

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**WILLIAM LAWLER AND JEFF
LAWLER**

Dubuque County, Iowa

ADMINISTRATIVE ORDER
NO. 2022-AFO- 03

TO: William Lawler and Jeff Lawler
Lawler Family Dairy
18655 Old Highway Road
Peosta, Iowa 52068

I. SUMMARY

This administrative order (Order) requires to comply with the provision 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:

Brett Meyers, Field Office 1
Iowa Department of Natural Resources
909 W. Main Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

Appeal or 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 violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; 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. Iowa Code

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section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. William and Jeff Lawler own and operate Lawler Family Dairy located at 18655 Old Highway Road, Peosta, Iowa (Section 4, Vernon Township, Dubuque County). Lawler Family Dairy is a small animal feeding operation with 240 mature dairy cattle, 80 immature dairy cattle, and 24 calves in three confinement building and 150 immature dairy cattle in two open feedlots. Manure from the confinement buildings is stored in an unformed manure storage structure and manure from the open feedlots is stored in a smaller earthen basin.

2. On March 25, 2019, DNR Field Office 1 received a complaint regarding a fish kill in an unnamed tributary near Graf Road in Dubuque County. The complainant stated that the water was discolored and foamy with many dead fish. DNR Field Office 1 notified Matt Calvert, DNR Fisheries Bureau.

3. On March 25, 2019, Brett Meyers, DNR Field Office 1 environmental specialist, and Mr. Calvert met at the location where the caller indicated the fish kill had occurred. The area was near a house located at 12542 Graf Road, Peosta, Iowa. They observed dead fish, foaming and discolored water, and a manure odor in the tributary. They walked upstream and noted a smaller tributary that was flowing into the main channel. Mr. Meyers conducted a field test of the water in the small stream; no ammonia was detected in the smaller tributary. Mr. Meyers also conducted a field test of the water in the main channel. The field test indicated the presence of ammonia. Mr. Meyers then collected a laboratory sample of the water. The laboratory sample indicated an ammonia concentration of 9.4 mg/L. This area was downstream of the Lawler Family Dairy.

4. Mr. Meyers and Mr. Calvert continued upstream in the main channel and observed dead fish along the tributary; the water was foamy and discolored. They walked the tributary to a culvert near the house on Graf Road. At this point, Mr. Meyers and Mr. Calvert drove to the Lawler Family Dairy. They spoke to William Lawler regarding the investigation. Mr. Lawler stated that there had not been a manure release from the basins and allowed the DNR personnel to inspect the facility. The DNR personnel did not observe any evidence of manure overflow from any of the basins at the facility. Mr. Lawler stated that manure was recently pumped from one of the basins and land applied to a nearby terraced field. He stated that it had rained and melted the snow on top of the hills above the manure application area. Mr. Lawler stated there was another farm on Graf Road that drained into the same tributary that the Lawler Family Dairy did. Mr. Meyers informed Mr. Lawler the investigation would continue the following day.

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5. On March 26, 2019, Mr. Meyers and Mr. Calvert returned to the area. They checked the culverts along Graf Road at two locations. There was some standing water in the ditches so Mr. Meyers conducted field tests on the water. The field tests of the two areas did not indicate the presence of ammonia. There was no evidence of manure runoff into the ditches from the farm fields on the west side of Graf Road. They returned to area where they ended the investigation the previous day. The tributary was less discolored than the previous day; however dead worms were observed in the stream bed. Mr. Meyers continued upstream closer to the Lawler Family Dairy. The field test in this area indicated the presence of ammonia. Mr. Meyers collected a laboratory sample in this area. The laboratory sample indicated an ammonia concentration of 2.1 mg/L. Mr. Meyers continued upstream and observed an area of pooled manure below some dead trees a ravine. The field test in this area indicated the presence of ammonia. Mr. Meyers collected a laboratory sample in this area. The laboratory sample indicated an ammonia concentration of 11 mg/L.

6. Mr. Meyers continued upstream to the area where the channel of water ended and the ravine began. This location adjoined the Lawler Family Dairy property. Mr. Meyers noted dead and decomposing cows in the ravine. At the top of the ravine there was a pipe that came through the terrace. There was some water coming from the pipe, and the terrace had pooled manure at the bottom of it. Mr. Meyers determined that it was likely that the manure that had been applied on the fields ran into the terrace, through the pipe, to the ravine, and eventually to the tributary. Mr. Meyers collected a laboratory sample in this area. The laboratory sample indicated an ammonia concentration of 19 mg/L. Mr. Meyers also observed area next to the ravine where it observed manure had been dumped. There was a pathway of manure that lead to the ravine. Mr. Meyers collected a laboratory sample in this area. The laboratory sample indicated an ammonia concentration of 15 mg/L.

7. Following the investigation, Mr. Meyers spoke to William and Jeff Lawler. They understood the manure runoff was from their fields and further discussed the manure storage at the facility. They explained that they haul manure throughout the year because of limited storage and most of the land they apply the manure to has steep slopes.

