

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>WILLIAM LAWLER AND JEFF LAWLER</p> <p>Dubuque County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE ORDER NO. 2015-AFO- 27</p>
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TO: William Lawler and Jeff Lawler
Lawler Family Dairy
18655 Old Highway Road
Peosta, Iowa 52068

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:

Sue Miller, Field Office 1
Iowa Department of Natural Resources
909 W. Main Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to appeal rights:

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 violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; 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. Iowa Code

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. William and Jeff Lawler own and operate Lawler Family Dairy located at 18655 Old Highway Road, Peosta, Iowa. Lawler Family Dairy is a small animal feeding operation with 240 dairy cattle in a confinement building and approximately 150 immature dairy cattle in two open feedlots. The confinement building was constructed in 2008 and was expanded in 2013. Manure from the confinement building is stored in an unformed manure storage structure that was constructed in 1992. The manure from the open feedlots is stored in a smaller earthen basin.

2. On September 17, 2014, DNR Field Office 1 received a call from the Dubuque County Conservation Office regarding dead fish, discolored water and a manure odor in an unnamed tributary of the Little Maquoketa River south of the town of Graf, Iowa. The Dubuque County Conservation Office stated a concerned citizen had reported seeing dead fish the previous week and brown foamy water in the unnamed tributary on September 15, 2014.

3. On September 17, 2014, Sue Miller, DNR Field Office 1 environmental specialist, began the investigation of the complaint. Ms. Miller arrived at 12640 Graf Road and met with the property owner. At this location, Ms. Miller observed foam in the unnamed tributary and the field test indicated an ammonia concentration of >3.0 mg/L. Ms. Miller and the property owner continued upstream where manure solids in the stream bed were observed approximately one and a half miles upstream. According to the plat map, this location was near the southern property line of William Miller and the northern property line of William Lawler. Because of the terrain, Ms. Miller was unable to move further upstream, so she returned to the location on Graf Road where she had begun her investigation. At this location she collected a laboratory sample. The laboratory sample result, received at a later date, indicated an ammonia concentration of 14 mg/L.

4. Ms. Miller drove north on Graf Road to the Lawler Family Dairy and met with Jeff Lawler. Ms. Miller explained to Jeff Lawler that she was tracking the source of manure in the unnamed tributary. He stated the facility had a manure release over the weekend of September 13-14. He explained that he and his father, William Lawler, constructed a second deep pit on September 15, 2014 to contain the overflow from the main storage basin. Ms. Miller noted that the majority of the release was now going to the second pit, but some flow was still evident across a hay field west of the main storage basin. The flow continued to the northwest onto a neighboring field and into a drainage area that led to the unnamed tributary. Ms. Miller collected a laboratory sample of runoff near the property line at this location. The laboratory sample result, received at a later date, indicated an ammonia

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

concentration of 510 mg/L. Ms. Miller instructed Jeff Lawler to construct a dam at the property line and in the stream on the Miller property. Ms. Miller also told him to install a pump in the stream above the dam and pump the solids contaminated liquid onto nearby land.

5. Ms. Miller left the facility and drove downstream to determine the impact of the discharge to the unnamed tributary. Ms. Miller collected a laboratory sample from the unnamed tributary at a culvert that crosses Graf Road just upstream of the confluence with the Maquoketa River. The laboratory sample indicated an ammonia concentration of 13 mg/L.

6. On September 18, 2014, Ms. Miller and Brett Meyers, DNR Field Office 1 environmental specialist, returned to the facility. The field office personnel observed less than one foot of freeboard in the unformed manure storage structure and there was heavy vegetation on the berms of the unformed manure storage structure consisting mostly of weeds. Mr. Lawler stated the sand had not been removed from the basin in three years. The Lawlers had constructed a berm at the western edge of the property and had incorporated the manure into the hayfield ground. There was no manure flowing across the ground. They also had placed a check dam at the end of the drainage area where the wooded ravine started as well as a check dam in the unnamed tributary on the Miller property. The pumping had not started but William Lawler stated the pump would be installed immediately.

7. On September 19, 2014, Ms. Miller visited the facility to check on the progress of the stream pumping. Jeff Lawler stated the manure pump had been installed and was pumping water to an old pasture area. The earthen manure storage basin was still overflowing into the second basin, but Mr. Lawler stated some corn would be chopped later in the day so that the manure could be land applied.

