Water Act and has the authority to issue permits to regulate the discharges of pollutants into a water of the state. Iowa Code § 455B.177(1).

18. The IDNR is authorized to issue National Pollutant Discharge Elimination System (“NPDES”) permits. Iowa Code § 455B.197.

19. 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.

20. 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).

21. No person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. 567 Iowa Admin. Code 64.3(1).

22. 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).

23. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1

or any permit, rule, or order issued thereunder 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).

24. The Attorney General is authorized, at the request of the DNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

#### **Animal Feeding Operations Regulations**

25. The EPC has the authority to establish rules relating to the construction, expansion, or operation of open feedlot operations, including related open feedlot operation structures. Iowa Code § 459A.104(1). These rules are contained in 567 Iowa Admin. Code 65.

26. An open feedlot operation which has an animal unit capacity of 1,000 animal units or more 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. 567 Iowa Admin. Code 65.101(3).

27. Open feedlot effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. 567 Iowa Admin. Code 65.101(6)(a).

28. If there is substantial evidence that any person has violated or is violating any provision of chapter 455B, division III, part 1; chapter 459, subchapter III; or chapter 459A; or any rule or standard established or permit issued pursuant thereto, the director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. Iowa Code § 455B.175(1).

29. 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(3).

30. The department and the attorney general may enforce the provisions of Iowa Code section 459A in the same manner as provided in section 455B.175. Iowa Code § 459A.501.

31. A person who violates chapter 459A shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459A.502.

32. A person who violates any provision of Iowa Code chapter 455B, division III, part 1, or any permit, rule, standard, or order issued under chapter 455B, division III, part 1, 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).

33. The Attorney General is authorized, at the request of the DNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

#### FACTS

34. The Defendants own and operate an open feedlot cattle operation located in the SW ¼ of the SW ¼ Section 6 T95N, R46W, Center Township, Sioux County, Iowa. The facility has a capacity of 3,500 head of beef cattle and 5,750,000 gallons of settled effluent in three (3) basins.

35. On August 19, 2005, the IDNR issued the Defendants Construction Permit No. CP-A2005-119 to construct settled open feedlot effluent basins to serve existing and new open feedlots.

36. On December 27, 2005, the IDNR issued to the Defendants NPDES Permit No. 2-84-00-0-42. The permit requires that there must be no discharge of manure, open feedlot effluent, settled open feedlot effluent, settleable solids or process wastewater from the "Production Area,"

which includes the animal confinement area, manure storage area, raw materials storage area, and waste containment areas, into a water of the state. NPDES Permit No. 2-84-00-0-42, § I(A)(1). The permit also requires that whenever manure is removed from the feedlot areas or the basin, it shall be land applied in a manner which will not cause surface or ground water pollution. NPDES Permit No. 2-84-00-0-42, § IV(4).

37. On March 26, 2010, the IDNR received a report at approximately 4:30 p.m. that manure from the Defendants' settled open feedlot effluent basin ("SOFEB") had been discharged into a water of the state. The IDNR arrived at the facility at approximately 6:30 p.m. that evening. The IDNR immediately observed a path of saturated ground coming from the direction of Defendants' operation and running through the field to an unnamed tributary of Six Mile Creek, but no manure was flowing into the tributary at that time. The IDNR observed several small berms of soil which had been constructed and were retaining pools of manure.

38. The IDNR questioned Defendant Pete Haverhals to determine the cause of the spill and the status of any remediation efforts. Mr. Haverhals stated that he had been agitating his SOFEB and that sometime between 1:00 p.m. and 4:00 p.m., the agitator switched from agitate to pump, which caused the discharge of an unknown quantity of manure.

39. The IDNR then began to investigate the tributary to Six Mile Creek and took field samples, laboratory samples, photographs, and made observations at various sites. The IDNR observed that the tributary was cloudy in color but did not have an apparent odor of manure. After walking the tributary and taking field samples, the IDNR informed Mr. Haverhals about the results of the field tests. The field samples yielded the following results: cloudy water at the discharge entry site with an ammonia level of 1.5 parts per million (ppm); very clear water upstream of the discharge entry site with an ammonia level of 0.5 ppm; and brown, extremely discolored water downstream of

the discharge entry site with an ammonia level of 60-90 ppm.

