

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

<b>IN THE MATTER OF:</b>  <b>M.G. Waldbaum Company d/b/a Michael Foods Inc., Michael Foods Egg Products Company, and Abbotsford Farms</b>  <b>Hancock County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2015-WW-15</b>
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**TO: James E Dwyer, President  
M.G. Waldbaum Company  
301 Carlson Parkway, Suite 400  
Minnetonka, MN 55305**

**I. SUMMARY**

This administrative consent order (order) is entered into between M. G. Waldbaum Company d/b/a Michael Foods Egg Products Company, Abbotsford Farms and Michael Foods Inc. (Waldbaum) and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of the terms and conditions of Waldbaum's Iowa Wastewater Operations Permit No. 41-00-1-05 (permit) and applicable Department rules. This order assesses a penalty and requires Waldbaum to comply with its permit. In the interest of avoiding litigation, the parties have entered into this order and agree to the provisions set forth below.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**  
Jeremy Klatt, Environmental Specialist  
IDNR Field Office #2  
2300 15<sup>th</sup> St. SW  
Mason City, IA 50401  
Ph: 641/424-4073

**Relating to legal requirements:**  
Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
Wallace State Office Bldg. 502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: 515/725-8824

**Payment of penalty to:**  
Iowa Department of Natural Resources

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Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

## **II. JURISDICTION**

The parties hereby agree that this order is issued pursuant to 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 I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

## **III. STATEMENT OF FACTS**

1. Waldbaum owns and operates an egg processing facility located at T96N R25W S25 Britt township, Hancock County, Iowa. This property is locally known as 1260 Highway 18, Britt Iowa. Waldbaum's wastewater treatment facility consists of two anaerobic lagoons followed by three facultative ponds, with final wastewater disposal by land application using a center pivot irrigation system on land immediately adjacent to the treatment plant. Waldbaum purchased the facility from Primera Foods in June of 2013. On March 24, 2014, the permit was amended to change the facility name to Waldbaum. This is the current permit that the facility operates under.

2. On October 29, 2014, the Department conducted a wastewater inspection of Waldbaum. During this inspection Mr. Klatt documented the following permit violations:

(1) Waldbaum's permit requires that it submit Monthly Operation Reports (MORs) to the Department which document its rate of land application. Its permit allows for land application of wastewater at a rate which cannot exceed 10,000 gallons per acre per day. A review of Waldbaum's MORs documented violations of this limit on 8 days during July of 2013 and 2 days during September 2013 for a total of 10 violations.

(2) Waldbaum's permit allows for land application which cannot exceed 30,000 gallons per acre per week. A review of Waldbaum's MORs documented violations of this limit in June 2013 and July 2013. A violation also occurred in June 2012, but that was prior to Waldbaum obtaining ownership of the facility.

(3) Waldbaum's permit prohibits an average influent biochemical oxygen demand (BOD) load to the lagoons in excess of 1136 lbs per day. During the review period the monthly average BOD load exceeded this amount during 10 of the 16 reviewed months. Waldbaum informed the Department that it has hired an engineering firm to address this problem.

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(4) Waldbaum's permit requires careful operation of the irrigation system to assure that there is no ponding of the land applied wastewater. During the inspection, Mr. Klatt observed significant ponding of water in the application field. Mr. Klatt photographed these violations.

3. On November 5, 2013, the Department sent Waldbaum a Notice of Violation (NOV) for the above discussed violations. A copy of the relevant wastewater inspection report was sent to Waldbaum along with this NOV.

4. On September 24, 2014, the Department received a complaint alleging that Waldbaum was violating its permit by land applying wastewater on the neighboring property (Mr. Hejlik's field) and applying when the wind speed exceeded 15 miles per hour (mph).

5. On September 26, 2014, Mr. Klatt went on site to investigate. Once on site Mr. Klatt observed that the east pivot was operating and that the wind speed appeared to be less than 15 miles per hour. Mr. Klatt spoke to Emilio Escobar and Mark Tendall of Waldbaum and explained the complaint. Together they drove to the property line between Waldbaum and Mr. Hejlik's field. Mr. Tendall reported that the center pivot gun routinely sprayed Mr. Hejlik's field until about two weeks ago when Mr. Hejlik informed Waldbaum of the problem. Mr. Tendall stated that upon learning of the problem Waldbaum immediately reprogrammed the center pivot gun so that it would maintain the 50 feet setback required by its permit. Mr. Klatt requested weather records showing the wind speed on the day the complaint was received. Mr. Escobar stated that if he could retrieve the data he would send it to Mr. Klatt. Mr. Escobar was unable to retrieve the data and therefore this data has not been submitted to the Department.

Next, Mr. Klatt observed the east center pivot applying wastewater to the application field south of Waldbaum's property line. The application was occurring within 50 ft of the neighboring property line.

Following the on-site investigation, Mr. Klatt obtained wind speed data from the Clear Lake and Forest City weather stations. These weather stations are located near Waldbaum. This data indicated that wind speeds were in excess of 15 mph during the afternoon of September 24, 2014. Mr. Klatt contacted Shane Meneffee, Corporate Environmental Director for Waldbaum, who indicated that after Waldbaum was informed of the complaint he instructed staff to observe Waldbaum's weather station. Staff then reported that wind speed was less than 15 mph. Therefore, he advised that the application of wastewater could continue.

