

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

<p>IN THE MATTER OF:</p> <p>DARRYL BANOWETZ</p> <p>Clinton County, Iowa AFO #68704</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- 06</p>
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TO: Darryl Banowetz
1276 320th Avenue
Charlotte, Iowa 52731

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Darryl Banowetz for the purpose of resolving water quality violations resulting from a manure discharge at Mr. Banowetz's animal feeding operation in Clinton County, Iowa. 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:

Jeff Prier, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

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

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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. Darryl Banowetz owns and operates D&D Dairy located at 1276 320th Avenue, Charlotte, Iowa (Section 23, Waterford Township, Clinton County). The confinement facility has a capacity of 352 mature dairy cattle and utilizes an outside uncovered pit for manure storage.

2. On November 4, 2015, DNR Field Office 6 received a complaint that a berm had blown out from the manure storage structure at Mr. Banowetz's facility and manure was flowing into a nearby stream. The complainant stated the berm had blown out many times before.

3. Jeff Thomann, DNR Field Office 6 environmental specialist and Jeff Prier, DNR Field Office 6 environmental specialist senior, investigated the complaint on the same day. They observed a trail of manure solids that appeared to have breached an earthen structure (a temporary bedding sand and manure storage area) on the west end of the freestall barn. They noted the trail of manure solids continued to the stream north of the facility. The field office personnel noted manure solids in the stream and several areas of the stream were brown from the manure discharge. The field office personnel collected laboratory samples of the impacted areas and the results are as follows:

Sample Location	E.coli [MPN]/100 mL	Ammonia mg/L	Biological Oxygen Demand (CBOD) mg/L	Total Suspended Solids (TSS) mg/L
Southeast Branch (upstream of discharge)	860	0.5	<2	4
In the Stream (at the discharge)	8,700	6.1	21	27
Downstream	3,100	1.1	<2	5

4. Mr. Banowetz told the field office personnel that there was an electrical design issue with the solids settling pump control panel and he had to temporarily store bedding sand and manure in an area west of the freestall barn. Mr. Banowetz stated that the control panel was being worked on and he anticipated the control panel to be completed during the week of November 16. He stated once the pump system was operational that the sand and manure mixture would be stored outside in

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the concrete manure storage structure. Before the field office personnel left the facility the storage structure had been repaired and a secondary levee had been constructed downslope to capture any sand/manure mixture that may be released from the temporary storage area.

5. On November 10, 2015, Mr. Prier returned to the facility to verify the clean-up efforts. Mr. Banowetz stated that approximately 500,000 gallons of effluent stream water was pumped into the containment structure over the weekend on two different occasions. Mr. Banowetz continued to haul the loads of the sand/manure mixture to maintain capacity in the temporary storage area. Mr. Prier conducted a field test by the containment dam and it indicated an ammonia concentration of 1.0 ppm.

6. On November 12, 2015, DNR issued a Notice of Violation letter to Mr. Banowetz for the violations discovered by the field office personnel on November 4, 2015. The letter required Mr. Banowetz to comply with the regulations and prevent discharges. He was also required to submit a written spill report by December 21, 2015. The letter also informed Mr. Banowetz that the matter was being referred for further enforcement. Mr. Banowetz submitted the spill report on January 8, 2016.

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 chapter 65.

2. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 6's investigation in November 2015, it was determined that manure from Mr. Banowetz's facility was discharged into the stream. The above-mentioned facts indicate a violation of these provisions.

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. During DNR Field Office 6's investigation in November 2015, it was determined that manure from Mr. Banowetz's facility had been discharged into the stream. The above facts indicate violations of this provision.

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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. During DNR Field Office 6's investigation, manure solids and discolored water was noted in the stream. The laboratory results indicated elevated levels of pollutants in the stream. The above mentioned facts indicate violations of the general water quality criteria.

5. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-4, Section IV [Conclusions of Law] will occur again if the requirements set forth in Paragraphs 1-2, Section V [Order] of this administrative consent order are met.

V. ORDER

THEREFORE, the DNR orders and Mr. Banowetz agrees to do the following:

1. Mr. Banowetz shall prevent further discharges of manure from his facility to a water of the state;
2. Mr. Banowetz shall develop and submit a corrective action plan to prevent future discharges from the facility. The corrective action plan shall be submitted for DNR approval to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order and shall be implemented immediately upon written receipt of DNR approval; and
3. Mr. Banowetz shall pay an administrative penalty in the amount of \$4,000.00 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 \$4,000.00. The administrative penalty is determined as follows:

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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.” The discharge could have been prevented if Mr. Banowetz would have taken preventative steps to prevent the manure discharge. He gained an economic benefit from delaying the costs associated with building the proper containment for the sand/manure mixture. This includes delayed construction costs, delayed transportation costs, and delayed personnel costs. Based on the above facts, an economic benefit of \$1,000.00 is being 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 6 documented a manure discharge that impacted the stream. The violations included in this administrative consent order threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Mr. Banowetz 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. Banowetz was very cooperative in working with the DNR to remedy the violations at the facility. Therefore a minimal \$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 Darryl Banowetz. For that reason Darryl Banowetz waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

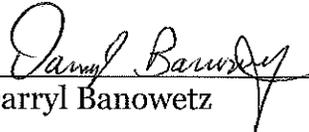
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties 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
Iowa Department of Natural Resources

Dated this 27th day of
February, 2016.



Darryl Banowetz

Dated this 8th day of
February, 2016.

Facility #68704; Kelli Book, DNR Field Office 6, EPA, VIII.D.1.a, VIII.D.3.a