IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF: PATRICK & TRACY HAMMES, LLC Linn County, Iowa	ADMINISTRATIVE ORDER NO. 2023-WW-04

To: Patrick & Tracy Hammes, LLC
1436 Highway 34
Batavia, Iowa 52533

I. SUMMARY

This Administrative Order (Order) requires Patrick and Tracy Hammes, LLC, to comply with the provisions of section V of this Order, subject to the rights of appeal stated in this order.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Brian Jergenson
DNR Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct, Ste 10
Manchester, Iowa 52057
Ph. (563) 608-6749

Relating to legal requirements:
Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Department of Natural Resources
502 9th St., Wallace State Office Building
Des Moines, Iowa 50319
(515)725-8248

Send payment of penalty to:
Director of the Iowa DNR
Iowa Department of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, Iowa 50319

II. JURISDICTION

This Order is issued pursuant to 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 and the rules adopted or permits issued pursuant thereto; Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties; and Iowa Code section 481A.151 which authorizes the assessment of restitution for injuries caused to wild animals by unlawful water pollution.

III. STATEMENT OF FACTS

a. Field Office Investigation

1. Since October 11, 2017, Patrick and Tracy Hammes, LLC (Hammes), owns and operates a chemical fertilizer storage facility at or about 3240 310th Street, Coggon, Iowa (Facility). Hammes stores liquid ammonia nitrogen-based fertilizer at the Facility for its own use.

2. At the southern end of the Facility is an intake for an agricultural drainage tile (Tile). This tile discharges to an unnamed tributary of Dry Creek (Tributary).

3. The Tributary flows into a farm pond (Pond) which stores water due to an earthen dam. The Pond is entirely on land owned by the Carroll J Takes Revocable Trust (Trust).

4. The outfall of the Tile discharges to the Tributary upstream of the Pond.

5. The Pond releases water through a culvert and through seepage in the earthen dam. The released water mixes with Dry Creek downstream of the Pond.

6. On September 9, 2022, DNR Field Office 1 received a complaint of dead fish in the section of Dry Creek to the east of 3198 Vincent Avenue, Walker, Iowa (Segment). DNR environmental specialist senior Brian Jergenson notified DNR biologist Dan Kirby of the fish kill, then responded to the Segment to investigate.

7. Mr. Jergenson first investigated the area at or about the 310th Street bridge upstream of the Segment and the confluence of the Tributary and Dry Creek. Mr. Jergenson did not note dead fish at this location.

8. Next, Mr. Jergenson investigated at or about the Vincent Avenue and 322nd Street bridge, downstream from the Segment and approximately 1.3 miles downstream of the 310th Street bridge. Mr. Jergenson noted numerous dead fish at this location.

9. Mr. Jergenson met with the complainant, Patrick Mahoney, at the 322nd Street bridge. Mr. Mahoney stated there were additional dead fish further downstream from the bridge.

10. Regarding the Segment, Mr. Mahoney stated that he leases land from the Trust, including the land containing the Pond. Mr. Mahoney hired a contractor to breach and rebuild the earthen dam that retains the Pond. Mr. Mahoney stated there was a strong chemical odor when the dam was breached and the pond drained. Mr. Mahoney stated that he was unaware of any discharge of pollutants to the Pond or the Tributary prior to breaching the Pond. Mr. Mahoney stated he was surprised that he did not see fish in the pond, as the pond had been stocked by Trust in 2021.

11. Mr. Jergenson took an ammonia nitrogen field test of the Pond's water. The test showed evidence of levels of ammonia nitrogen greater than 3 mg/L in the water.

12. Mr. Jergenson took an ammonia nitrogen field test of water approximately 550 feet upstream of the Pond, and 10 feet upstream of the Tile's discharge point. The test showed no evidence of ammonia nitrogen in the water.

13. Mr. Jergenson took an ammonia nitrogen field test of water at the Tile's discharge point. The test showed evidence of levels of ammonia nitrogen greater than 3 mg/L in the water.

