

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

DANIEL MUHLBAUER
Facility #66277

Crawford County, Iowa

ADMINISTRATIVE ORDER
NO. 2015-AFO- **30**

TO: Daniel Muhlbauer
3316 370th Street
Manilla, Iowa 51454

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Dan Olson, 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
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Appeal, if any, addressed to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of Penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This 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 459A and the rules adopted 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.

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III. STATEMENT OF FACTS

1. Daniel Muhlbauer owns and operates an open feedlot located at 3316 370th Street, Manilla, Iowa (SW ¼ of NW ¼ of Section 33, Iowa Township, Crawford County). The facility has a capacity of 999 head of beef cattle. Manure controls at the facility consist of one solids settling basin with an actively managed outlet consisting of six inch plugs. Manure then flows through an underground, non-perforated, tile line into the three-tiered filter/treatment system. Manure from the third tier of the filter/treatment system then flows onto the surface of a row crop field. In the summer of 2015, three small berms were constructed in the row crop field to divert the manure flow away from an unnamed tributary of the West Nishnabotna River.

2. Between June 2009 and July 2009, DNR Field Office 4 personnel investigated complaints regarding manure discharges from Mr. Muhlbauer's facility and documented several water quality violations. On August 4, 2009, Mr. Muhlbauer was issued a Notice of Violation letter for the manure discharges from the facility. The letter explained the requirements for manure control at the facility and noted several requirements for the facility to ensure proper manure control. In May 2011, the United States Environmental Protection Agency (EPA) conducted an inspection at Mr. Muhlbauer's facility. No water quality violations were noted during the inspection; however a letter from the EPA reminded Mr. Muhlbauer of the regulations.

3. On September 5, 2014, DNR Field Office 4 received a complaint about a settling basin at Mr. Muhlbauer's feedlot that was discharging. The complainant stated the manure discharge had been taking place over several days. At the time of the complaint it was unknown if manure had entered a water of the state.

4. On September 8, 2014, Ryan Young and Erin Ogle, DNR Field Office 4 environmental specialists, investigated the complaint. Mr. Muhlbauer explained that manure is stored uncovered within the feedlot pens along with any runoff that flows into the settling basin. The liquid is held for approximately 72 hours in the settling basin and then dewatered through an underground conduit to the three-tiered filter/treatment system. Mr. Muhlbauer stated that the settling basin was last scraped in the spring with any solids stored within the pens until land applied. Mr. Muhlbauer went on to explain that once the liquid from the settling basin reaches the three-tiered filter/treatment system, it flows to an unnamed tributary of the West Nishnabotna River, approximately 200 feet southwest of the tiered system.

5. During the investigation, the field office personnel did not observe manure solids discharging into the unnamed tributary. However, they did observe liquid from the three-tiered filter/treatment system entering the unnamed tributary. The liquid flowed from the bottom tier of the system through the crop ground, across a pasture and into the unnamed tributary of the West Nishnabotna River. A field

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test of the discharge to the unnamed tributary showed a discolored liquid with an ammonia concentration greater than 10 ppm. The discharge location had consistent flow as well as a cloudy appearance and discoloration from foam being generated, resulting in high turbidity. The field office personnel collected a laboratory sample of the discharge. The laboratory sample results indicated an ammonia concentration of 8.3 mg/L, an E.Coli concentration of >24,000 MPN/100 mL, and a BOD concentration of 74 mg/L. The field office personnel collected a laboratory sample from the unnamed tributary approximately 175 feet upstream of the discharge. The laboratory sample results indicated an ammonia concentration of 0.29 mg/L, an E.Coli concentration of 4,800 MPN/100 mL, and a BOD concentration of 4 mg/L. The field office personnel also collected a laboratory sample from the unnamed tributary approximately 50 feet downstream of the discharge. The laboratory sample results indicated an ammonia concentration of 0.30 mg/L, an E.Coli concentration of 12,000 MPN/100 mL, and a BOD concentration of 7 mg/L.

