

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>JASON LARABEE</p> <p>Taylor County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE ORDER NO. 2021-AFO-08</p>
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To: Jason Larabee
dba Larabee Applicators
1347 225th Street
New Market, Iowa 51646

I. SUMMARY

This administrative order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz, DNR Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
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 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 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.

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III. STATEMENT OF FACTS

1. Mr. Larabee operates Larabee Applicators as a commercial manure application service and is a certified manure applicator.
2. On November 19, 2019, the DNR Field Office 4 received an anonymous complaint alleging a discharge of manure from a field located at or about the NW ¼, Section 33, Platte Township, Taylor County, Iowa (Field).
3. On November 20, 2019, DNR Field Office 4 environmental specialist senior Alison Manz and DNR Field Office 4 environmental specialist Kristi Burg (jointly, DNR Staff) responded to the Field to investigate the complaint. DNR Staff observed manure actively flowing from the Field into an unnamed tributary of the East River (Tributary).
4. Additionally, DNR Staff observed that manure had been land applied to within 200 feet of the residence located at 2990 150th Street, Lenox, Iowa. The titleholder of the residences is different than the titleholder of the Field. The manure had not been incorporated into the soil.
5. DNR Staff also observed that manure had been land applied within a few inches of tiles lines located in the Field. The manure had not been incorporated into the soil.
6. DNR Staff located the equipment used to land apply manure in the Field in the parking lot of Facility ID 66415. The equipment was marked as owned by Mr. Larabee. DNR Staff observed an active leak from one of the manure tankers and large pools of manure on the ground around the equipment.
7. DNR staff collected water samples for laboratory testing. 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)
Upstream	340	0.42	<2	49
Discharge	4,400	96	220	94
Downstream	3,100	18	46	130

8. DNR Staff contacted Mr. Larabee, who confirmed he had land applied manure to the Field on November 20, 2019. Ms. Manz requested that Mr. Larabee promptly incorporate the manure in the Field.

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9. On November 25, 2019, Ms. Burg followed up with Mr. Larabee. Mr. Larabee stated that the manure could not be incorporated due to Natural Resource Conservation Service (NRCS) restrictions to the field.

10. On December 4, 2019, the DNR issued Mr. Larabee a Notice of Violation detailing the violations observed by DNR Staff and the associated regulations.

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(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Manure land applied to the Field by Mr. Larabee discharged to the Tributary. The facts of this case indicate violations of these provisions.

3. 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.

4. 567 IAC 65.2(7) requires that all manure must be land applied in a manner that does not cause surface water pollution. Manure land applied to the Field by Mr. Larabee caused water pollution in the Tributary. The facts of this case indicate a violation of this provision.

5. 567 IAC 65.3(3)(a) requires a manure application separation distance of 750 feet from the nearest residence, if the residence is not owned by the titleholder of the application field. Mr. Larabee land applied manure to the Field within 200 feet of an applicable residence. While the rule is waived if the manure is incorporated, the manure was not incorporated and NRCS restrictions showed manure was not allowed to be incorporated on the Field. The facts of this case indicated violations of these provisions.

6. 567 IAC 65.3(3)(g) requires a manure application separation distance of 200 feet from the tile intake. Mr. Larabee land applied manure to the Field within inches of tiles lines in the Field. While the rule is waived if the manure is incorporated, the manure was not incorporated and NRCS restrictions showed manure was not allowed to be incorporated on the Field. The facts of this case indicated violations of these provisions.

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

V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. Larabee and/or any employees of Mr. Larabee shall land apply manure in compliance with all applicable DNR rules and regulations;
2. In order to prevent future non-permitted discharges during the land application of manure, Mr. Larabee shall develop a Plan of Action (POA) approved by the DNR that addresses the concerns document in this case. This POA shall be submitted to Field Office 4 for approval within 60 days of the date the Director signs this Order and shall be implemented within 90 days of the date the Director signs this Order; and
3. Mr. Larabee shall pay an administrative penalty in the amount of \$7,500.00 within 60 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 order with an administrative penalty of \$7,500.00. 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 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. Larabee gained an economic benefit by failing to land apply manure in a proper manner and by failing to provide adequate monitoring of the Field to ensure no discharge occurred. This includes but is not limited to land applying in a manner that requires incorporation of manure when incorporation was not an option due to the NRCS restrictions. Using a reasonable estimate for the delayed and avoided costs, \$1,500.00 is assessed for this factor.

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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 land application of manure in an improper manner caused a discharge to the Tributary. In addition, the manure was land applied in violation of separation distances. This creates by a programmatic harm and the risk for harm to human health and the environment. Therefore, \$3,000.00 per day is assessed for this factor.

Culpability – As a commercial manure applicator, Mr. Larabee has a duty to land apply manure in a manner that prevents violations of applicable laws and regulations. Mr. Larabee land applied manure in manner that caused a water quality violation and violated separation distances. Therefore, \$3,000.00 per day is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

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 _____ day of _____, 2021.