8. On March 25, 2019, the Fisheries personnel began its fish kill assessment of the impacted areas of the unnamed tributary of the Little Maquoketa River. The fish kill investigation was conducted by Dan Kirby and Mark Winn, DNR Fisheries Bureau. The total fish kill extended 1.12 miles beginning at the confluence of the Little Maquoketa River and the unnamed tributary and continued upstream on the unnamed tributary until a farm access road was intersected in the SE ¼ of Section 32. Based on the small area of the impacted stream and the low density of dead fish within the stream, the Fisheries personnel conducted a census (complete enumeration) of the dead fish within the impacted stream area.

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9. Fish restitution valuation followed procedures provided by American Fisheries Society Special Publication 30 and pursuant to 571 IAC chapter 113. The fish kill assessment determined that 238 fish were killed, valued at \$22.06. The Fisheries Bureau investigative costs were \$450.99 and the field office investigative costs were \$665.33. The total fish value and investigative costs total \$1,138.38.

10. On July 24, 2019, DNR issued a Notice of Violation letter to Lawler Family Dairy for the violations discovered during the March 2019 investigation. The letter informed Lawler Family Dairy the matter would be referred for further enforcement.

11. On September 15, 2015, DNR issued Administrative Order No. 2015-AFO-27 to William and Jeff Lawler, and the order was amended in 2016. The order was a result of a manure discharge from the facility's manure storage structures that led to water quality violations and a fish kill in the same segment of water as noted in this Order.

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. DNR Field Office 1 documented a manure discharge from the Lawler's application fields to an unnamed tributary of the Little Maquoketa River. Laboratory results indicated an elevated concentration of ammonia in the unnamed tributary. The above-mentioned facts indicate a violation of these provisions.

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 laboratory results indicated elevated pollutants. Additionally, a fish kill resulted from the manure discharge. The above-mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 459.103 provides that the Commission shall adopt rules related to the construction or operation of animal feeding operations, including

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permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

5. Iowa Code section 459.311(3) and 567 IAC 65.2(7) state that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollutions. DNR Field Office 1 documented a manure discharge from the Lawler's application fields to an unnamed tributary of the Little Maquoketa River. Laboratory results indicated an elevated of ammonia in the unnamed tributary. The above-mentioned facts indicate a violation of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

7. 567 IAC 105.6(6) states that dead farm animals shall be incorporated into the composting process within 24 hours of death. An adequate base layer (from 12 to 24 inches thick, depending on the size and number of dead farm animals) with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times to control mortality leachate and odors and to prevent access by scavenging domestic and wild animals. During the March 2019 DNR Field Office 1 inspection, the field office personnel noted dead and decomposing cattle in the ravine near the Lawler Family Dairy. The above-mentioned facts indicate a violation of this provision.

8. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from the application fields.

9. DNR has determined that there is no likelihood that the violations identified in this Order will recur if William and Jeff Lawler implement the requirements set forth in Paragraphs 1-2, Section V. Order of this Order.

V. ORDER

THEREFORE, the DNR orders William and Jeff Lawler to do the following:

1. Operate and maintain all animal feeding operation structures in compliance with all applicable DNR rules and regulations, including the regulations for manure storage, land application, and animal disposal;

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2. Submit a Plan of Action to ensure there is adequate storage and proper land application for all of the manure produced by the number of animals at the facility;
 - a. The Plan of Action shall be submitted and approved by DNR Field Office 1 within 60 days of issuance of this Order;
 - b. The actions in the Plan of Action must be completed with 180 days of approval from DNR Field Office 1. The actions may include, but are not limited to increasing storage or reducing the animal numbers and locating suitable land for land application;
3. Pay fish restitution in the amount of \$22.06, Fisheries Bureau investigative costs in the amount of \$450.99, and Field Office investigative costs in the amount of \$665.33 for a total restitution and investigative costs of \$1,138.38 within 60 days of issuance of this Order; and
4. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of issuance of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. 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 Order with an administrative penalty of \$10,000.00. William and Jeff Lawler are jointly and severally liable for the penalty. 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.” Due to limited storage at the facility, William and Jeff Lawler are required to land apply manure throughout the

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year. This results in applying manure during adverse weather conditions, such as snow melt in the surrounding areas and applying to fields that may not be suited for land application, specifically fields with steep slopes. In this situation, the Lawlers applied manure to steep sloped ground with no incorporation. The Lawlers gained an economic benefit by avoiding the costs associated with proper land application, including finding suitable fields and weather conditions. Additionally, this discharge was related to the facility not having adequate storage. Therefore, the Lawlers have gained an an economic benefit by failing to have adequate manure storage at the facility. William and Jeff Lawler delayed the significant costs associated with the construction of proper manure storage. The economic benefit received by William and Jeff Lawler through the delayed costs is that the money was able to be used for other purposes. Based on the above facts, the economic benefit William and Jeff Lawler received was at least \$4,000.00 and that amount 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. DNR Field Office 1 documented a manure discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Additionally, the field office observed dead cows in the ravine that may have also impacted water quality. Therefore \$3,000.00 is assessed for this factor.

Culpability –William and Jeff have a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. The Lawlers applied manure to fields that had steep slopes. Snow was still on the ground and rain was forecasted. Additionally, this is the Lawlers second discharge resulting in water quality violations and a fish kill. Therefore, \$3,000.00 is assessed for this factor.

VII. 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.

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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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Kelli Book; DNR Field Office 1; I.C.1, VIII.D.1.a and VIII.D.3.a