8. On September 19, 2014, the Fisheries personnel began its fish kill assessment of the impacted areas of the unnamed tributary of the Little Maquoketa River. The fish kill investigation was conducted by Dan Kirby and Greg Gelwicks, DNR Fisheries Bureau. The total fish kill extended 1.12 miles beginning at the confluence of the Little Maquoketa River and the unnamed tributary and continued upstream on the unnamed tributary until a farm access road was intersected in the SE ¼ of Section 32. Based on the small area of the impacted stream and the low density of dead fish within the stream, the Fisheries personnel conducted a census (complete enumeration) of the dead fish within the impacted stream area.

9. Fish restitution valuation followed procedures provided by American Fisheries Society Special Publication 30 and pursuant to 571 IAC chapter 113. The fish kill assessment determined that 138 fish were killed, valued at \$39.80. The following chart shows the species and value of the fish:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

Species	Number Killed	Monetary Value
Minnows, Shiners, Chubs, and Dace	21	\$1.89
Stonerollers	3	\$0.27
Darters	110	\$37.28
Brook Stickleback	4	\$0.36
TOTALS	138	\$39.80

The Fisheries Bureau investigative costs were \$623.19. The total fish value and investigative costs total \$662.99.

10. On September 22, 2014, Ms. Miller returned to the property observed that the earthen storage basin had approximately two feet of freeboard. The manure had been land applied and incorporated on a cornfield.

11. On October 8, 2014, DNR issued a Notice of Violation to William and Jeff Lawler for the violations discovered during the September investigation. The letter required William and Jeff Lawler to take the following actions: submit a plan detailing how the facility will provide for adequate manure storage and for preventing future manure releases within 30 days to DNR Field Office 1; submit a statement from a certified professional engineer or from NRCS that the unformed manure storage structure is structurally sound within 30 days to DNR Field Office 1; submit a written manure release report by October 17, 2014; and submit an as-built construction permit application for the unformed manure storage structure within 60 days to DNR. The letter also informed the Lawlers that the matter may be referred for further enforcement. The investigative costs of the field office personnel were \$455.14.

12. On December 12, 2014, DNR Field Office 1 received a complaint stating the unformed manure storage structure at Lawler Family Dairy was close to overflowing. The complainant stated that manure was within six inches of the top of the basin.

13. On December 15, 2014, Ms. Miller visited the Lawler facility to investigate the complaint. Ms. Miller observed the unformed manure storage structure completely full and overflowing to the secondary pit constructed in September. During the visit, Ms. Miller inquired as to the requirements in the October Notice of Violation letter. None of the requirements had been completed. Facility representatives had met with the NRCS regarding funding for a concrete manure storage basin.

14. On December 18, 2014, DNR issued a Notice of Violation letter to William and Jeff Lawler for failing to maintain a minimum of two feet freeboard in the basin as observed by Ms. Miller on December 15, 2014. The letter also instructed

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

the Lawlers to continue to work with NRCS and to submit a schedule for completing as-built plans within 10 days.

15. On April 13, 2015, representatives with the DNR and representatives for the Lawlers met to discuss a possible settlement to the violations documented by the field office. During the meeting, William Lawler stated that all solids had dredged and removed from the basin in late December 2014, early January 2015. He also stated that all the sand had been removed from the buildings and the facility would no longer be using sand in the buildings. The sand had been replaced with rubber mats. On April 30, 2015, the Lawlers submitted the manure release report.

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 water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 1 documented a manure discharge from the Lawler's confinement manure storage structure to an unnamed tributary of the Little Maquoketa River. Laboratory results indicated an elevated of ammonia in the unnamed tributary. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. DNR Field Office 1 documented a manure discharge from the Lawler's confinement manure storage structure to an unnamed tributary of the Little Maquoketa River. The above facts indicate a violation of this provision.

4. 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. The laboratory results indicated elevated pollutants. Additionally, a fish kill resulted from the manure discharge. The above mentioned facts indicate violations of the general water quality criteria.

