

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

<p>IN THE MATTER OF:</p> <p><b>SLEISTER BROTHERS DAIRY, L.L.C. Facility #68703</b></p> <p><b>Clayton County, Iowa</b></p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- <i>28</i></p>
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TO: Darren Sleister, Registered Agent  
Sleister Brothers Dairy, L.L.C.  
1302 NW Cedarwood Dr.  
Ankeny, Iowa 50023

Jon and Keya Sleister  
Sleister Brothers Dairy, L.L.C.  
14673 Gold Mine Road  
McGregor, Iowa 52157

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Sleister Brothers Dairy, L.L.C. (Sleister) for the purpose of resolving animal feeding operation and water quality violations resulting from discharges from Sleister's animal feeding operation. 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:**

Chris Gelner, Field Office 1  
Iowa Department of Natural Resources  
909 West Main Street, Suite 4  
Manchester, Iowa 50257  
Phone: 563/927-2640

**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

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thereto; Iowa Code chapter 459A and the rules adopted or permits issues pursuant 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. Sleister owns a combined open lot and confinement operation with a capacity for housing 100 mature dairy cattle in one freestall confinement building and several open feedlots with the capacity for approximately 80 immature dairy cattle, 20 horses and 10 beef calves. Jon and Keya Sleister operate the facility. The facility is located at 14673 Gold Mine Road, McGregor, Iowa (SW ¼ of Section 26, Giard Township, Clayton County).

2. On November 3, 2015, DNR Field Office 1 received a complaint alleging manure from Sleister's facility was running into an unnamed tributary of Bloody Run Creek. The complaint stated the tributary was full of manure.

3. On November 4, 2015, Chris Gelner, DNR Field Office 1 environmental specialist, arrived at the Sleister facility to investigate the complaint. He spoke with Jon Sleister regarding the complaint and asked Mr. Sleister if he knew anything about the complaint. Mr. Sleister stated that the manure pit for the confinement building was overflowing and when it rains manure from the open feedlots runs through a grassy area and then to the tributary. Mr. Sleister also stated that the dairy parlor waste discharges onto the surface.

4. Mr. Gelner walked around the facility and observed the freestall sand bedded confinement building as well as the concrete manure storage structure. Mr. Gelner noted manure solids and liquids actively flowing over the structure through an area of ragweed to a wooded ravine about 600 feet away. Mr. Gelner also observed the dairy parlor waste being discharged from a pipe onto the south slope of the confinement building. This was also discharging to the ragweed area. Mr. Gelner observed the open feedlots with several feet of manure at the bottom. Solid and liquid manure was flowing from the open feedlots to the ragweed area. Mr. Gelner followed the ravine downslope for approximately 6,000 feet before it reached the unnamed tributary of Bloody Run. The entire length of the ravine from the facility to the tributary was filled with 4-6 inches of manure and had a strong manure odor.

5. Mr. Gelner collected water samples of the impacted areas of the tributary. The laboratory sample result from upstream of the discharge indicated an ammonia concentration of 0.080 mg/L and the field test did not detect any ammonia. The laboratory sample result at the discharge point indicated an ammonia concentration of 38 mg/L and the field test indicated an elevated ammonia

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concentration. The laboratory sample result from downstream of the discharge approximately 20 feet indicated an ammonia concentration of 2.4 mg/L and the field test indicated an elevated ammonia concentration.

6. Mr. Gelner continued downstream for approximately one mile. In the stretch of the tributary Mr. Gelner noted manure solids and a manure odor in the tributary. Mr. Gelner traveled to the area where the tributary enters Bloody Run. The field test did not detect any ammonia and there was no manure odor at the location.

7. Mr. Gelner returned to the facility and spoke with Jon and Keya Sleister. He informed them that the discharges must be stopped and recommended they seek assistance from a consultant. Mr. Sleister stated he could have the pits pumped. On November 5, 2015, Mr. Sleister provided pictures to Mr. Gelner showing the manure levels had been lowered. Mr. Sleister purchased a new manure pump and the feedlots were scraped and the manure solids were removed.

8. On November 13, 2015, DNR issued Mr. and Mrs. Sleister a Notice of Violation letter for the violations observed during the investigation on November 4, 2015.

9. On November 30, 2015, Mr. Gelner met with Mr. and Mrs. Sleister and representatives from Iowa State University Extension Office and NRCS to discuss technical solutions to eliminate discharges at the facility. The NRCS representative stated design plans would be developed. Mr. Gelner reminded the Sleisters that while they waited for the plans and the implementation of the improvements that the discharges must be stopped. Mr. Sleister stated that the parlor waste would be re-routed to the manure storage structure and two feet of freeboard would be maintained.

