

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

IN THE MATTER OF: LAVERN VAN LOON Facility #60341 O'Brien County	ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO-08
--	---

TO: Lavern Van Loon
6858 320th Street
Hartley, Iowa 51346

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Lavern Van Loon for the purpose of resolving violations resulting from a manure discharge from his animal feeding operation that resulted in water quality violations and a fish kill. 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:

Tom Roos, Field Office 3
Iowa Department of Natural Resources
1900 North Grand – Gateway North Mall
Spencer, Iowa 51301
Phone: (712) 262-4177

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 violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LAVERN VAN LOON

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

III. STATEMENT OF FACTS

1. Lavern Van Loon owns and operates an 870 head nursery/1,030 head finisher hog confinement facility located at 6858 320th Street, Hartley, Iowa (SE ¼ of Section 27, Hartley Township, O'Brien County, Iowa). The facility utilizes an earthen manure storage basin to store manure between periods of application. Mr. Van Loon purchased the facility after the basin had been constructed.

2. On June 3, 2015, Mr. Van Loon contacted DNR Field Office 3 to report a manure release from his earthen basin. He stated it appeared the liquid level in the basin had dropped approximately three feet. Mr. Van Loon discovered the manure entered a tile line along the west side of the basin and discharged to an unnamed tributary of Sewer Creek.

3. On June 3, 2015, Tom Roos, DNR Field Office 3 environmental specialist, visited Mr. Van Loon's facility to investigate the manure release. Upon Mr. Roos's arrival at the facility, he noted that Mr. Van Loon had located the tile that the manure was flowing from and plugged it with clay to prevent any more manure from leaking from the basin. Mr. Van Loon and Mr. Roos followed the path of manure and determined that the manure discharged from the tile to an unnamed tributary of Sewer Creek approximately ¾ mile south of the basin. Mr. Van Loon and Mr. Roos traveled downstream and confirmed that the manure entered Sewer Creek and caused a fish kill approximately 5.7 miles until its confluence with the Ocheyedan River. It was determined that to stop the manure flow to Sewer Creek that Mr. Van Loon would construct a berm east of where the unnamed tributary crossed under Wilson Avenue. Mr. Van Loon instructed his contractor who was on site to construct the berm and Mr. Van Loon would start pumping the manure from behind the berm. Mr. Roos conducted field tests and collected laboratory samples of areas impacted from the manure release. The field tests were conducted downstream of the discharge in the unnamed tributary and Sewer Creek and indicated the following results:

Location	Ammonia Nitrogen (mg/L)	Dissolved Oxygen (mg/L)
Wilson Avenue Crossing	>3	0
Yew Avenue Bridge	>3	0
340 th Street Crossing	>3	0
M-27 Bridge	2.5-3.0	2.5

4. On June 4, 2015, Paul Petitti, DNR environmental engineer, and Mr. Roos returned to Mr. Van Loon's facility to meet with the contractor who would be

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LAVERN VAN LOON

repairing the basin. The parties agreed that the contractor would uncover and plug the tile. Mr. Van Loon also indicated he would have the contractor dig on both sides of the basin to assure there were no additional tiles. If any additional tiles were discovered they would be plugged. The ammonia levels at the Wilson Avenue crossing had dropped and live fish were observed in Sewer Creek from the Yew Avenue Bridge to its confluence with the Ocheyedan River. The ammonia and dissolved oxygen levels in this area had also returned to near normal.

The laboratory samples indicated the following results:

Location	Total Suspended Solids (mg/L)	Ammonia Nitrogen (mg/L)	Biological Oxygen Demand (mg/L)
Upstream of Sewer Creek before the Unnamed Tributary	1	0.16	<2
Yew Avenue Bridge	14	14	29
Wilson Avenue Crossing	68	190	1,200

5. On June 15, 2015, DNR issued a Notice of Violation and Referral letter to Mr. Van Loon for the violations discovered by the field office during the June investigation. The letter informed Mr. Van Loon that the matter was being referred for further enforcement.

6. The field office investigative costs totaled \$634.37.

FISHERIES BUREAU INVESTIGATION:

7. On June 4, 2015, Mr. Roos contacted Mike Hawkins, Natural Resources Biologist with the DNR's Fisheries Bureau regarding the fish kill in Sewer Creek. Mr. Hawkins visited the area and observed dead fish in Sewer Creek and noted that the creek smelled strongly of manure. He observed dead fish at the confluence of Sewer Creek and the Ocheyedan River, which he believed had washed down from Sewer Creek. Because it was late in the day, Mr. Hawkins was unable to conduct the fish kill count. He contacted Ben Wallace, Biologist with the DNR's Fisheries Bureau, and it was decided that Mr. Wallace would begin the fish kill count the following day.

