IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

ROLAND WEIRATHER
MARY WEIRATHER

ID #70809
Lee County, Iowa

TO: Roland Weirather
   Mary Weirather
   3118 270th Avenue
   Keokuk, Iowa 52632

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Mary and Roland Weirather (jointly, Weirathers) for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from a manure discharge at the Weirathers' confinement feeding operation in Lee County, Iowa. This Order requires the Weirathers to make improvements to the Facility to prevent all future discharges prior to operating the Facility in the future; pay an administrative penalty of $3,000.00; and in the future comply with the laws and rules governing animal feeding operations.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Mark Heiderscheit, 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 prevent a violation of Iowa Code chapter 455B, Division III, Part I and of Iowa Code chapter 459; 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.

III. STATEMENT OF FACTS

1. The Weirathers own confinement feeding operation located at or about the NW ¼ of the NW ¼ of Section 25, Township 66, Lee County (Facility). The Facility utilizes an under building manure storage structure (Structure) to hold manure until land application. The Facility is a grow to finish hog operation and has an animal unit capacity of 354 animal units. Downhill from and to the southwest of the Facility is an unnamed tributary of the Mississippi River (Tributary).

2. On July 7, 2019, DNR Conservation Officer Ben Schlader received a complaint from a J.D. White, who stated the water of the Tributary was black. Officer Schlader, in turn, contacted DNR Field Office 6 environmental specialist Mark Heiderscheit to report the complaint.

3. Mr. Heiderscheit contacted Mr. White by telephone. Mr. White stated that he noticed a discoloration of the Tributary starting on July 5, 2019, and had concerns it was caused by pollutants from the Facility or from the Dakota Access Pipeline (Pipeline). Mr. White stated he had contacted the corporate owner of the Pipeline. The Pipeline representative visited the Tributary areas and told Mr. White the substance was not oil.

4. Mr. Heiderscheit responded to the Mr. White’s residence to investigate the complaint. Mr. White took Mr. Heiderscheit to meet with his neighbor, Mike Prybil. Mr. Prybil took Mr. Heiderscheit to the Tributary. Mr. Heiderscheit observed that the Tributary’s water was very dark in color, nearly black, and had the odor of manure. Mr. Heiderscheit took field samples of the Tributary’s water at Mr. Prybil’s property; the tests indicated the presence of high levels of nitrogen as ammonia.

5. Mr. Heiderscheit followed the Tributary upstream. To the southwest of the Facility, Mr. Heiderscheit observed a flow of manure coming downhill from the Facility and discharging to the Tributary.

6. Mr. Heiderscheit made contact with Roland Weirather and his son, Shane Weirather. Mr. Weirather allowed Mr. Heiderscheit to investigate the property around the
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ISSUED TO: ROLAND AND MARY WEIRATHER

4. 567 IAC 65.2(3) states 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 investigation, it was determined that manure from the Structure discharged to the Tributary. The facts of this case indicate a violation of this rule.

5. 567 IAC 65.2(9) requires that releases of manure must be reported to the DNR as soon as possible but no later than six hours after the onset or discovery of the release. The Weirathers were aware of the release from the Facility, but did not contact the DNR. The facts of this case indicate a violation of this rule.

6. DNR has determined that there is no likelihood that the violations cited in this Order will recur if the Weirathers implement the requirements set forth in Paragraphs 1-3, Section V of this Order.

V. ORDER

THEREFORE, the DNR orders and the Weirathers agree to the following:

1. The Weirathers shall operate and maintain the Facility and all other animal feeding operations under their control in compliance with all applicable laws and regulations;

2. The Weirathers stipulate that the Facility has ceased all operation due to the age and layout of the confinement structures at the Facility, and that the Facility will remain out of operation for the indefinite future until the Weirathers can repair, upgrade, and improve the Facility. The DNR enters into this Order due to that stipulation. Prior to the start of any operation of the Facility as an animal feeding operation of any size in the future, the Weirathers shall develop a plan to make improvements to the Facility to prevent future discharges as the Facility and shall submit the plan to DNR Field Office 6 for approval.

3. The Weirathers shall pay a joint and several administrative penalty in the amount of $3,000.00 within 30 days of 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. 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 $3,000.00. 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.” This failure resulted in delayed costs from planning, construction, maintenance, and monitoring, saving the Weirathers these costs. Therefore, $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. 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. There were multiple water quality violations in this case that negatively impacted water quality in the Tributary. Operating the Facility in a manner that allows discharges from the manure storage structure and causes water quality violations threatens the integrity of the animal feeding operation and water quality improvement programs. $2,000.00 is assessed for this factor.

Culpability – The Weirathers have a duty to follow the applicable laws and regulations while storing manure to ensure storage does not create a water quality violation. Due to the Weirather's closure of the Facility, $500.00 is assessed for this violation.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of the Mary Weirather and Roland Weirather. For that reason, the Weirathers each waive 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.

Kayla Lyon, Director  
Iowa Department of Natural Resources

Dated this 24th day of January, 2019

Mary Weirather

Dated this _____ day of
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: ROLAND AND MARY WEIRATHER

MARY WEIRATHER

ROLAND WEIRATHER

Dated this 13th day of January, 2019

Noah Poppelreiter, DNR Field Office 6, EPA, VIII.B.1, VII.D.1.a