10. On December 14, 2015, the Sleisters submitted the written plan for the improvements at the facility. The plan stated that the facility purchased a replacement pump to maintain the proper freeboard. The plan also indicated that the feedlots were cleaned and one of the feedlots had been abandoned. The parlor waste would be redirected and the tile will be extended away from the building location. The plan also indicated that the Sleisters are continuing to work with the NRCS to address additional concerns at the facility including but not limited to changing water flow or cattle location and creating additional storage capacity. On December 17, 2015, NRCS provided its report regarding the Sleister facility to DNR. The recommendations included adding additional manure storage structures and adding clean water diversions at the facility. The report recommended the Sleisters review the options and contact NRCS with the decision on how to proceed.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.104 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. Manure from Sleister's facility was released to the unnamed tributary of Bloody Run Creek. 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. During the field office's investigation, manure from the confinement building manure storage structure was observed overflowing to a grassy area and eventually being discharged to the unnamed tributary of Bloody Run Creek. The above facts indicate a violation of this provision.

4. 567 IAC 65.101 states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to a discharge to a water of the state. During the field office's investigation, manure and manure solids from the open feedlots were observed overflowing to a grassy area and eventually being discharged to the unnamed tributary of Bloody Run Creek. The ravine between the facility and the tributary was full of manure solids. The above facts indicate a violation of this provision.

5. 567 IAC 65.2(3)"b" requires that manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Unroofed formed manure storage structure must maintain a minimum of two feet of freeboard in the structure. During the field office's investigation, manure was overflowing the manure storage structure and the minimum one foot of freeboard was not being complied with. The above facts indicate a violation of this provision.

6. 567 IAC 65.2(9) and 567 IAC 65.101(9) require that a person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from a confinement feeding operation or an open feedlot operation who becomes aware of a release shall notify

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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. Manure solids and liquids from the Sleister facility were discharged into the unnamed tributary of Bloody Run Creek and no notification was received by the DNR. Mr. Sleister admitted to the field office that he was aware of the manure release prior to the DNR's investigation. The above mentioned facts indicate a violation of this provision.

7. 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 ammonia concentrations. Additionally, DNR Field Office 1 personnel observed objectionable color and odor in the water, along with manure liquids and solids in the water. The above mentioned facts indicate violations of the general water quality criteria.

8. DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 6, Section IV. Conclusions of Law will recur if Sleister implements the requirements set forth in Paragraph 10, Section III. Statement of Facts and Paragraphs 1-2, Section V. Order of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Sleister agrees to do the following:

1. Sleister shall operate and maintain all animal feeding operation structures that it owns or operates in compliance with all applicable DNR rules and regulations;
2. Sleister shall submit a Plan of Action to DNR Field Office 1 within 60 days of the date the Director signs this administrative consent order detailing how the facility will ensure there will be no more discharges to waters of the state. The Plan of Action shall include a proper management and maintenance plan for the facility. Other aspects of the Plan of Action may include additional storage and the abandonment of structures or lots. Sleister shall implement the Plan of Action once DNR Field Office 1 approves the Plan of Action;
3. Sleister shall pay an administrative penalty in the amount of \$6,000.00 in accordance with the following payment plan. If any of the payments are not submitted in accordance with the plan the remaining penalty shall be due immediately:

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\$750.00 due January 15, 2017	\$750.00 due January 15, 2018
\$750.00 due April 15, 2017	\$750.00 due April 15, 2018
\$750.00 due July 15, 2017	\$750.00 due July 15, 2018
\$750.00 due October 15, 2017	\$750.00 due October 15, 2018

## 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 \$6,000.00. 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.” Sleister gained an economic benefit by delaying the expense of properly containing the manure at its facility, including the costs associated with maintaining the storage basins and feedlots and constructing additional storage. Sleister has been able to delay these costs, thus being able to use the money for other purposes. Therefore, an economic benefit of \$2,000.00 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 1 documented a discharge 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. Based on the above facts, \$2,000.00 is assessed for this factor

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Culpability –Sleister has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Mr. Sleister admitted he was aware of the manure releases at the facility but at no time made an attempt to prevent the releases or to contact the DNR and notify of the releases. Therefore, \$2,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

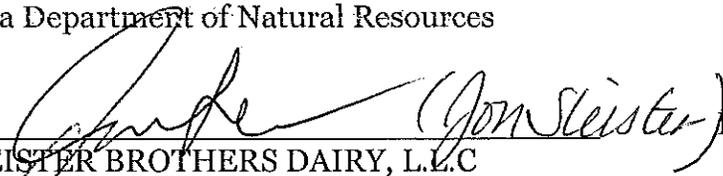
This administrative consent order is entered into knowingly and with the consent of Sleister. For that reason Sleister waives the right to appeal this administrative consent order or any part thereof.

**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 5<sup>th</sup> day of  
December, 2016.

  
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SLEISTER BROTHERS DAIRY, L.L.C

Dated this 28<sup>th</sup> day of  
November, 2016.

Facility #68703; Kelli Book; DNR Field Office 1; EPA; I.C.1, VIII.D.1 and VIII.D.3.a