8. On June 5, 2015, the Fisheries personnel began its fish kill assessment of the impacted areas of the unnamed tributary and Sewer Creek. The fish kill investigation was led by Mr. Wallace who was assisted by Matt Mork, Natural Resources Technician; and David Shoo, Natural Resources Aide. The Fisheries

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LAVERN VAN LOON

Bureau calculated the length of the kill to be 6.2 miles, beginning in Section 35 of O'Brien County and ending at the confluence of Sewer Creek and the Ocheyedan River. Based on the length of the fish kill and the accessibility of the unnamed tributary and Sewer Creek, the Fisheries personnel used the methods for streams accessible at and beyond road crossing as outlined in American Fisheries Society, Special Publication 30.

9. The fish kill assessment determined that approximately 14,989 fish were killed, valued at \$2,847.70. The Fisheries Bureau investigative costs were \$603.86. The total fish value and Fisheries Bureau investigative costs totaled \$3,451.56.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 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 3's investigation it was determined that manure from Mr. Van Loon's facility flowed into an unnamed tributary and then to Sewer Creek. The above-mentioned facts indicate violations of these provisions.

2. 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 3's investigation it was determined that manure from Mr. Van Loon's facility flowed into an unnamed tributary and then to Sewer Creek. The above facts indicate a violation of this provision.

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. The DNR personnel noted the water had a manure odor. The laboratory results indicated elevated pollutants and a fish kill was confirmed. The above mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 481A.151 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. The DNR has adopted 571 IAC 113. 571 IAC 113 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 Mr. Van Loon's facility.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LAVERN VAN LOON

5. Based on the information provided by Mr. Van Loon as stated in Paragraph 4 in the Statement of Facts and the observations made by DNR Field Office 3 at the facility, the DNR has determined that the actions have permanently remedied the violations.

V. ORDER

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

1. Mr. Van Loon shall operate and maintain all animal feeding operation structures and production areas in compliance with all applicable rules and regulations;
2. Mr. Van Loon shall pay fish restitution and investigative costs in amount of \$3,000¹ and an administrative penalty in the amount of \$500.00 in accordance with the following payment plan. The administrative penalty shall be paid first and the remaining payments shall be applied to the restitution.

\$165.00 due March 15, 2016	\$145.00 due March 15, 2017
\$145.00 due April 15, 2016	\$145.00 due April 15, 2017
\$145.00 due May 15, 2016	\$145.00 due May 15, 2017
\$145.00 due June 15, 2016	\$145.00 due June 15, 2017
\$145.00 due July 15, 2016	\$145.00 due July 15, 2017
\$145.00 due August 15, 2016	\$145.00 due August 15, 2017
\$145.00 due September 15, 2016	\$145.00 due September 15, 2017
\$145.00 due October 15, 2016	\$145.00 due October 15, 2017
\$145.00 due November 15, 2016	\$145.00 due November 15, 2017
\$145.00 due December 15, 2016	\$145.00 due December 15, 2017
\$145.00 due January 15, 2017	\$145.00 due January 16, 2018
\$145.00 due February 15, 2017	\$145.00 due February 15, 2018

If any of the said payments are not received by the due date, the remaining penalty shall be due immediately.

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.

¹ For settlement purposes the fish restitution and investigative costs have been reduced through a negotiated settlement.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LAVERN VAN LOON

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (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 \$500.00. 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.” Any economic benefit Mr. Van Loon received was mitigated when he had to hire a contractor to fix the basin and identify and plug any remaining tile lines following the manure release. Therefore no economic benefit is being assessed.

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 3 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. Therefore, \$400.00 is assessed for this factor.

Culpability – Mr. Van Loon 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. Van Loon did notify the DNR as soon as he discovered the manure release and he took immediate steps to remove the manure from the unnamed tributary and to repair the basin. Therefore, a majority of the culpability has been mitigated and \$100.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Lavern Van Loon. For that reason Lavern Van Loon waives the right to appeal this administrative consent order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LAVERN VAN LOON

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.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 21st day of
March, 2016.



LAVERN VAN LOON

Dated this 8 day of
March, 2016.

Facility #60341; Kelli Book, DNR Field Office 3, EPA, VIII.D.1 and VIII.D.3