

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

**IN THE MATTER OF:**

**THE GOOD EGGS, LLC  
Facility #67800**

**ADMINISTRATIVE CONSENT ORDER  
NO. 2016-WW- 01**

**TO:** Joe Scallon  
150 Lark Avenue  
Iowa Falls, IA 50126

**I. SUMMARY**

This administrative consent order (Order) is entered into between The Good Eggs, LLC (Good Eggs) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations resulting from a wastewater discharge from a Good Eggs egg layer facility near Hampton, IA. This discharge caused violations of water quality standards and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Adam Shaffer  
Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW, Box 1443  
Mason City, Iowa 50401  
Ph. 641-424-4073

**Relating to legal requirements:**

John Crotty  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph. 515-725-8249

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, IA 50319-0034

**II. JURISDICTION**

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 1 and the rules adopted or permits issued pursuant thereto; Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties; and Iowa Code section 481A.151, which authorizes the assessment and recovery of restitution for injury to wild animals.

**III. STATEMENT OF FACTS**

1. On July 15, 2015, DNR received a citizen complaint regarding a possible fish kill on Maynes Creek in Franklin County. DNR staff contacted the complainant the next day to obtain further details. The complainant advised that dead fish had been spotted on the banks of Maynes Creek at a farm adjacent to Mallory Memorial County Park.

2. DNR Field Office 2 staff arrived at the farm at 6:00 pm on July 16, 2015. Dead fish were observed on the creek banks and sandbars. No live fish were observed.

3. On July 17, 2015, DNR Field Office 2 staff were alerted by Jason Gooder, of the Franklin County Conservation Board, that a white milky material had been observed in Maynes Creek at Mallory Memorial Community Park on July 15, 2015 and that the material was observed to have entered Maynes Creek from its southern tributary, Drainage Ditch #6.

4. DNR Field Office 2 staff then proceeded to various sites along Maynes Creek and Drainage Ditch #6 in an attempt to find the source of the material that had caused the fish kill. Dead fish were observed at the Maynes Creek Highway 65 bridge and at the Drainage Ditch #6 Nettle Avenue bridge. At the Drainage Ditch #6 County Road S41 bridge, staff observed very turbid water with a white tint. The water at this site smelled of poultry manure. Samples collected at this site had an ammonia concentration of 6.5 parts per million and a Chemical Oxygen Demand of 130 milligrams per liter. DNR staff suspected the source of the pollution was the Good Eggs egg layer facility, which was in sight of this location. Samples of Drainage Ditch #6 at two sites upstream of this location showed significantly lower ammonia and Chemical Oxygen Demand levels and the water was observed to be clear.

5. DNR staff proceeded to the Good Eggs facility and spoke with the manager, Jesse Osterheimer. Mr. Osterheimer stated that the facility's egg wash water screens and pumps become clogged with egg shells about every six weeks and that a contractor visits the facility on a regular basis to fix the problem. He stated that when the screens and pumps get clogged, the wet well sometimes overflows. He advised that the contractor had been to the facility earlier in the day to correct the problem.

6. Mr. Osterheimer showed the wet well to DNR staff. The wash water inside the wet well was a milky white color. DNR staff observed tire ruts in the area around the wet well in which milky white wash water had pooled. From these pooled areas, DNR staff observed a flow path that led out into the yard, away from the wet well, and drained into a storm water intake. Mr. Osterheimer led DNR staff through a field south of the facility to an embankment where the storm water drain outfalls to a ditch. It was apparent to

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DNR staff that the discharge from this outfall was mostly egg wash water due to its odor, turbidity, and milky white color. The stones around the outfall were holding back milky white solids that were floating on the surface of the outfall pool and the stones were covered in a white film. Water samples taken at this location showed an ammonia concentration of 25 parts per million and Chemical Oxygen Demand of 640 milligrams per liter. DNR staff observed that the water in the ditch was clear upstream of the storm drain outfall. DNR staff observed that the ditch was still milky white with floating white solids a half mile downstream from the storm water drain outfall.

7. DNR fisheries biologists conducted a fish kill investigation on July 17, 2015 along Maynes Creek and Drainage Ditch #6. The investigation concluded that a total of 7,596 fish had been killed, including an American Brook lamprey, which is a threatened species in Iowa. The value of the killed fish was \$2,774.30; DNR fisheries biologists' investigative costs were \$538.10; and Field Office 2 investigative costs were \$1,266.78.

8. Good Eggs installed an upgraded float alarm in the wet well shortly after DNR staff visited the facility. The alarm triggers a siren and lights inside the building. The installation of this alarm will alert Good Eggs staff to problems in the wet well before overflows occur.

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

DNR and Good Eggs agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission (Commission).

2. 567 IAC 61.3(2) provides general water quality criteria. These criteria provide that all waters shall be free from materials attributable to wastewater discharges producing objectionable color, odor, or other aesthetically objectionable conditions. The criteria also provide that all waters shall be free from substances attributable to wastewater discharges which are acutely toxic to human, animal, or plant life. The facts stated above demonstrate violations of these general water quality criteria.

3. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law is also liable to pay restitution to DNR for injury caused to a wild animal by the pollution. The amount of the restitution shall also include DNR's administrative costs for investigating the incident.

4. DNR has determined there is no likelihood that the violations identified in Paragraphs 1 and 2 of this section will recur because Good Eggs has installed a permanent remedy, as noted in Paragraph 8 of Section III.

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**V. ORDER**

Therefore, DNR orders and Good Eggs agrees to do the following:

1. Good Eggs shall cease all discharges to waters of the state.
2. Good Eggs shall maintain the wet well alarm system such that Good Eggs staff will be able to prevent future overflows from the wet well.
3. Good Eggs shall pay fish restitution in the amount of \$2,774.30; DNR fisheries biologists' investigative costs in the amount of \$538.10; and Field Office 2 investigative costs in the amount of \$1,266.78 within 30 days of the date the Director signs this Order.
4. Good Eggs shall pay an administrative penalty of \$5,000 within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the 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 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$5,000 for the violations described above. The following factors were considered in the assessment of this penalty:
  - a. Economic benefit. Good Eggs delayed the expense of upgrading its egg wash water pumping system and alarm system. Good Eggs notified DNR that an upgraded float alarm was installed shortly after DNR visited the facility. \$1,000 is assessed for this factor.
  - b. Gravity of the violation. The unpermitted discharge of process wastewater to a water of the state negatively affects the wildlife and beneficial uses of Iowa's rivers and streams, and poses a risk to human health and the environment. \$2,000 is assessed for this factor.
  - c. Culpability. The unpermitted discharge of process wastewater to a water of the state has been prohibited for over 30 years. Good Eggs has a duty to remain knowledgeable of the laws and regulations that pertain to its business. Good Eggs' farm manager told DNR staff that the process wastewater system would clog about every six weeks and that sometimes process wastewater would leave the system and drain to the ground. The storm water drain that carried the process wastewater to the Maynes Creek

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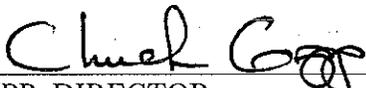
tributary system was installed by Good Eggs. Good Eggs was aware that the discharge of process wastewater to a water of the state was likely to occur. \$2,000 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1) 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 Good Eggs. By signing this Order, all rights to appeal this Order are waived.

**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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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13<sup>th</sup> day of  
January 2016

The Good Eggs, LLC by   
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THE GOOD EGGS, LLC

Dated this 7 day of  
January, 2016

Field Office #2; John Crotty; EPA; I.C.6.a

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