

\$5000.00

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

POSTED  
FEB 14 2024  
IOWA DNR

<p>IN THE MATTER OF:</p> <p><b>BERNARD BAKKER</b></p> <p>Lyon County AFO #62058</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2024-AFO-12</p>
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**TO:** Bernard Bakker  
2096 Elmwood Avenue  
Alvord, Iowa 51230

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Bernard Bakker for the purpose of resolving a violation of the animal feeding operation construction permit regulations. This administrative consent order requires Mr. Bakker to pay a \$5,000.00 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:**

Daniel Morse, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand Gateway North, Suite E17  
Spencer, Iowa 51301-2200  
Phone: 712/262-4177

**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 459A and the rules adopted or permits issued

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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. Bernard Bakker owns and operates a dairy facility known as Rock Bottom Dairy. The facility is located at 1243 Elder Avenue; Rock Rapids, Iowa (Section 20, Allison Township, Lyon County. The facility has a total capacity of 6,100 head of dairy cattle in both confinement and an open feedlot. There are 5,600 head of mature dairy cattle and 250 head of immature dairy cattle in confinement and 200 head of mature dairy cattle and 50 head of immature dairy cattle in an open feedlot.

2. On September 26, 2023, a neighbor to the Rock Bottom Dairy contacted DNR Field Office 3 to ask if the facility had received its construction permit and if the new construction for the expansion at the facility met the required separation distance from his house. In review of the file, it was noted that the construction permit application had been submitted, but the construction permit had not been issued. The application including the following projects: 1) construct one new day cattle free stall confinement building; 2) expand the existing dairy cattle free stall confinement building; and 3) construct a new two cell earthen manure storage basin. Field Office 3 personnel reviewed the file and noted that the separation distance between the neighbor's house and the new earthen manure storage basin did not meet the required distance. DNR Field Office 3 personnel visited the Rock Bottom Dairy facility and confirmed that construction of the new earthen manure storage basin had been completed and other construction activity was occurring at the facility without a construction permit. The field office personnel spoke to the facility's consultant who stated the corner of the basin would be moved back to comply with the required separation distance to the neighboring house.

3. On September 29, 2023, Daniel Morse, DNR Field Office 3 environmental specialist, contacted Mr. Bakker regarding the construction. Mr. Bakker admitted he had begun construction prior to the construction permit being issued in order to complete construction prior to the winter weather.

4. On October 2, 2023, the construction permit was issued.

5. On October 6, 2023, DNR issued a Notice of Violation/Notice of Referral letter to Mr. Bakker for the construction permit violation. The letter informed Mr. Bakker the violation is being referred for further enforcement.

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**IV. CONCLUSIONS OF LAW**

1. 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.

2. 567 IAC 65.7(1)"b"(1) requires that a confinement feeding operation shall obtain a construction permit prior to constructing, installing or modifying any unformed manure storage structure or modifying a confinement building that uses an unformed manure storage structure. During a site visit in September 2023, DNR Field Office 3 noted the construction of earthen manure storage basin had been completed before the issuance of a construction permit. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

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

1. Mr. Bakker 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.

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.” Mr. Bakker gained an economic

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benefit by completing the construction of the earthen manure storage basin prior to the issuance of a construction permit. Mr. Bakker was able to complete construction on his own schedule rather than waiting for the issuance of the construction permit. Based on the above-mentioned information, an economic benefit of \$500.00 is being assessed.

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. Starting the construction project before the construction permit was issued barred the DNR from reviewing the design and location of the construction project. This review ensures that the interests of the citizens of Iowa in clean water are protected. Failure to obtain a construction permit prior to construction threatens the integrity of the animal feeding operation regulations. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Mr. Bakker has a duty to know the regulations and to be aware that his actions are subject to the regulations. Therefore, \$2,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Bernard Bakker. For that reason, Bernard Bakker 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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources



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BERNARD BAKKER

Dated this 6<sup>th</sup> day of  
February, 2024