IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

BRIAN BEHRENS
Carroll County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO-04

To: Brian Behrens
16507 Highway 141
Templeton, Iowa 51463

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Behrens for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from a discharge from the Brian Behrens Feedlot (Feedlot). This administrative consent order (Order) requires Mr. Behrens to pay an administrative penalty of $2,500.00 pursuant to a payment plan, to implement a plan of action to prevent all discharges from the Feedlot, to maintain a herd of less than 300 head of cattle at the Feedlot until the plan of action is implemented, and in the future comply with the laws and rules governing the animal feeding operations and water quality for the waters of the state.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**
Wendy Wittrock, DNR Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712-243-1934

**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 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 a violation of Iowa Code chapter 455B, Division III, Part 1; 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. Mr. Behrens neither admits nor denies the Statement of Facts and enters into this Order for settlement purposes only.

2. Mr. Behrens owns and operates the Feedlot, located at 16507 Highway 141, Templeton, Iowa.

3. The Feedlot has two solids settling basins (SSB). One is located to the north of the Feedlot; the other is located to the south. The Feedlot has a maximum capacity of 999 head of non-dairy cattle (999 animal units).

4. On May 2, 2018, DNR environmental specialist Wendy Wittrock conducted a scheduled on-site inspection of the Feedlot. At the time of the inspection, the Feedlot contained 730 head of non-dairy cattle (730 animal units).

5. During this inspection, Ms. Wittrock observed settled open feedlot effluent (for purposes of this order only, “effluent”) overflowing from both the north SSB and the south SSB. The effluent overflowing from the SSBs entered channelized areas of cropland on the north and south of the Feedlot, respectively. The effluent flowed through the channelized areas downhill, then through road culverts under Hawthorne Ave. After travelling through the culverts, the effluent discharged into an unnamed tributary of the East Nishnabotna River (Tributary). The Tributary is a water of the State and a water of the United States. Ms. Wittrock documented the discharge with pictures and written reports.

6. After discovering the discharges, Ms. Wittrock collected water samples of the Tributary at four locations: upstream of the feedlot; at the north discharge point; downstream of the north discharge point but before the south discharge point; and downstream from the second discharge point. The laboratory results from the upstream water sample indicated low levels of E. coli (140 MPN/100 ml), ammonia as nitrogen (0.07 mg/l), biochemical oxygen demand (<2 mg/L), and total suspended solids (24 mg/L). The water sample from the discharge site had significantly higher levels of E. coli (>24,000 MPN/100 ml), ammonia as nitrogen (27 mg/l), biochemical oxygen demand (120 mg/L), and total suspended solids (88 mg/L). The water samples from both downstream sample sites also had higher levels of each pollutant relative to the results from the upstream sample. These results indicate that effluent discharged into the Tributary and caused elevated pollutant levels in the Tributary.

7. On June 28, 2018, Ms. Wittrock issued Mr. Behrens a Notice of Violation for violations of the Iowa Code and IAC related to the discharges.
8. On July 20, 2018, Ms. Wittrock received an email from ProAg Engineering (ProAg), a company contracted by Mr. Behrens to develop and construct improvements to the Feedlot to prevent future discharges. ProAg Engineering submitted to Ms. Wittrock detailed construction plans for the updates.

9. On July 31, 2018, ProAg requested a 30 day extension to begin work on the project.

10. On August 31, 2018, ProAg informed Ms. Wittrock by email that construction work on the improvements would begin at the Feedlot on October 1, 2018.

11. On November 20, 2018, while driving by the Facility, Ms. Wittrock discovered that construction had not begun on updates to the Feedlot.

12. On November 26, 2018, Mr. Behrens confirmed that construction on the Feedlot had not begun and would not begin for an indefinite period of time.

IV. CONCLUSIONS OF LAW

1. Mr. Behrens neither admits nor denies these Conclusions of Law and enters into this Order for settlement purposes only.

2. 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.

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 above mentioned facts indicate violations of the general water quality criteria.

4. DNR has determined that there is no likelihood that the violations cited in this Order will recur if Mr. Behrens implements the requirements set forth in Paragraphs 1-2, Section V of this Order.

V. ORDER

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

1. Mr. Behrens shall operate the Feedlot in compliance with all applicable DNR rules and regulations;
2. Mr. Behrens shall implement of the Plan of Action as presented to DNR Field Office 4 that establishes additional effluent and runoff controls at the Feedlot. The control structures shall be constructed pursuant to the design specifications in the Plan of Action. Mr. Behrens shall finish the construction of all control structures detailed in the Plan of Action by June 30, 2020. The DNR shall retain the discretion to grant a month-to-month extension of this deadline to allow for weather related and other reasonable delays. The DNR may look at the amount of construction finished when considering an extension. Any grant of an extension shall be documented by email or otherwise in writing. Proof of implementation of the Plan of Action shall be provided to DNR Field Office 4 within 15 days of completion of construction.

3. Until the Plan of Action is implemented, Mr. Behrens shall maintain a herd of less than 300 head of cattle at the Feedlot and shall properly maintain all existing runoff and effluent control structures.

4. Mr. Behrens shall pay an administrative penalty in the amount of $2,500.00 payable pursuant to the following payment schedule:
   a. $343.00 within 30 days from the date the Director signs this Order.
   b. $333.00 six months from the date the Director signs this Order.
   c. $333.00 one year from the date the Director signs this Order.

If the DNR has not received a payment within ten (10) days of a deadline detailed in the payment schedule, the DNR will notify Mr. Behrens in writing of his failure to pay. Payment in full of the remaining amount of the penalty shall be due within 30 days of the date the DNR provides notice of a delinquent payment.

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 an administrative consent order with an administrative penalty of $2,500.00. 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 receives 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. Behrens has obtained an economic benefit from delaying to implement
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adequate controls. However, Mr. Behrens’ agreement to construct the controls detailed in the Plan of Action and to lower the number of head of cattle at the Feedlot mitigates much of the economic benefit. Therefore, $100.00 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. The discharge in this case was documented by the laboratory results. Additionally, there were two distinct flow paths of effluent that reached the Tributary. Therefore, $1,900.00 is assessed for this factor.

Culpability – Mr. Behrens has attempted to implement controls, as shown by the multiple SSBs. However, these controls were improperly maintained and were inadequate relative to the size of the Feedlot. Mr. Behrens has a duty to construct and maintain the Feedlot in a manner that prevents violations of open feedlot laws and regulations. Therefore, $500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Behrens. For that reason Mr. Behrens 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 administrative consent 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.

KAYLAI LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 31st day of January, 2020.

BRIAN BEHRENS

Dated this 28th day of January, 2020.

Noah Poppelreiter, DNR Field Office 4, EPA, VIII.D.1.b