

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>ECOSYSTEMS, INC.</p> <p>Ottumwa, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2022-WW- <u>10</u></p>
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TO: Jeffrey Klodt, Manager
Ecosystems, Inc.
12708 160th Avenue
Ottumwa, IA 52501

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (Department) and Ecosystems, Inc. The parties hereby agree to the issuance of this order due to an illegal discharge of a pollutant to a water of the state and illegal land application of sewage sludge. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Jeffrey Thomann
DNR Field Office #6
1023 W Madison St,
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Rachel Zander, Attorney for DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-444-8165

Payment of Penalty to:

Department of Natural Resources
ATTN: Director
Wallace State Office Building
502 E 9th Street
Des Moines, Iowa 50319
[include Order number with penalty]

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II. JURISDICTION

1. 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 (wastewater) and the rules adopted or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

2. Ecosystems, Inc. neither admits nor denies the factual allegations, conclusions of law, or penalty calculations contained in this Order. The execution of this agreement is for settlement purposes only and does not constitute an admission by Ecosystems, Inc. that a violation occurred.

III. STATEMENT OF FACTS

1. Ecosystems, Inc. receives and land applies waste water, industrial sludge, and sewage sludge generated by private, public, industrial, and municipal clients. Ecosystems, Inc. uses semi-trucks with tanks and farm equipment to apply product on farm ground in and around Wapello County, Iowa.

2. Overnight July 14, 2021 into the morning of July 15, 2021, the Ottumwa area experienced heavy rainfall.

3. On July 15, 2021, DNR Environmental Specialist Jeff Thomann received a complaint regarding a black water discharge in the county road ditch in front of a house in rural Wapello County.

4. On July 15, 2021, Mr. Thomann and DNR Environmental Specialist Anthony Kerker responded to the location of the complaint. They observed the black water discharge identified by the complainant flowing through the country road ditch.

5. Mr. Thomann and Mr. Kerker traced the source of black colored fluid to a property at 19753 132nd Street, Ottumwa, Iowa. That property was owned by Richard E. Klodt, the registered agent of Ecosystems, Inc.

6. At that property, Mr. Thomann spoke with Ecosystems, Inc. Manager, Jeffrey Klodt. Mr. Klodt informed Mr. Thomann of discharges of sewage sludge and wastewater from semi-trucks at the Ecosystems, Inc., property at a location west of the machine shed shop. Mr. Klodt showed the semis and the discharge location to Mr. Thomann and Mr. Kerker, who took a

laboratory sample indicating that the discharge location had high biochemical oxygen demand five day and high total suspended solids.¹

7. Mr. Klodt stated that six semi-truck loads of partially treated wastewater from the City of Osceola had been hauled to the property that day. Some of that wastewater, containing sewage sludge, then entered a field tile intake and flowed through a ditch to South Avery Creek, which is a water of the state. It is not possible to verify how much wastewater was discharged, but it was sufficient to cause black water to flow into the creek more than 90 minutes after DNR staff received the initial report.

8. Ecosystems, Inc. does not hold a National Pollutant Discharge Elimination System (NPDES) permit that authorizes the discharge of a pollutant to a water of the state.

9. Mr. Klodt stated that four more loads were in route to be delivered to the property that afternoon. Mr. Thomann instructed Mr. Klodt to cease discharges from semi-trucks that contained wastewater from the City of Osceola.

10. Mr. Thomann and Mr. Kerker took laboratory samples from the following locations and the results are in the below table:

Location	Biological Oxygen Demand 5 day (mg/L)	Total Suspended Solids (mg/L)
19753 132 nd Street west of machine shed shop (approximate point of discharge)	620	16300
Ditch on north side of 132 nd Street (tile exit point into ditch)	6	260
Ditch adjacent to 200 th Ave. driveway*	27	290
200 th Ave. Avery Creek bridge (downstream of creek-ditch confluence)	13	130

* Samples were also taken at this location for volatile organic compounds. All results were below the quantification limit.

11. On August 3, 2021, the Department issued Ecosystems, Inc. a Notice of Violation for prohibited discharges, water quality violations, and improper disposal of sewage sludge.

¹ Laboratory sample results from samples taken during this inspection are presented in the table below.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the state without an applicable permit. The discharge of sewage sludge by Ecosystems, Inc. entered a field tile intake and was discharged to South Avery Creek, a water of the state. Ecosystems, Inc. does not have an NPDES permit that authorizes the discharge of a pollutant to a water of the state.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectional color, odor, or other aesthetically objectionable conditions. The discharge of partially treated wastewater containing sewage sludge from Ecosystems, Inc. entered a field tile intake that drains to South Avery Creek and turned South Avery Creek dark. The color change resulting from the discharge is objectionable and violates general water quality criteria.

3. 567 IAC 67.1 establishes standards for the land application of sewage sludge generated during the treatment of domestic sewage in a treatment works. Chapter 67 applies to any person who prepares sewage sludge, any person who applies sewage sludge to the land, and to sewage sludge applied to the land. No person shall land apply sewage sludge through any practice for which requirements are established in Chapter 67 except in accordance with those requirements. Ecosystem, Inc. did not apply sewage sludge following requirements established in 567 IAC 67.

V. ORDER

By the execution of this Order, the Department orders and Ecosystem, Inc. agrees to do the following:

1. Ecosystems, Inc. and/or its employees shall comply with all laws and regulations applicable to discharging pollutants into a water of the state;
2. Ecosystems, Inc. and/or its employees shall comply with all laws and regulations application to the land applicable of sewage sludge.
3. Ecosystems, Inc. will implement the Corrective Action Plan submitted to the Department on February 2, 2022 to ensure all future land application activities will be conducted in accordance with applicable requirements and will not result in prohibited discharges, improper land application of sewage sludge, or water quality violations to waters of the state.
4. Ecosystem, Inc. shall pay an administrative penalty in the amount of \$5,500 within 30 days of the date the Director signs 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 the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department 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. The administrative penalty is determined as follows:

a. Economic Benefit. 567 IAC chapter 10 requires that the Department 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.” Dumping sewage sludge in violation of 567 IAC 67 provided significant economic benefit by saving time, manpower, fuel, and equipment use/expense that would have been required for land application consistent with Chapter 67. Specifically, because the property had just experienced a large rainfall event, halting lawful land disposal, Ecosystems, Inc. avoided the cost of storing material or tying up equipment to wait for drier conditions needed for lawful application. Therefore, \$1,500.00 is assessed for this factor.

b. Gravity of the Violation. 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 the type of violation. As indicated above, substantial civil penalties are authorized by statute. Ecosystems, Inc.’s failure to properly land apply treated sewage sludge in accordance with 567 IAC 67 resulted in documented water quality violations. These violations exemplify the importance of the sewage sludge land application program and the threat that failing to follow acceptable disposal practices can have on the integrity of the water quality program. Therefore, \$2,000.00 is assessed for this factor.

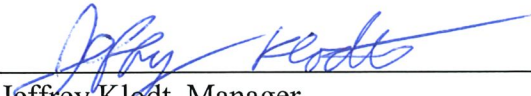
c. Culpability. Ecosystems, Inc., including Manager Jeffrey Klodt, has a duty to ensure all employees are knowledgeable of state law and take appropriate actions to avoid violations of the Commission’s rules. Therefore, the amount of \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Ecosystems, Inc. For that reason, it waives its 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 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.



Jeffrey Klodt, Manager
Ecosystems, Inc.

Dated this 23 day of
February, 2022

Kayla Lyon, Director
Iowa Department of Natural Resources