5. 567 IAC 65.2(9) requires that a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

of a release to notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Jeff Lawler told DNR Field Office 1 that the manure release occurred sometime between September 13 and September 14. The release was not reported to the DNR. The above mentioned facts indicate a violation of this provision.

6. 567 IAC 65.2(3)(b) requires that manure stored in unformed manure storage structures shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard. During the December 2014 visit, the field office personnel noted that the unformed manure storage structure did not have the minimum two feet of freeboard and the unformed manure storage structure was close to overflowing. The above mentioned facts indicate a violation of this provision.

7. 567 IAC 65.7(1)(1) requires a confinement feeding operation to obtain a construction permit prior to constructing or modifying any unformed manure storage structure, or constructing, installing or modifying a confinement building that uses an unformed manure storage structure. The confinement building at Lawler Family Dairy uses the unformed manure storage structure. The confinement building was constructed in 2008 and expanded in 2013 without first obtaining construction permits.

8. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 13. 571 IAC 13 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from Lawler Family Dairy.

9. Based on the facts provided by Mr. Lawler during the April 2015 meeting, DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 7, Section IV. Conclusions of Law will recur if William and Jeff Lawler implement the requirements set forth in Paragraphs 1-3, Section V. Order of this Order.

V. ORDER

THEREFORE, it is hereby ordered that William and Jeff Lawler do the following:

1. Operate and maintain all animal feeding operation structures in compliance with all applicable DNR rules and regulations;

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

2. Submit an engineer's statement regarding the soundness of the original unformed manure storage structure to DNR Field Office 1 within 30 days of receipt of this Order. The engineer's report shall include the following information: 1) a visual inspection by the engineer; 2) one boring converted into a ground water monitoring well; 3) the results of two permeability samples taken near the dike; 4) soil composition of the top 60 inches of soil; 5) reports from a tile check; and 6) a statement from the engineer regarding the capacity of the basin and the amount of storage. If the unformed manure storage structure is not structurally sound, William and Jeff Lawler must submit a plan to correct the unformed manure storage structure to DNR Field Office 1 within 45 days of receipt of this Order. If the unformed manure storage structure is not structurally sound, William and Jeff Lawler shall take the actions to make the unformed manure storage structure structurally sound within 90 days of receipt of this Order;
3. If the secondary basin will remain in place, submit to the DNR a statement from the engineer that the basin is suitable to hold manure. The statement shall be submitted within 30 days of receipt of this Order;
4. Pay fish restitution in the amount of \$39.80, Fisheries Bureau investigative costs in the amount of \$623.19, and Field Office investigative costs in the amount of \$455.14 for a total restitution and investigative costs of \$1,118.13 within 60 days of receipt of this Order; and
5. Pay an administrative penalty in the amount of \$9,000.00 within 60 days of receipt 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.

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 \$9,000.00. William and Jeff Lawler are jointly and severally liable for the penalty. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

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.” William and Jeff Lawler gained an economic benefit by failing to have adequate manure storage at the facility. William and Jeff Lawler delayed the significant costs associated with the construction of proper manure storage. The economic benefit received by William and Jeff Lawler through the delayed costs is that the money was able to be used for other purposes. Additionally, William and Jeff Lawler were able to gain an economic benefit by failing to obtain a construction permit. William and Jeff Lawler delayed the costs associated with obtaining the construction permit, including permit application preparation fees and manure management plan preparation fees. Based on the above facts, the economic benefit William and Jeff Lawler received was at least \$3,000.00 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 1 documented a manure discharge that led to documented water quality violations and a fish kill. 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, a construction permit is required to be obtained prior to construction in order to allow for the prior review of plans and specifications pertaining to a proposed facility. This review ensures that the interests of the citizens of Iowa in clean water are protected. Therefore \$3,000.00 is assessed for this factor.

Culpability – William and Jeff have a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. The Lawlers failed to notify the DNR of the manure release in September and December 2014. The Lawlers were informed of the requirements in September and October 2014 and the field office documented another violation in December 2014. Therefore, \$3,000.00 is assessed for this factor.

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: WILLIAM LAWLER AND JEFF LAWLER

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 14th day of
September, 2015.

Kelli Book; DNR Field Office 1; EPA; I.C.1, VIII.D.1.a and VIII.D.3.a

