

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

IN THE MATTER OF:

**HARRIS WEMARK**

**Winneshiek County, Iowa  
AFO #68571**

ADMINISTRATIVE CONSENT ORDER  
NO. 2018-AFO- 11

**TO:** Harris Wemark  
1400 East Street  
Ridgeway, Iowa 52165-8620

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Harris Wemark for the purpose of resolving violations associated with the construction of an unformed manure storage structure without a construction permit. 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:**

Tom McCarthy, Field Office 1  
Iowa Department of Natural Resources  
909 West Main Street, Suite 4  
Manchester, Iowa 52057  
Phone: 563/927-2640

**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: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**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 a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC)

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chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Harris Wemark owns an animal feeding operation located at 3023 225<sup>th</sup> Street, Ridgeway, Iowa (Section 35, Lincoln Township, Winneshiek County, Iowa). The facility has the capacity for 325 dairy cows in confinement and 50 dry cows and 60 calves in an open feedlot. The facility is known as Wemark Dairy and is operated by Eric Wemark, Harris Wemark's son.

2. In 2013, Tom McCarthy, DNR Field Office 1 visited Wemark Dairy and spoke to Eric Wemark. Mr. Wemark asked Mr. McCarthy about the possibility of modifying or constructing a new earthen basin structure. Mr. McCarthy stated that a construction permit would be required before modification or construction.

3. On June 9, 2015, Mr. McCarthy visited Wemark Dairy based on a complaint received by the field office. Mr. McCarthy observed that a new unformed earthen manure storage basin (new south basin) had been constructed. The 3,000,000 gallon earthen south basin was constructed in December 2014 by Mehmert Tiling. Mr. Wemark stated the south basin had not been designed by an engineer, but that soil borings were taken and a clay liner was installed. Mr. Wemark stated that a construction permit had not been obtained prior to the construction of the south basin. Mr. Wemark stated that the confinement dairy barn was constructed in 2011 and manure is stored in an old earthen basin (old north basin) constructed in 1997. Mr. McCarthy observed that the old north basin settled out the manure solids and the liquids from the north basin flowed into the new south basin.

4. On June 25, 2015, DNR issued a Notice of Violation letter to Mr. Wemark for the construction permit violation observed during the June 2015 inspection. The letter required that construction permit applications must be submitted for the two earthen basins within 30 days.

5. In July 2015, Mr. McCarthy spoke to Nic Rowe, Wemark Dairy's engineer regarding the construction permit applications for the facility. Mr. Rowe was working on the construction permit applications. In October 2015, Mr. McCarthy contacted Mr. Rowe and reminded him the construction permit applications were overdue. In April 2016, Mr. McCarthy contacted Mr. Wemark and reminded him that the construction permit applications had not been submitted. In July 2016, Mr. McCarthy once again contacted Mr. Wemark and reminded him the construction permit applications were overdue. In February 2017, Mr. McCarthy contacted Mr. Wemark twice and reminded Mr. Wemark that the construction permit applications must be submitted. Mr. McCarthy requested that Mr. Rowe provide a project update.

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6. In April 2017, the construction permit applications were submitted for the two basins. Paul Petitti, DNR engineer, reviewed the applications. It was determined that the old north basin had been constructed prior to the DNR's construction permit requirements and the karst provisions; therefore, the old north basin could remain in use. However, the new south basin was constructed in potential karst terrain and required further borings and analysis. Wemark Dairy emptied the basin and took several more soil borings. DNR analysis of the information submitted by Wemark Dairy determined the area while in poor soil, did not meet the definition of karst terrain.

**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, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapters 65.

2. 567 IAC 65.7(1)(b)(1) states that a confinement feeding operation shall obtain a construction permit if constructing or modifying any unformed manure storage structure, or constructing, installing or modifying a confinement building that uses an unformed manure storage structure. During DNR Field Office 1's inspection at Wemark Dairy it was determined that the new south unformed basin was constructed without first obtaining a construction permit. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Harris Wemark agrees to do the following:

1. Harris Wemark shall install a ground water monitoring system that shall be installed and operated as follows:
  - a. At least one permanent monitoring well shall be located at the toe of the existing outside dike of the south earthen basin. The well shall be located in between soil borings B5 and B6 as shown on Team Services soil boring map developed in October 2015.
  - b. The well shall be installed down to bedrock refusal with the bottom five feet screened.
  - c. The monitoring well location and detail shall be submitted to the DNR for approval prior to installation.
  - d. Initial baseline samples shall be taken for nitrate nitrogen, ammonia nitrogen, and chloride.
  - e. The ground water elevation shall be determined at the time of sampling.

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- f. The sampling shall occur annually in the Spring or when the ground water levels are at the highest.
  - g. If the baseline and first annual sampling results indicate gross contamination then a maximum of two additional ground water monitoring wells shall be installed at a distance of 100 feet and 400 feet further down gradient of the initial monitoring well.
  - h. If the baseline and the next four annual sampling results do not indicate contamination, the annual testing may be discontinued.
  - i. All sampling results shall be submitted to the DNR.
2. Harris Wemark shall pay an administrative penalty in the amount of \$5,000.00 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 administrative penalty of \$5,000.00. 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 10.2(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. Mr. Wemark gained an economic benefit by failing to obtain a construction permit prior to the construction of the new south basin. Mr. Wemark avoided the costs associated with the permitting process and has been able to use the unpermitted basin for over two years. Mr. Wemark delayed costs associated with constructing an allowable basin. It is estimated that Mr. Wemark gained an economic benefit of at least \$1,000.00 and that amount is 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

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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. Without first submitting the construction permit application DNR was not allowed to review the design and location of the basin. This review ensures that the interests of the citizens of Iowa in clean water are protected. Therefore, \$2,500.00 is assessed for this factor.


Culpability – Mr. Wemark has a duty to know the regulations and to be aware that his actions are subject to the regulations. Eric Wemark, the operator of the facility, was informed in 2013 that a construction permit would be required if a new basin was constructed. Over the course of two years, DNR Field Office 1 made several attempts to obtain the construction permit applications from Eric Wemark. Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

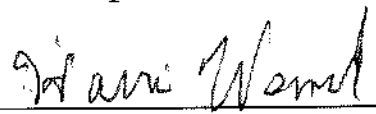
This administrative consent order is entered into knowingly and with the consent of Harris Wemark. For that reason Harris Wemark waives the right to appeal this administrative consent order or any part thereof.

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

  
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CHUCK GIPP, DIRECTOR *Acting Director*  
Iowa Department of Natural Resources

Dated this 30 day of  
May, 2018.

  
\_\_\_\_\_  
Harris Wemark

Dated this 22<sup>nd</sup> day of  
May, 2018.

Kelli Book, DNR Field Office 1, EPA, VIII.A.1

RECEIVED  
MAY 29 2018