

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

<p>IN THE MATTER OF:</p> <p>G. LEE PATTISON</p> <p>Clayton County Iowa AFO #58629</p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER NO. 2022-AFO-36</p>
--	---

TO: G. Lee Pattison
22127 Highway 52
Garnavillo, Iowa 52049

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and G. Lee Pattison for the purpose of resolving water quality violations from a manure discharge at Mr. Pattison's animal feeding operation in Clayton County. This administrative consent order requires Mr. Pattison to: 1) develop and implement a Standard Operating Procedure for land application and 2) pay a \$5,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Amber Sauser, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct, Suite 10
Manchester, Iowa 52057
Phone: 563/563-927-2640

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

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 administrative consent 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: G. LEE PATTISON

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. G. Lee Pattison owns and operates a confinement animal feeding operation located at 22127 Hwy 52; Garnavillo, Iowa (Section 1, Garnavillo Township, Clayton County). The facility has an animal capacity of 610 head of mature dairy cattle.

2. On September 20, 2022, DNR Conservation Officer Burt Walters was notified of a manure release from Mr. Pattison's facility into the upper end of the North Cedar, a trout stream north of Garnavillo. This body of water was later determined to be Buck Creek. Officer Walters notified the DNR spill line and the person on call attempted to contact Mr. Pattison. Mr. Pattison was unable to be contacted on September 20.

3. On September 21, 2022, Amber Sauser, DNR Field Office 1 environmental specialist senior, and Jason Gearhart, DNR Field Office 1 environmental specialist, went to Mr. Pattison's facility. When they arrived on site, there was no one present, but they observed a hose running from the property under Highway 52 to the east. The field office personnel entered the field on the east side of the road to observe the hose. They noted a manure odor. The hose had broken, but repaired and manure had been released. The field office personnel noted manure sprayed into the tributary of Buck Creek and on the other side of the tributary.

4. The field office personnel conducted field observations and collected laboratory samples from the tributary. The finding of the observations and samples are noted below:

Location	Laboratory Sample – Ammonia (mg/L)	Observations
100 feet Upstream of Spill Location	0.10	No dead or live fish observed
Spill Location	2.0	No dead or live fish observed. Manure odor noted and foam observed.
100 feet Downstream of Spill Location	5.5	No dead or live fish observed. Manure odor noted and foam observed.

5. Michael Steuck, DNR Fisheries Bureau, was called to the area to determine if a fish kill investigation was necessary. Mr. Steuck notified Ms. Sauser

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: G. LEE PATTISON

that he observed the area downstream and did not note an impact or any dead fish. No further investigation was warranted by the Fisheries Bureau.

6. Following the investigation of the impacted area, the field office personnel returned to Mr. Pattison's facility. They noted that the manure pumping equipment was still in place, but no one was on site. The field office personnel traveled downstream beyond the application field to the King Road crossing and the field test did not indicate the presence of ammonia. No dead or live fish were observed and no manure odor was noted.

7. During mid-morning on September 21, 2022, Lee Zapf, an employee at Mr. Pattison's facility contacted DNR Field Office 1 to notify the DNR of a manure release. Ms. Sauser informed Mr. Zapf that the field office was already investigating the manure release and asked that Mr. Zapf meet the field office personnel at the facility. Mr. Zapf told the field office personnel that he had been land applying manure from the facility the previous day at a field located east of the facility. He stated he noted a pressure drop during the afternoon of the previous day and immediately notified the person controlling the pumps. The person turned the pump off immediately. Mr. Zapf estimated that 1,000 gallons of manure had been released. Mr. Zapf stated that he and the other employee repaired the break in the hose and began constructing earthen berms in the tributary downstream of the spill. Mr. Zapf and the field office personnel went to observe the berms and noted three earthen berms. Field tests indicated the presence of ammonia in the water above all three berms. The field office personnel recommended that the water be pumped and land applied.

8. On October 10, 2022, DNR issued a Notice of Violation letter to Mr. Pattison for the violations observed during the September investigation. The letter informed Mr. Pattison that the matter would be referred for further formal enforcement.

9. In 2010, Mr. Pattison and the DNR entered into an administrative consent order to address two manure releases from Mr. Pattison's facility.

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 a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the September 2022

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: G. LEE PATTISON

investigation, DNR Field Office 1 confirmed that manure from Mr. Pattison's facility entered a tributary of Buck Creek. 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. During the September 2022 investigation, DNR Field Office 1 confirmed that manure from Mr. Pattison's facility entered a tributary of Buck Creek and resulted in elevated pollutant levels and a manure odor. The above-mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 459.103 provides that the Environmental Protection Commission (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.

5. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to a water of the state. During the September 2022 investigation, DNR Field Office 1 confirmed that manure from Mr. Pattison's facility entered a tributary of Buck Creek. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. Mr. Zapf did not contact the DNR within six hours of the release. The above-mentioned facts indicate a violation of this provision.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Pattison complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

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

1. Mr. Pattison shall submit a written plan with Standard Operating Procedures for employee training pertaining to manure application; including but not limited to routine monitoring of the equipment and the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: G. LEE PATTISON

application areas and notification requirements in the event of a release. The Standard Operating Procedures shall be submitted to DNR Field Office 1 for approval within 30 days of the date the Director signs this administrative consent order. Mr. Pattison shall immediately implement the Standard Operating Procedures upon approval by DNR Field Office 1; and

2. Mr. Pattison shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the date the Director signs this administrative consent 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. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air 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 administrative consent order with an administrative penalty of \$5,000.00. 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.” The manure release was a result of an equipment failure and Mr. Pattison gained little to no economic benefit; therefore, no amount is being 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 discharge of manure from the facility resulted in the degradation of water quality, through elevated pollutant levels and a manure odor. The manure

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: G. LEE PATTISON

discharge threatens the integrity of the animal feeding operation regulations. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Mr. Pattison has a duty to know the regulations and to be aware that his actions are subject to the regulations. His employee failed to timely notify the manure release and he had been issued a previous administrative consent order for manure releases at the facility. Based on the information above, \$2,500.00 is being assessed.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Pattison. For that reason, Mr. Pattison waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent 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



G. Lee Pattison

Dated this 14 day of
Dec, 2022.