40. The IDNR then asked Defendant Peter Haverhals to identify the path of manure from the basin to the tributary and point out any measures he had taken to prevent the manure from reaching the stream. The Defendant pointed out the berms he had constructed to capture the manure and that he had placed a pump in the terraces to lower the level of manure and stop the flow towards the tributary.

41. The IDNR then asked the Defendant to describe the exact events that led to the discharge. The Defendant first stated that he had begun agitation at 9:00 a.m. to break up the ice on the basin surface, left the basin while the agitator was running, and returned to the basin at 1:00 p.m. to check on the agitator and everything was functioning properly.

42. Defendant Peter Haverhals then stated that he had intentionally turned on the pump at 1:00 p.m. to flood his terraces and then left the area to grind corn stalks. He stated that this is a practice he has done several times previously during the summer months and it usually takes three (3) to four (4) hours to flood the terraces, so he figured he had approximately that much time before he would have to return and turn off the pump. He then stated that the manure did not soak into the ground as he had expected and the result was a discharge of manure toward the tributary.

43. Defendant Peter Haverhals stated that he was contacted at 4:00 p.m. by his neighbor who informed him that water was running through his field and it had not yet reached the stream but would very soon. Haverhals then stated that he immediately returned to the basin, shut the pump off, and proceeded to the tributary where the manure had begun to flow into the tributary at a high rate. Defendants built several berms to contain the manure and then began pumping the manure from the overflowing terraces to dry ground. According to Defendant Peter Haverhals, the manure was contained and the flow into the tributary from the field was stopped by 4:30 p.m. Haverhals then



contacted the Farmers Coop Society who in turn contacted the IDNR.

44. The IDNR asked Defendant Peter Haverhals about the capacity of the pump, and he responded that the pump can fill a 7,000 gallon tank in three (3) minutes. Based upon this response, the IDNR's initial estimate of the amount of manure land-applied from 1:00 p.m. to 4:00 p.m. was 420,000 gallons. Prior to leaving, the IDNR encouraged Haverhals to continue any remediation measures possible, including placing round bales of hay in the tributary and pumping the contaminated water from behind the bales to dry land in order to further reduce the impact of the manure on the tributary.

45. On March 27, 2010, IDNR officials conducted a follow-up visit to the Defendants' facility to observe the cleanup efforts at the site. The IDNR observed a tile line outfall that empties into the unnamed tributary of Six Mile Creek, thirty (30) feet downstream of the discharge entry point observed on March 26, 2010. The water near the tile outfall was very cloudy and a manure odor was detected. The IDNR concluded that the effluent from the tile outfall caused the discoloration of the stream. Defendant Peter Haverhals later informed the IDNR that the tile was his and originated in the field that the manure had traveled through.

46. The IDNR then investigated approximately twelve (12) miles of both the unnamed tributary of Six Mile Creek and Six Mile Creek itself, and took field samples, laboratory samples, photographs, and made observations at various sites. The water was very clear upstream of the discharge entry site, slightly discolored at the discharge entry site, and slightly discolored downstream of the discharge site. The ammonia levels were 0.5 ppm upstream of the discharge entry site, 1.0 ppm at the discharge entry site, and decreased in concentration from a high of 2 ppm two (2) miles downstream of the discharge site to 1.8 ppm, 1.4 ppm, 1.2 ppm, and 0.6 ppm, decreasing in order the further downstream the samples were taken. The IDNR also took field and laboratory

samples near the tile outlet and downstream of the outlet. The water was very cloudy at the tile outlet and clear downstream. The ammonia levels were 7.5 ppm at the tile outlet and 1.6 ppm downstream of the tile outlet.

47. At approximately 10:35 a.m. on March 27, 2010, the IDNR went to the Defendants' SOFEB. The IDNR observed that the liquid level in the basin had dropped significantly, as was evidenced by the high water mark observed around the inner berm. The IDNR noted two (2) flow paths of manure from the bottom of the berm toward the Defendants' fields and an additional area of manure saturated soil, located between the basin and the animal pen. The IDNR questioned Defendant Peter Haverhals about an area of saturated soil between the basin and the animal pen. Mr. Haverhals informed the IDNR that the solid settling tile intake in the animal pen had become plugged, which resulted in manure overflowing from the pen and drained out toward the fields.