6. On December 23, 2014, DNR issued a Notice of Violation letter to Mr. Muhlbauer for the discharge violations discovered during the September 2014 investigation. The letter included a copy of the investigation report. The letter and report required that Mr. Muhlbauer notify the DNR regarding his intentions to discontinue the occurring discharge into the unnamed tributary of the West Nishnabotna River. The report provided two options to ensure ongoing compliance: 1) eliminate the discharge or 2) obtain a National Pollutant Discharge Elimination System (NPDES) permit as a medium Concentrated Animal Feeding Operation (CAFO). Mr. Muhlbauer was required to submit his intentions on how he was going to proceed by January 6, 2015. Mr. Muhlbauer later informed the field office that he was working with a technical service provider and an engineer to make improvements at the facility. To date, a formal plan for Mr. Muhlbauer has not been received. The Notice of Violation letter also informed Mr. Muhlbauer that the matter was being referred for further enforcement.

7. On May 25, 2015, representatives for Mr. Muhlbauer and the DNR met to discuss a possible enforcement action and to address the violations discovered during the September investigation. No agreement was reached during the meeting and negotiations continued following the meeting.

8. On June 12, 2015, DNR Field Office 4 received a complaint of a possible discharge from Mr. Muhlbauer's feedlot. Jessica Montana, DNR Field Office 4 supervisor, and Dan Weber, DNR Field Office 4 environmental specialist, investigated the complaint. The field office personnel noted that liquid from the three-tiered filter/treatment system was entering the unnamed tributary; they did not observe any manure solids being discharged to the unnamed tributary. The discharging liquid was discolored and the field test indicated that the ammonia concentration levels exceeded 10 ppm. The discharge into the unnamed tributary was a consistent flow with a cloudy appearance and discoloration from the foam being generated, the unnamed tributary had a higher than normal turbidity.

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Upstream of the discharge location was clear and downstream of the discharge location was cloudy and smelled like manure. The field office personnel collected laboratory samples of the impacted area and the sample results are shown below:

Location	E.Coli (MPN/100mL)	Ammonia (mg/L)	BOD, 5 Day (mg/L)
300 feet Upstream of the discharge location	750	0.11	<2
Discharge location in the unnamed tributary	>2,400,000	32	350
Fence line	>2,400,000	32	360
700 feet downstream of the discharge location	>2,400,000	3.1	35

9. On June 17, 2015, Mr. Weber returned to the facility and did not observe any discharge from the feedlot. On June 19, 2015, Mr. Weber returned to the facility and did not observe any discharge from the feedlot. The water upstream and downstream of the discharge location appeared to be clear.

10. On June 26, 2015, DNR Field Office 4 received a complaint alleging manure runoff from Mr. Muhlbauer's feedlot. Mr. Weber, Wendy Wittrock and Josh Chambers, DNR Field Office 4 environmental specialists, investigated the complaint. The field office personnel observed discolored water discharging from the third stage of the filter/treatment system to a bean field with small berms that had recently been installed, under a fence line, through a small pasture and then to the unnamed tributary; they did not observe any manure solids being discharged to the unnamed tributary. The field test from the water being discharged to the unnamed tributary had an ammonia concentration greater than 10 ppm. The water upstream of the discharge location appeared clear, while the water downstream of the discharge location appeared discolored and cloudy. The field office personnel collected laboratory samples of the impacted area and the sample results are shown below:

Location	Ammonia (mg/L)
Upstream of the discharge location	0.070
Discharge location in the unnamed tributary	18
Fence line	20
700 feet	0.27

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downstream of the discharge location	
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11. On July 1, 2015, Alison Manz, DNR Field Office 4 environmental specialist, returned to the facility during a light precipitation event. Ms. Manz did observe manure liquid and solids in the row crop field, but there was no discharge to the unnamed tributary. Ms. Manz spoke to Robert Riesselman, facility operator, during the inspection. Ms. Manz explained that due to the close proximity to the unnamed tributary, the flow from the final stage of the three tier filter/treatment system should not occur when the ground is saturated. She stated that the water quality violations must stop immediately. Mr. Riesselman informed Ms. Manz that Mr. Muhlbauer intended to construct total containment for all the manure from the feedlot. He was currently working with ProAg Engineering to design the system. Ms. Manz observed stakes and flags in the field outlining where the proposed containment structures would be located. Mr. Riesselman explained that the precipitation events in the spring and summer had delayed the project.

12. On July 6, 2015, DNR issued Mr. Muhlbauer a Notice of Violation letter for the violations discovered during the June 12, 2015 investigation. The letter required that the facility discontinue any discharge to the unnamed tributary. The letter also informed Mr. Muhlbauer that the matter was being referred for further enforcement.

