IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

BAR K CATTLE, L.L.C.
Facility ID # 57946
Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2019-AFO-28

To: Bar K Cattle, L.L.C.
   Kirk Hulstein, Registered Agent
   Kelly Hulstein, Owner
   1275 7th Ave. NE
   Sioux Center, Iowa 51250

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Bar K Cattle, L.L.C. (Bar K), for the purpose of resolving violations of animal feeding operation regulations and water quality laws and regulations resulting from discharges from an open feedlot animal feeding operation owned by Bar K. This Order requires Bar K to pay an administrative penalty of $5,000.00, to implement a plan of action to prevent all further discharges from the feedlot, and in the future comply with the laws and rules governing animal feeding operations and water quality.

Questions regarding this Order should be directed to:

Relating to technical requirements: Doyle McKeever
DNR Field Office 3
Iowa Department of Natural Resources
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
712-262-4177

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

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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 prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and of Iowa Code chapter 459; Iowa Code chapter 459A 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.

III. STATEMENT OF FACTS

1. Bar K owns an open feedlot animal feeding operation located at 3577 Grant Avenue, Sioux Center, Iowa (Feedlot). The Feedlot has a total capacity of 9,000 finishing cattle. To contain effluent\(^1\) until land application, the Feedlot utilizes a two part system. First, manure solids are settled in three interconnected basins directly to the south of the Feedlot. Effluent from these basins is intended to drain to a settled open feedlot effluent basin (SOFEB) located to the southwest of the solids settling basins. The Feedlot also utilizes a manure storage structure to hold fluids from the composting and animal feed storage areas of the Feedlot (Secondary Structure).

2. Approximately 50 feet to the southeast of the solids settling basins and the SOFEB is Sixmile Creek (Creek).

3. At all times relevant to this Order, the Feedlot operated under NDPES permit # 8457946 (Permit). The terms of the Permit allow a discharge only if the Feedlot is designed, constructed, operated, and maintained in a manner that can contain all effluent, including runoff and direct precipitation from a 25 year, 24-hour rainfall event.

4. On April 11, 2019, Nutrient Advisors, a consulting firm for Bar K, contacted DNR Field Office 3 to report a release from the SOFEB. DNR Field Office 3 environmental specialist Doyle McKeever contacted Kelly Hulstein, the owner of Bar K, to discuss the situation. Mr. Kelly was aware that the SOFEB was full but did not believe a discharge was occurring.

5. On April 12, 2019, Mr. McKeever and DNR Field Office 3 environmental specialist Jennifer Christian investigated the Feedlot to determine if a discharge was occurring. Bar K employee Chad Derentshot met with the DNR staff and showed them around the Feedlot.

\(^1\) For brevity in this Order, the terms “manure,” “open feedlot effluent,” and “settled open feedlot effluent” as defined in 567 IAC 55.101 shall all be referred to as “effluent” unless otherwise clarified or specified. “Effluent” when used in this Order may contain more than one or a mix of these pollutants.
6. On the north area of the feedlot, DNR staff observed an ice jam plugging a tile inlet that assisted with draining water from the fields to the north of the Feedlot. This caused fresh water from the fields to enter the feedlot drainage systems leading to the settling basins.

7. When DNR staff observed the settling basins, they documented a release from the basins at the area where the basins flowed into the SOFEB. The SOFEB was completely full and was backing up into the settling basins. Effluent was flowing from the settling basins downhill to the Creek. The water of the Creek at the point of discharge was dark brown in color and smelled of manure. The water of the Creek immediately upstream from the point of discharge was clear and had no discernable odor.

8. DNR staff took samples at several locations along Creek for laboratory testing. The results of the testing are as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>E. coli (MPN/100 mL)</th>
<th>Ammonia as Nitrogen (mg/L)</th>
<th>Biochemical Oxygen Demand (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upstream, approximately 1/3 of a mile upstream of the discharge</td>
<td>510</td>
<td>.2</td>
<td>2</td>
</tr>
<tr>
<td>Discharge Site</td>
<td>1,300,000</td>
<td>340</td>
<td>1100</td>
</tr>
<tr>
<td>Downstream, approximately 1.2 miles downstream at 370th Street</td>
<td>7,300</td>
<td>6.9</td>
<td>&lt; 12</td>
</tr>
</tbody>
</table>

These results indicate effluent from the Feedlot entered the Creek.