48. The IDNR also questioned Defendant Peter Haverhals about the two (2) manure flow paths, and he stated that there were two flow paths because he had run the pump for approximately two (2) hours on Thursday to flood his east terraces and three (3) hours on Friday to flood his west terraces. The DNR informed Mr. Haverhals that by combining estimates of the amount pumped for Thursday, March 25 and Friday, March 26, the total amount land-applied by the Defendants was approximately 700,000 gallons. Mr. Haverhals responded that he ran the pump at a lower rate than when he fills tanks for application, so the amount land-applied would be less than 700,000 gallons.

49. The IDNR instructed the Defendants to monitor the tile outfall, clean out the solid settling tile that was plugged, and pump the remaining manure from the terraces so that the manure would not continue to drain to the subsurface tile line. IDNR officials then returned to the office and recalculated the land-application amount based upon estimating the drop in the level of manure in the basin and the capacity of the pump. The IDNR recalculated the amount to be approximately 950,000

gallons.

50. On March 29, 2010, the IDNR contacted Defendant Peter Haverhals to inquire about his clean-up efforts. Mr. Haverhals stated that he had pumped and land applied the manure from his terraces and the manure piled behind his berms. Mr. Haverhals stated that the discharge from his field's tile outfall was still cloudy.

51. On March 31, 2010, the IDNR contacted Defendant Peter Haverhals to check on the status of the clean-up efforts. Mr. Haverhals stated that he had started to clean out his solid settling tile to prevent another overflow from the northeast SOFEB. Mr. Haverhals also stated that he had removed the bales that he had previously placed in the tributary to act as a filter and had filled and leveled the berm dugouts he had created on March 26.

52. On April 16, 2010, the IDNR sent the Defendants a Notice of Violation ("NOV"), outlining the violations observed during the March 26, 2010, site investigation. The NOV also notified the Defendants that the matter was being referred to the IDNR's legal department for a formal enforcement action.

#### **VIOLATIONS**

53. On or before March 26-29, 2010, the Defendant discharged a pollutant into a water of the state in violation of Iowa Code § 455B.186(1), 567 Iowa Admin. Code 62.1(1), 64.3(1), and 65.101(3), and NPDES Permit No. 2-84-00-0-42, § I(A)(1).

54. On or before March 26, 2010, the Defendant land-applied manure in a manner which caused surface or groundwater pollution in violation of 567 Iowa Admin. Code 65.101(6)(a) and NPDES Permit No. 2-84-00-0-42, § IV(4).

55. The Defendant's discharge on or before March 26-27, 2010, into the unnamed tributary of Six Mile Creek produced discoloration of the water and a manure odor to the water

resulting in violation of the water quality standard contained in 567 Iowa Admin. Code 61.3(2)(c).

**PRAYER FOR RELIEF**

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

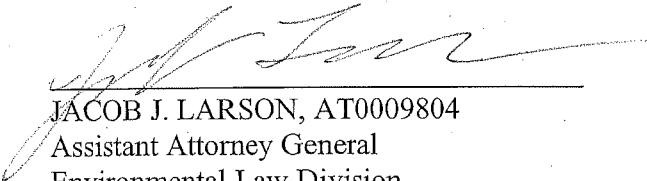
- a. assess a civil penalty against the Defendant, pursuant to Iowa Code sections 455B.191(2) and 459A.502, for each day of violation of Iowa Code section 455B.186(1); 567 Iowa Admin. Code 61.3(2)(c), 62.1(1), 64.3(1), 65.101(3), and 65.101(6)(a); and NPDES Permit No. 2-84-00-0-42, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation; and
- b. issue a permanent injunction ordering the Defendant, pursuant to Iowa Code sections 455B.191(5) and 459A.501, from any further violations of Iowa Code section 455B.186(1); 567 Iowa Admin. Code 61.3(2)(c), 62.1(1), 64.3(1), 65.101(3), and 65.101(6)(a); and NPDES Permit No. 2-84-00-0-42.

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

Respectfully submitted,

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