

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

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| <p>IN THE MATTER OF:</p> <p>BRIAN JACKSON Facility ID # 56520</p> <p>Buena Vista County, Iowa</p> | <p>ADMINISTRATIVE CONSENT ORDER NO. 2020-AFO- 17</p> |
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To: Brian Jackson
630th Street
Storm Lake, Iowa 50588

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Jackson for the purpose of resolving the violations of animal feeding operation regulations during the land application of manure solids produced at a feedlot owned by Mr. Jackson. This administrative consent order (Order) requires Mr. Jackson to pay an administrative penalty of \$3,000.00 and to implement a plan of action to prevent violations during land application of manure, 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:

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

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; Iowa Code chapter 459A

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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. Jackson owns and operates an open feedlot located at 930 630th Street Storm Lake, Iowa (Feedlot). The Feedlot has one solids settling basin (SSB). The Feedlot has a maximum capacity of 600 head of beef-finishing cattle (600 animal units). The property containing the Feedlot has fields surrounding the Feedlot. The Feedlot is located approximately one-half mile south of Storm Lake (the Lake), a lake located immediately south of the city of Storm Lake, Iowa

2. Rain and heavy snowmelt were forecast for March 11, 12 and 13, 2019, for the area around the Lake.

3. On March 13, 2019, DNR Field Office 3 received a complaint stating that Mr. Jackson was land applying manure in the rain and that manure from the Feedlot entering the Lake. DNR environmental specialists Doyle McKeever and Jennifer Christian immediately responded to investigate.

4. The field office staff observed rain and snowmelt runoff coming from fields immediately south of the Lake. The runoff entered the Lake at various points along the shoreline.

5. At the fields directly to the north and directly to the east of the Feedlot (Fields), runoff from the Fields smelled of manure and appeared exceptionally dark in color. Field tests of the runoff indicated the presence of ammonia in the runoff. This runoff left the Fields, entered a culvert under County Road C-65, flowed through a grassed waterway on the western side of a field downstream of the Feedlot, separated into eastern and western flows, and entered the Lake at multiple points.

6. At other fields directly to the farther east of the Feedlot, on different property, the water did not smell of manure and was relatively clear. A field test of that water did not indicate the presence of manure. The runoff from the other fields also flowed under County Road C-65 through a different culvert, flowed through a separate grassed waterway on the eastern side of the downstream field, mixed with some of the eastern-flowing manure-laden runoff, and entered the Lake.

7. At fields far to the north-west of the Feedlot, on different property, the runoff did not have a manure odor and was relatively clear in appearance. Field tests of the runoff showed low levels of ammonia.

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8. The field office staff collected water samples at three locations and the laboratory results are as follows:

| Location | E.coli (MPN/100 mL) | Ammonia as Nitrogen (mg/L) | Biochemical Oxygen Demand (mg/L) | Total Suspended Solids (mg/L) |
|--|--------------------------------|---|---|--|
| South Cove Road, downflow toward the lake, east sample | 58,000 | 4.6 | 48 | 49 |
| South Cove Road, downflow toward the, west sample | 130,000 | 12 | 140 | 96 |
| Road C-65, directly north of Feedlot | 180,000 | 15 | 180 | 200 |

These results indicate the runoff contained manure, that manure entered the Lake, and that the manure caused elevated pollutant levels in the Lake.

9. After collecting samples, the field office staff made contact with Mr. Jackson at the Feedlot. Mr. Jackson stated that he had applied manure solids to the fields on March 11, 12, and 13. Mr. Jackson also stated at a later time that he applied the manure to provide a relatively clean calving area for the cows at the Feedlot.

10. On April 16, 2019, DNR issued Mr. Jackson a Notice of Violation for violations observed during the March 12, 2019, investigation.

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 chapter 65.

2. 567 IAC 65.101(6)"a", by reference in 567 IAC 65.101(8)"a", requires the land application of settled solids in a manner that will not cause surface water pollution. Manure produced at the Feedlot was land applied in a manner that caused it to enter the Lake as a pollutant. These facts indicate a violation of this section.

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

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V. ORDER

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

1. Mr. Jackson shall operate all feedlots and land apply manure from the feedlots in compliance with all applicable laws and regulations;
2. Mr. Jackson shall develop a Plan of Action (POA) approved by the DNR that addresses the land application of settled solids to prevent manure from entering the Lake during future land applications. This POA shall be submitted to Field Office 3 for approval within 30 days of the date the Director signs this Order and shall be implemented within 60 days of the date the Director signs this Order; and
3. Mr. Jackson shall pay an administrative penalty in the amount of \$3,000.00 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. 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 \$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.” Mr. Jackson obtained a delayed benefit by land applying manure at an improper time and location, saving planning, hauling, and other overhead costs. Using a reasonable estimate for the costs of 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. 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 facts of this case show manure from three days of land application entering the Lake. The Lake is a closed

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ecosystem and is surrounded by several towns. Due to the impact to the environment and the neighboring towns, \$2,000.00 is assessed for this factor.

Culpability – Mr. Jackson did not take the appropriate precautions when land applying manure to ensure that manure did not enter a water of the state. Mr. Jackson failed to take these precautions despite the forecast for rainfall and snowmelt. Mr. Jackson land applied manure during an active precipitation event. In the interest of settling this matter via consent order, \$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. Jackson. For that reason Mr. Jackson 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 459A.501.



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of
April, 2020.



BRIAN JACKSON

Dated this 23rd day of
March, 2020.