9. DNR staff discussed the discharge further with Mr. Derentshot and suggested effluent from the SOFEB be transferred from the SOFEB to the Secondary Structure. Mr. Derentshot immediately began to make preparations to do so.

10. The DNR issued Bar K a Notice of Violation for the violations observed by DNR staff on April 12, 2019.

11. Weather data for the area surrounding the feedlot indicated 24-hour rainfall amounts of 0.76 inches for April 11 and 0.02 inches for April 12, with trace amounts of snowfall on April 11 and 0.8 inches on April 12. This does not qualify as a 25 year, 24-hour rain event.
IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into a water of the state, except adequately treated pollutants discharged pursuant to a permit from the DNR. Effluent from the Feedlot discharged to the Creek. This discharge was caused by Bar K’s failure to operate and maintain the Feedlot such that all manure produced at the Feedlot was contained. While Bar K was issued a NPDES permit by the DNR, Bar K was not allowed to discharge under the Permit because it did not operate and maintain the Feedlot in a manner that would allow the retention of all effluent and runoff in the event of a 25 year, 24-hour rain event, as evidenced by the failure of the Feedlot to contain all effluent in a precipitation event that was less than five inches. These facts indicate the Bar K is in violation of these sections.

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. At the Creek, DNR staff observed dark brown water that smelled of manure. Laboratory testing of the Creek’s water showed highly elevated levels of multiple pollutants. These conditions were caused by the discharge of effluent from the Feedlot to the Creek. These facts indicate Bar K is in violation of this section.

4. 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 effluent control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

5. 567 IAC 65.101(3) prohibits an open feedlot from discharging manure, open feedlot effluent, or settled open feedlot effluent into any waters of the United States unless the discharge is pursuant to a NPDES Permit. Effluent from the Feedlot discharged to the Creek. This discharge was caused by Bar K’s failure to operate and maintain the Feedlot such that all manure produced at the Feedlot was contained. While Bar K was issued a NPDES permit by the DNR, Bar K was not allowed to discharge under the Permit because it did not operate and maintain the Feedlot in a manner that would allow the retention of all effluent and runoff in the event of a 25 year, 24-hour rain event, as evidenced by the failure of the Feedlot to contain all effluent in a precipitation event that was less than five inches. These facts indicate the Bar K is in violation of this section.
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6. DNR has determined that there is no likelihood that the violations cited in this Order will recur if Bar K implements the requirements set forth in Paragraphs 1-2, Section V of this Order.

V. ORDER

THEREFORE, the DNR orders and Bar K agrees to the following:

1. Bar K shall operate all open feedlot animal feeding operations in compliance with all laws and regulations related to animal feeding operations and water quality.

2. Bar K shall immediately cease all discharges of any pollutant to waters of the state and/or waters of the United States. Within 30 days of the date the Director signs this Order, Bar K shall develop a plan of action to prevent all future discharges from the Feedlot and shall submit the plan to DNR Field Office 3 for approval. Within 60 days of the date the Director signs this order, Bar K shall implement the plan of action.

3. Bar K shall pay an administrative penalty in the amount of $5,000.00 within 30 days from the date the Director signs this Order.

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. 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. Because the DNR determines this matter is best handled administratively, the DNR must follow the limits of Iowa Code section 455B.109 and 567 IAC chapter 10. Pursuant to those limits, a penalty of $5,000.00 is assessed. 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.” Bar K avoided costs associated with properly retaining and disposing of effluent from the Feedlot. Using reasonable estimates for these costs, $500.00 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. The
discharge of effluent from the Feedlot caused harmed to the environment as evidenced by the presence of effluent in the Tributary. The laboratory results of the water from the Creek showed highly elevated levels of E. coli and ammonia. By violations of law and rule, Bar K also harmed the integrity of the animal feeding operation program. $3,000.00 is assessed for this factor.

Culpability – Bar K has a duty to operate and maintain the Feedlot in a manner that prevents violations of open feedlot laws and regulations. Bar K failed to operate and maintain the Feedlot in a manner that would prevent discharges. This is particularly problematic given the close proximity of the Creek to the settling basins, the SOFEB, and the Secondary Structure. $1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Bar K. For that reason, Bar K 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 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.

Dated this 7 day of October, 2019

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 24 day of September, 2019

For BAR K CATTLE, L.L.C.

Noah Poppelreiter, DNR Field Office 3, EPA, VIII.D.1.b