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6. On October 2, 2014, the Department sent a Letter of Noncompliance to Waldbaum for land application of wastewater in violation of the required 50 feet setback distance and for failure to document wind speed. This letter advised Waldbaum to comply with the setback requirements and to document wind speed during application. It also stated that further permit violations could result in an enforcement action which would include a monetary penalty.

7. Between October 2014 and November 2014 the Department received complaints alleging that on various days Waldbaum land applied wastewater (1) when wind speeds were in excess of 15 mph; (2) to areas where wastewater had ponded; and (3) to a county road. The complainant submitted photos to the Department which appear to document these violations.

8. On October 30, 2014, Mr. Klatt went to the site to investigate. Once on site Mr. Klatt met with Mr. Menefee. Mr. Klatt observed that the center pivots were not in operation, but significant ponding of wastewater was observed. Mr. Klatt documented his observations with photos and Mr. Menefee was provided with copies of the pictures taken by the complainant on October 6 and 13, 2014.

9. Following receipt of additional complaints Mr. Klatt returned to the site on November 5, 2014. Once on site Mr. Klatt met with Mark Tendell of Waldbaum. Mr. Klatt observed the large pivot in operation and in areas of the field that had recently received wastewater significant ponding had occurred. Waldbaum was documenting wind speed however, the speed documented by Waldbaum and that documented by the nearby weather stations varied considerably. Specifically Waldbaum documented that on November 4, 2014, wind speed varied between 7-13 mph and the nearby weather stations documented average wind speeds on the same day above 15 mph with gusts near 30 mph. Mr. Klatt provided Waldbaum with copies of the pictures taken by the complainant and Mr. Klatt took pictures which documented his observations.

10. On November 25, 2014, the Department sent Waldbaum an NOV for the above discussed violations. This NOV recommended that Waldbaum find a more accurate location to measure wind speed, one that would better represent wind speed at the application field.

11. Due to the number of complaints received by the Department a compliance evaluation was conducted of Waldbaum's daily irrigation logs on December 11, 2014.

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A review of the logs regarding the center pivots from September through October 2014 revealed that wastewater applications exceeded the permit limit of 10,000 gallons per acre per day on at least 16 occasions. In addition, the 30,000 gallons per acre per week limit was exceeded 4 times.

12. On December 12, 2014, the Department sent Waldbaum an NOV for violations discovered in the above discussed compliance evaluation. This NOV informed Waldbaum that land application of wastewater in excess of its permit limit was a violation of Iowa law and that the matter was being referred to the Department's Legal Services Bureau for an enforcement action.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Specifically, permit conditions 5 "c", "d", "h", "n" and "r" were violated. The above stated facts demonstrate noncompliance with these provisions.

#### **V. ORDER**

THEREFORE, the Department orders and Waldbaum agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Waldbaum shall comply with its permit; and
2. Waldbaum shall pay a penalty of \$8,000.00 within 30 days of the date the Director of the Department signs this 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 the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has

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adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** Waldbaum saved time and money through noncompliance with its permit. Waldbaum continued to apply wastewater during marginal field conditions and in excess of the permitted allowable rate. These practices caused wastewater to pond in areas of its field. Waldbaum could have complied with its permit by reducing production or hauling its wastewater off-site for proper treatment. Both solutions would have had a negative monetary impact. Therefore, it is estimated that Waldbaum saved approximately \$2,000.00 through noncompliance.

3. **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. Waldbaum violated the terms of its permit subsequent to notification from the Department and subsequent to notification that a neighboring property owner had complained. Further, application of wastewater to a county road threatens public safety. Such repeat violations threaten the integrity of the wastewater program and show a disregard for Iowa law. For these reasons the Department assesses \$2,000.00 for this factor.

4. **Culpability:** Waldbaum has been professionally involved in the business of egg production for a considerable amount of time. As an operator of a business it has a legal duty to be aware of the laws which regulate it and comply with those laws. Further, Waldbaum was aware of the conditions imposed by its permit, it was aware that it was operating in violations of these conditions and it understood how to operate in compliance with its permit. In addition, the Department notified Waldbaum in writing and in person of its violations, nevertheless the violations persisted. For these reasons \$4,000.00 is assessed for this factor.

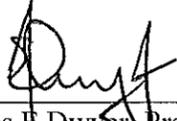
## VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Waldbaum. By signature to this order, all rights to appeal this order are waived.

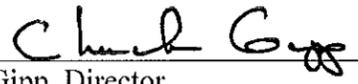
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VIII. NONCOMPLIANCE

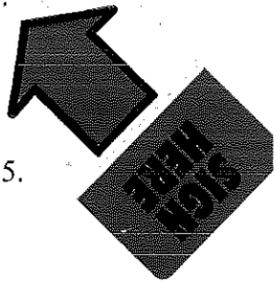
Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General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

  
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James H. Dwyer, President  
M.G. Waldbaum Company

Dated this 9 day of  
June, 2015.

  
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Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 15<sup>th</sup> day of  
June, 2015.



Field Office 2, Carrie Schoenebaum; Jeremy Klatt, I.B.2.d.