

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

IN THE MATTER OF:

**DENNIS A. LADWIG REVOCABLE
TRUST**

AFO #56511
Cherokee County

ADMINISTRATIVE CONSENT ORDER
NO. 2023-AFO- 13

TO: Dennis A. Ladwig Revocable Trust
Dennis Ladwig
311 14th Avenue West
Spencer, Iowa 51301

Austin Jurgensen, Facility Contact
5125 Vine Avenue
Sutherland, Iowa 51058

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the Dennis A. Ladwig Revocable Trust (Ladwig Trust) for the purpose of resolving National Pollutant Discharge Elimination System (NPDES) Permit reporting violations. This administrative consent order required Ladwig Trust to do the following: 1) submit timely quarterly and annual reports in the future and 2) pay a \$4,000.00 administrative penalty. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Don Cunningham, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall-1900 North Grand
Spencer, Iowa 53101
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS A. LADWIG REVOCABLE TRUST

to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; 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.

III. STATEMENT OF FACTS

1. Ladwig Trust owns and operates an open feedlot located at 5125 Vine Avenue, Sutherland, Iowa (Section 6, Spring Township, Cherokee County, Iowa). The feedlot operates under the name of Deer Run Ranch. The feedlot has a capacity of 2,450 head of cattle. The facility operates under issued NPDES Permit #1856511. Section VI of the permit requires the facility to submit quarterly reports due January 10, April 10, July 10, and October 10 of each year to the DNR. Section VI of the permit also requires the facility to submit an annual report due January 10 each year to the DNR.

2. On January 10, 2021, the annual and quarterly reports for the facility was due. The facility failed to submit the annual and quarterly reports by January 10, 2021. On January 21, 2021, DNR issued a Notice of Violation letter for the failure to timely submit the annual and quarterly reports. The letter informed the facility the failure to timely submit the annual and quarterly reports may result in an enforcement action. The reports were received on January 31, 2021.

3. On July 10, 2021, the quarterly report for the facility was due. The facility failed to submit the quarterly report by July 10, 2021. On July 21, 2021, DNR issued a Notice of Violation letter for the failure to timely submit the quarterly report. The letter informed the facility the failure to timely submit the annual and quarterly reports may result in an enforcement action and any additional late submittals in the next 18 months would result in an enforcement action. The report was received on July 29, 2021.

4. On October 10, 2021, the quarterly report for the facility was due. The facility failed to submit the quarterly report by October 10, 2021. On October 20, 2021, DNR issued a Notice of Violation letter for the failure to timely submit the quarterly report. The letter informed the facility the matter would be referred for further enforcement. The report was received on October 25, 2021.

5. On January 10, 2023, the annual report for the facility was due. The facility failed to submit the annual report by January 10, 2023. On January 20, 2023, DNR issued a Notice of Violation letter for the failure to timely submit the annual report. The letter informed the facility the matter would be referred for further enforcement. The report was received on February 2, 2023.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS A. LADWIG REVOCABLE TRUST

6. In 2016, Ladwig Trust entered into Administrative Consent Order 2016-AFO-29 for the NPDES permit reporting violations. The order required Ladwig Trust to submit quarterly and annual reports in a timely manner in the future and to pay a \$3,000.00 administrative penalty.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 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.

2. 567 IAC 65.104(9)"e" requires a NPDES permittee to submit quarterly reports by January 10, April 10, July 10 and October 10 of each year. The Ladwig Trust facility failed on three occasions since January 2021 to timely submit the quarterly reports for the facility. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.104(9)"f" requires a NPDES permittee to submit an annual report by January 10 of each year. The Ladwig Trust facility failed on two occasions since January 2021 to timely submit the annual report by for the facility. The above-mentioned facts indicate violations of this provision.

4. Administrative Consent Order 2016-AFO-29 was issued to for the NPDES permit reporting violations. The order required Ladwig Trust to submit quarterly and annual reports in a timely manner in the future. Ladwig Trust has continued to fail to timely submit the quarterly and annual reports. The above-mentioned facts indicate violations of the previous administrative consent order.

V. ORDER

THEREFORE, the DNR orders and the Ladwig Trust agrees to do the following:

1. The Ladwig Trust shall submit timely quarterly and annual reports in the future; and
2. The Ladwig Trust shall pay an administrative penalty in the amount of \$4,000.00 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS A. LADWIG REVOCABLE TRUST

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 administrative consent order with an administrative penalty of \$4,000.00. 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 Ladwig Trust has gained an economic benefit from the delayed submittal of the required reports. The Ladwig Trust delayed the costs associated with the recordkeeping and reporting. Based on the above facts, the economic benefit the Ladwig Trust received was at least \$200.00 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. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,300.00 is assessed for this factor.

Culpability – The Ladwig Trust has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. The Ladwig Trust has repeatedly failed to timely submit the required reports and has been issued a previous administrative consent order for the same violations. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

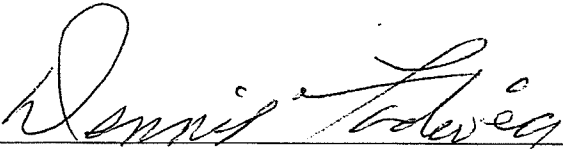
This administrative consent order is entered into knowingly and with the consent of the Ladwig Trust. For that reason, the Ladwig Trust waives the right to appeal this administrative consent order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS A. LADWIG REVOCABLE TRUST

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 Resource



For DENNIS A. LADWIG REVOCABLE TRUST

Dated this 28 day of _____, 2023.