

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

HAROLD CHAPMAN

Facility ID No. 71608

Crawford County

ADMINISTRATIVE CONSENT ORDER

NO. 2021-WW- 06

To: Harold Chapman
dba Harold Chapman Dairy Farm
2254 P Avenue
Arion, Iowa 51520

I. SUMMARY

This administrative consent order (Order) is entered into between Harold Chapman and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the improper discharge of a pollutant to a water of the state. The Order requires Mr. Chapman to pay an administrative penalty of \$1,350.00 and to comply with all laws and rules related to wastewater. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz
Iowa Department of Natural Resources
Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
712-243-1934

Relating to legal requirements:

Noah Poppelreiter
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph. 515-669-8752

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319-0034

RECEIVED

FEB 25 2021

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued to: HAROLD CHAPMAN**

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 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. Chapman owns and operates an open feedlot dairy at 2254 P Avenue in Arion, Iowa (Facility). The Facility is located next to Willow Creek (Creek) in Crawford County.

2. On October 21, 2020, Crawford County officials notified DNR Field Office 4 of a milky white substance in the Creek, at or about the intersection of 220th Street and Q Avenue. DNR Field Office 4 environmental specialist senior Alison Manz responded to the County to investigate.

3. Upon arrival at the intersection, Ms. Manz observed a milky white substance in the Creek. The substance had a sweet odor. Ms. Manz documented the presence of the milky white substance in the Creek with photographs.

4. Ms. Manz observed the Facility approximately a mile to the north and upstream from the intersection and traveled there to continue her investigation.

5. At the edge of the Facility, Ms. Manz observed more of the milky white substance in stormwater erosion flow paths coming from the Facility. The stormwater erosion flow paths connected to a road ditch running parallel to P Avenue that flowed to the Creek.

6. Ms. Manz contacted Mr. Chapman to discuss the milky white substance. Mr. Chapman stated that approximately 400 gallons of milk from his dairy spoiled on October 20, 2020. Due to a medical emergency involving his son, he elected to dump the spoiled milk onto the ground next to the Facility, where it ran off into the ditch flowing to Willow Creek.

7. Ms. Manz collected water samples for laboratory testing in the Creek. The sample locations and results of the laboratory testing are as follows:

Location	Biological	Total	E. Coli	Fecal
-----------------	-------------------	--------------	----------------	--------------

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued to: HAROLD CHAPMAN**

	Oxygen on Demand (mg/L)	Suspended Solids (mg/L)	(MPN/100 ml)	Coliform (CFU/100 ml)
Willow Creek, ~100 feet upstream from P Avenue	14	5	1,200	690
Willow Creek, at intersection of 220th Street and Q Avenue	280	76	> 24,000	1,400,000
Willow Creek, ~0.5 miles downstream of intersection, after confluence with unnamed tributary of Willow Creek	< 2.0	10	> 24,000	29,000

The results of these tests show spoiled milk from the Facility entered the Creek.

8. On October 28, 2020, the DNR issued Mr. Chapman a Notice of Violation for violations of water quality regulations.

IV. CONCLUSIONS OF LAW

DNR and Harold Chapman agree the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 and 657 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Mr. Chapman discharged spoiled milk into the Creek without a permit. These facts indicate Mr. Chapman is in violation of these sections.

2. 567 IAC 61.3(2) establishes narrative water quality criteria. These criteria provide that all waters shall be free from materials attributable to wastewater discharges producing objectionable color, odor, or other aesthetically objectionable conditions. When Mr. Chapman discharged spoiled milk into the Creek, the milk caused objectionable color, odor, or other aesthetically objectionable conditions. These facts indicate a violation of this section.

V. ORDER

Therefore, DNR orders and Harold Chapman agree to the following:

1. Mr. Chapman and any employees of his dairy shall follow all laws and regulations related to the discharge of pollutants to waters of the state;

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued to: HAROLD CHAPMAN**

2. Within 30 days of the date the Director signs this Order, Mr. Chapman shall pay an administrative penalty of \$1,350.00.

VI. PENALTY

Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day per violation for the violations involved in this matter. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$1,350.00 for the violations described above. The following factors were considered in the assessment of this penalty:

a. 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. Chapman gained an economic benefit from properly disposing of the spoiled milk. Using a reasonable estimate of the costs for properly disposing of spoiled milk, \$200.00 is assessed for this factor.

b. 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. Failing to properly dispose of pollutants causes harm to the environment and a degradation of water quality law and rules. Therefore, \$650.00 is assessed for this factor.

c. Culpability. Mr. Chapman has a duty to operate the Facility in accordance with the laws and regulations of the state of Iowa. Mr. Chapman failed to comply with water quality law and rule. However, given the extenuating circumstance involving Mr. Chapman’s son’s emergency, the DNR believes a low penalty is warranted in this situation. Therefore, \$500.00 is assessed for this factor.

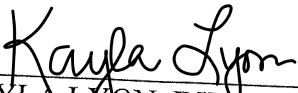
VII. WAIVER OF APPEAL RIGHTS

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mr. Chapman. By signing this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

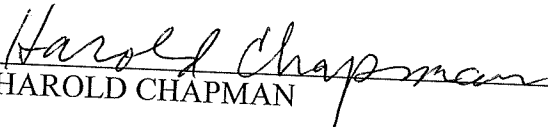
**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued to: HAROLD CHAPMAN**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order, and constitutes a permanent remedy of the conditions which caused the violations. 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.



KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4th day of
March, 2021



HAROLD CHAPMAN

Dated this 23 day of
Feb, 2021

Noah Poppelreiter; Field Office #4; EPA; I.C.1