14. Mr. Jergenson took an ammonia nitrogen field test of in a separate pond upstream of the Segment, approximately 1,500 feet downstream of the 310th Street bridge, which discharged to Dry Creek. The test showed no evidence of ammonia nitrogen in the water.

15. Mr. Jergenson collected samples of water for laboratory testing, the sample locations and results of which are as follows:

Location	Ammonia Nitrogen as N mg/L
Tributary, upstream of Tile discharge point	0.69
Tile Outfall, discharging to Tributary	480
Tributary, below Tile Outfall	41
Tributary, from the Pond	490
Tributary, downstream of dam and Pond	150

16. After collecting these samples, Mr. Jergenson proceeded to investigate the Facility.

17. At the Facility, Mr. Jergenson met the Hammes' agent and manager of the Facility, Kent Schmitz, and notified him of the fish kill.

18. Mr. Schmitz explained the Facility stores liquid fertilizer for its own use. The fertilizer is stored in chemical storage vessels (Vessels) on the south side of the Facility.

19. Mr. Schmitz stated he was unaware of any spills on the property and agreed to allow Mr. Jergenson to investigate.

20. During the investigation of the Facility, Mr. Jergenson noted a gravel area near the Vessels) that was channelized toward the intake of the Tile.

21. Mr. Schmitz stated that water from the Vessels' secondary containment and catch basin was pumped out and allowed to discharge to the Tile. Mr. Schmitz stated that it was assumed the water was clean after visual observation. Mr. Schmitz stated that neither he nor any other employee of Hammes field sampled the water for pollutants prior to its discharge.

22. Mr. Jergenson noted a strong smell of ammonia near the tile intake. When he applied a reagent from the ammonia nitrogen test kit to the ground, the evidence showed levels of ammonia nitrogen greater than 3 mg/L on the surface of the ground.

23. Mr. Jergenson took pictures during his investigation and documented them in his report.

24. Based on his training and experience, when Mr. Jergenson observed the fields surrounding the Facility, he noted the crops were not of the age when ammonia nitrogen fertilizer would be applied to facilitate their growth.

25. When Mr. Jergenson asked Mr. Mahoney if he had noted any manure or chemical application to the crops recently, Mr. Mahoney stated that he had not noted any such application in recent days.

26. On September 12, 2022, Mr. Jergenson conducted a follow-up visit to the Facility. Mr. Jergenson took an ammonia nitrogen field test of water in the Facility's catch basin, which was full after a rain event. The test showed evidence of levels of ammonia nitrogen greater than 3 mg/L in the water.

27. On September 28, 2022, Mr. Jergenson conducted a follow-up visit to the Pond. A water sample collected from the pond showed a concentration of 91 mg/L ammonia nitrogen.

b. Fisheries Investigation

28. On September 9, 2022, DNR fishery's biologists Daniel Kirby conducted a fish kill investigation of Dry Creek.

29. Mr. Kirby noted dead fish for a 6.3 mile long segment, which began at the confluence of the Tributary and Dry Creek and ended at the confluence of Dry Creek and the Wapsipinicon River.

30. Mr. Kirby identified the following fish species among the dead fish observed during his investigation: Bluntnose Minnows, Brook Stickleback, Central Stoneroller, Creek Chub, Fantail Darter, Green Sunfish, Johnny Darter, Northern Hogsucker, Slenderhead Darter, Western Blacknose Dace, and White Sucker.

31. Mr. Kirby also noted evidence of dead frog tadpoles, leeches, and worms during his investigation.

32. Using methodology contained in Special Publication 35, "Investigation and Monetary Values of Fish and Freshwater Mollusk Kills," published by the American Fisheries Society, as authorized by 571 IAC Chapter 113, Mr. Kirby counted:
    a. A total of 48,203 minnows, chubs, and dace;
    b. 680 suckers;
    c. 183 stonerollers;
    d. 1233 darters; and
    e. 436 green sunfish.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

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 through 64.

2. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants from a point source into any water of the State without an applicable permit. Hammes discharged pollutants to the Tributary, the Pond, and Dry Creek. The facts of this case show Hammes is in violation of these sections.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits any discharge that produces sludge deposits or are toxic to aquatic life. Hammes caused the discharge of pollutants to the Tributary, the Pond, Dry Creek, which resulted in a fish kill. The facts of this case show Hammes is in violation of this section.

4. Pursuant to 567 IAC 61.3(5), Dry Creek and the Tributary are classified as B(WW-1) streams. 567 IAC 61.3(3)"b" and Table 3 set the maximum acute concentration of ammonia nitrogen in a class B(WW-1) streams[1]. The facts of this case show Hammes discharged

[1] The statewide median background pH value for interior streams in Iowa is 8.3 during the month of September. Pursuant to 567 IAC 61.3, Table 3, the ammonia as nitrogen limit for a stream with a pH of 8.3 is 4.71 mg/L. The maximum allowable ammonia as nitrogen limit is 48.8 mg/L, which is allowed when a stream has a pH of 6.5.

pollutants in a manner that increased acute concentrations of ammonia nitrogen in Dry Creek and the Tributary to levels that are in violation of these rules.

5. Iowa Code section 481.151 authorizes the assessment and recovery of restitution for damages to natural resources, as well as for the administrative costs for investigating the incident. The Natural Resource Commission 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 Hammes' discharge of pollutants to the Tributary, the Pond, and Dry Creek.

V. ORDER

THEREFORE, the DNR orders the following:

1. Hammes and its employees shall comply with all laws and regulations applicable to discharging pollutants into a water of the State.

2. Within 30 days of the date the Director signs this Order, Hammes must identify all drains at the Facility, document where the drains lead, and provide this information to DNR Field Office 1.

3. Within 30 days of the date the Director signs this Order, Hammes must develop and implement a standard operating procedure that details the steps Hammes and its employees will take to prevent, mitigate, and report pollutants discharged to waters of the state, including to tile lines. This procedure shall be submitted to Field Office 1 for approval, and upon approval shall become part of this Order.

4. Hammes shall pay restitution and investigative costs in the amount of $11,339.89 within 30 days of the date the Director signs this Order. This amount shall be payable within 30 days to the Director.

5. Hammes shall pay an administrative penalty of $10,000.00 within 30 days of 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. The DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order. Because the DNR determines this matter is best handled administratively, the DNR must follow the limits of Iowa Code section 455B.109

and 567 IAC chapter 10. Pursuant to those limits, a penalty of $10,000.00 is assessed. 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." By discharging water captured by the Vessel's secondary containment prior to proper testing and disposal, Hammes avoided costs associated with testing and properly disposing of contaminated water. This includes but is not limited to costs of testing equipment, employment, fuel, and land application or wastewater disposal services. These costs were avoided since the property was purchased in 2017. $4,000.00 is assessed for this factor.

Gravity of the Violation: Hammes violated multiple Iowa laws and rules related to the discharge of pollutants to the Tributary, the Pond, and Dry Creek. The discharge in this matter was extensive, as demonstrated by the elevated ammonia nitrogen levels in the water bodies. The discharge resulted in a fish kill of over 50,000 fish. The discharge of pollution caused harm on properties unowned by Hammes. An administrative penalty of $3,000.00 is assessed for this factor.

Culpability: Hammes has a duty to operate the Facility in a manner that does not harm the public health and the environment. Hammes willfully released contaminated water from the Facility's secondary containment and catch basin to ground near the Tile on a regular basis. The discharge occurred over an extended period of time, as demonstrated by the channelization in the ground. Hammes discharged the water without knowing whether fertilizer remained in the contained water and without knowing where the Tile led. An administrative penalty of $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.

VII. 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 Digitally signed by Kayla Lyon
Date: 2023.03.21 09:59:04 -05'00'

KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

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