13. On July 21, 2015, DNR issued Mr. Muhlbauer a Notice of Violation letter for the violations discovered during the June 26, 2015 investigation. The letter required that the facility must cease the discharges and water quality violations immediately and stated that continued discharges during the construction of the total containment would not be allowed. The letter also informed Mr. Muhlbauer that further enforcement was possible.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 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 chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 4's investigation it was determined that settled feedlot effluent from Mr. Muhlbauer's facility was discharged to an unnamed tributary of the West Nishnabotna River. The above-mentioned facts indicate a violation of this provision.

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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. Field Office 4 personnel noted a discolored discharge from Mr. Muhlbauer's facility. The laboratory results indicated elevated pollutants. The above mentioned facts indicate violations of the general water quality criteria.

4. 567 IAC 65.103(1) states that the DNR may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the DNR shall consider the following factors: the size of the operation and the amount of the manure or process wastewater reaching waters of the United States; the location of the operation relative to waters of the United States; the means of conveyance of manure or process wastewater to waters of the United States; the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and other relevant factors. This site has 999 cattle in an open feedlot. The effluent from the three-tiered filter/treatment system at the facility flows through a drain tile into a crop field to an unnamed tributary of the West Nishnabotna River, approximately 200 feet southwest of the tiered system. Due to the design and maintenance of the system, a discharge can be documented after many precipitation events or when the basins have not been cleaned out. This results in a discharge of open feedlot effluent and process wastewater resulting in repeat water quality violations. Based on the above-stated facts, the DNR is designating Mr. Muhlbauer's facility a CAFO.

5. 567 IAC 65.103(3) states the owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.

V. ORDER

THEREFORE, the DNR orders Daniel Muhlbauer to do the following:

1. In order to prevent future discharges from Mr. Muhlbauer's facility to a water of the state, Mr. Muhlbauer shall choose one of the following options. Mr. Muhlbauer shall notify DNR Field Office 4 which option he is choosing within 30 days of the date the Director signs this Order.
 - a. Mr. Muhlbauer shall obtain a NPDES permit for his facility. Mr. Muhlbauer shall submit complete construction permit and NPDES permit applications to DNR within 90 days of the date the Director

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signs this Order. Upon issuance of the construction permit and NPDES permit, Mr. Muhlbauer shall comply with all terms contained therein, including terms related to design, construction, operation and maintenance of waste controls;

OR

- b. Mr. Muhlbauer shall permanently remedy the cause of the violations by constructing and maintaining total containment structures at his facility. The total containment structures shall be completed within 180 days of the date the Director signs this Order.

Mr. Muhlbauer shall develop and submit a Plan of Action to DNR Field Office 4 within 30 days of the date the Director signs this Order. The Plan of Action shall include the following information:

1. The design and timeframe for the completion of the total containment structures at the facility. The design shall include a permanent system for monitoring cell depth;
2. The operation and maintenance plan for the total containment structures once the construction has been completed. This shall include recordkeeping provisions, with the records available on-site for inspection; and
3. The steps the facility intends to take to prevent discharges during the construction of the total containment structures; and

Mr. Muhlbauer shall submit a Nutrient Management Plan and shall continue to submit updates every four years as required by the DNR's regulations.

Mr. Muhlbauer shall submit construction updates to the DNR Field Office 4 every 30 days until the construction of the total containment structures is completed; and

2. Pay an administrative penalty in the amount of \$7,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of 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 each of the water quality violations involved in this matter.

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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 Order with an administrative penalty of \$7,000.00. 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. Muhlbauer gained an economic benefit by delaying the cost associated with the installation of proper manure controls to stop the discharges. Additionally, Mr. Muhlbauer gained an economic benefit by failing to properly ensure the manure and effluent were not being released to a water of the state. He avoided the costs associated with proper disposal and possible land application. Based on the above facts, the economic benefit Mr. Muhlbauer received was at least \$2,000.00 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 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 at least two manure discharges that led to documented 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. Additionally, DNR Field Office 4 has expended a large amount of staff time in responded to complaints and following up on inspections at the facility. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Mr. Muhlbauer 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. Muhlbauer had been previously informed of the requirements for retaining and controlling manure by the field office. Therefore, \$2,000.00 is assessed for this factor.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

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.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 29th day of
September, 2015.

Facility #66277; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.B and VIII.D.3.a

