IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
DARRYL BANOWETZ
Facility ID #68704
Clinton County, Iowa

TO: Darryl Banowetz
1276 320th Street
Charlotte, Iowa 52731

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Darryl Banowetz, for the purpose of resolving the violations of animal feeding operation regulations resulting from a manure overflow at an animal feeding operation in Clinton County, Iowa. This Order requires Mr. Banowetz to take steps to prevent all future discharges; to pay an administrative penalty of $5,000.00; to submit monthly freeboard measurements to DNR Field Office 6 for a period of one year; and in the future comply with the laws and rules governing animal feeding operations and water quality standards for the waters of the state.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Kurt Levetzow, DNR Field Office 6
Iowa Department of Natural Resources
1023 W Madison
Washington, Iowa 52353
319-653-2135

Relating to legal requirements:
Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

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 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
III. STATEMENT OF FACTS

1. In 2016, DNR and Mr. Banowetz entered into Administrative Consent Order No. 2016-AFO-06 to address a manure release at his animal feeding operation. At that time, Mr. Banowetz submitted a plan of action to DNR for preventing future violations.

2. Mr. Banowetz owns and operates a confined animal feeding operation (Facility) located at 1276 320th Street, Charlotte, IA. At all times relevant to this Order, the Facility had a capacity of 352 mature dairy cattle. The Facility has an outside concrete manure storage structure (Basin) on the premises. The Basin is located at the top of a hill that slopes downward to a dirt road and a tributary of Bear Creek (Tributary).

3. Or. Wednesday, April 24, 2019, DNR Field Office 6 received a complaint stating that manure overflowed at the Facility. DNR Field Office 6 environmental specialist senior Kurt Levetzow investigated the complaint.

4. When he arrived, Mr. Levetzow made contact with Mr. Banowetz. Mr. Banowetz stated that he had been trying for weeks to contact a manure applicator to maintain the manure, but an applicator had not been available. Mr. Banowetz stated that on Monday, April 22, 2019, the manure storage structure overflowed. Mr. Banowetz attempted to control the manure flow by constructing a berm at the bottom of the hill.

5. Mr. Levetzow observed the berm Mr. Banowetz constructed. The berm was directly downhill from the Basin and was actively holding back liquid manure. The road down-flow from the berm was wet, indicating manure flowed over the road and into the Tributary.

6. Mr. Levetzow collected several water samples for laboratory testing at various locations along the Tributary. The laboratory results are as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Result (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gravel road (far upstream)</td>
<td>&lt;.05</td>
</tr>
<tr>
<td>Upstream of Discharge</td>
<td>.22</td>
</tr>
</tbody>
</table>
These results indicate the presence of manure in the Tributary.

7. The DNR issued Mr. Banowetz a Notice of Violation on May 8, 2019, for the violations discovered during the field office inspection in April 2019.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the 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 65.

2. Iowa Code section 459.186 and 567 IAC 62.1(1) states that a pollutant may not be discharged into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Manure from Mr. Banowetz’s facility was discharged into the Tributary without a permit. These facts indicate a violation of these provisions.

3. 567 IAC 61.3(2)”d” states that surface waters must be free from substances attributable to agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. During Field Office 6 investigation, elevated pollutant levels were observed in the Tributary. This fact indicates a violation of this rule.

4. 567 IAC 65.2(3) states that all manure for confinement feeding operations must be retained between application periods, and manure may not be discharged into a water of the state. Manure at the Facility overflowed from its storage structure and carried downhill, directly into waters of the state. These facts indicate a violation of this rule.

5. 567 IAC 65.2(3)”b” states that manure shall be removed as necessary to prevent overflows. This includes maintaining at least one foot of freeboard at all times. The manure overflow in this case indicates that the manure was not removed in anticipation of the overflow and that the manure level necessarily rose above the one foot minimum. These facts indicate a violation of this rule.
6. 567 IAC 65.2(9)"a" states that releases shall be reported to the department as soon as possible, and no later than six hours after discovery of the release. Mr. Banowetz knew about the overflow starting on April 22, 2019, but did not notify DNR within six hours of discovering the release. These facts indicate a violation of this rule.

V. ORDER

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

1. Mr. Banowetz will prevent future discharges of manure from its facility from entering waters of the state.

2. Mr. Banowetz will submit a corrective action plan to prevent future discharges from its facility. The corrective plan of action shall be submitted for DNR approval to Field Office 6 within 30 days of the date the Director signs this Order and shall be implemented immediately upon Mr. Banowetz’s receipt of DNR’s written approval.

3. Mr. Banowetz will submit monthly freeboard measurements to Field Office 6 for a period of two years. This period will begin the week after the Director signs this Order.

4. Mr. Banowetz will pay the administrative penalty of $5,000.00 paid pursuant to the following payment schedule. Mr. Banowetz shall pay a penalty of $1,000.00 starting on September 1, 2019. Mr. Banowetz shall owe $1,000.00 or the full amount of the remaining penalty, whichever is less, on the first day of every month following that payment until the $5,000.00 administrative penalty is paid in full. Payment shall be considered received by the DNR on the day it is postmarked. If the DNR has not received a payment due for any month by the first day of that month, the DNR shall notify Mr. Banowetz in writing of its failure to pay. If Mr. Banowetz has not paid the penalty within five (5) days of receiving the notice, payment in full of the remaining amount of the penalty shall be due within 30 days of the notice. Nothing in this plan shall prevent Mr. Banowetz from making additional payments toward the penalty amount, but the DNR shall not consider any additional payments a reduction of the $1,000.00 payment owed on the first day of every month.

VI. PENALTY

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 this Order with an administrative penalty of $5,000.00. The administrative penalty is determined as follows:
Economic Benefit – 567 IAC 10.2(1) considers the costs saved or likely to be saved by the violator. 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.” Mr. Banowetz gained an economic benefit from the manure overflowing. The manure storage structure was not pumped before the overflow, saving Mr. Banowetz costs for pumping and land application or storage, as well as overhead costs. In addition, by failing to alert DNR, Mr. Banowetz avoided the cost of mitigating the environmental impact. Based on the above facts, the economic benefit Mr. Banowetz received was at least $1,500.00 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. Mr. Banowetz was entered into an administrative consent order in 2016 for similar violations as those cited in this Order. Additionally, DNR Field Office 6 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all persons in the state. Therefore, $1,500.00 is assessed for this factor.

Culpability – Mr. Banowetz has a duty to remain knowledgeable of DNR requirements and rules of notification, especially given the fact that Mr. Banowetz recently had a similar violation. Mr. Banowetz failed to report the release to DNR after he discovered the violation. Especially given the requirements of the previous administrative consent order for similar violations, Mr. Banowetz was or should have been aware of the requirement that DNR be notified after a release. Therefore, $2,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Mr. Banowetz. For that reason, Mr. Banowetz waives the right to appeal this Order or any part thereof.

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
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order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191 or Iowa Code section 459.603.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Darryl Banowetz

Dated this 20 day of August, 2019

Dated this 16 day of August, 2019

Noah Poppelreiter, DNR Field Office 6, EPA, VIII.A.2, VIII.D.2.a.