

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

IN THE MATTER OF:

**MILLER LIVESTOCK, INC.**  
**Facility #70901**

**Mitchell County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2024-AFO-11

TO: Todd Miller  
Miller Livestock, Inc.  
3430 Valley Avenue  
Osage, Iowa 50461

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Miller Livestock, Inc. (Miller Livestock) for the purpose of resolving violations resulting from a manure release from the Miller Livestock animal feeding operation located in Mitchell County. This administrative consent order requires Miller Livestock to: 1) choose an option to eliminate the discharge from the facility; 2) submit status reports on the completion of the project; and 3) pay a stipulated penalty of \$5,000.00 if the project is not completed and the discharge is not eliminated by October 1, 2024. 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:**

Jeremy Klatt, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**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

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to secure compliance with or prevent violations of Iowa Code chapter 455B, Division III, Part 1; and 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. Miller Livestock is an open feedlot operation with the capacity of 739 head of finishing cattle. The facility located at 3430 Valley Avenue; Osage, Iowa (Section 34, Douglas Township, Mitchell County).

2. On May 15, 2023, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, noted discolored water in the road ditch on Valley Avenue south of the Miller Livestock facility. Mr. Klatt determined that the discolored water was entering the road ditch through a solid settling structure at the Miller Livestock facility. The discolored water flowed through the road ditch where it mixed with a field tile discharge and ultimately discharged to an unnamed tributary of the Little Cedar River. Mr. Klatt collected a laboratory sample of the discolored water in the road ditch before it combined with the field tile discharge. The laboratory sample indicated elevated levels of ammonia, total kjeldahl nitrogen and biochemical oxygen demand (BOD) (5.0 mg/L ammonia; 28 mg/L total kjeldahl nitrogen; and 110 mg/L BOD).

3. On June 23, 2023, Mr. Klatt met with Todd Miller, with Miller Livestock, and explained that discolored water was being discharged from the facility. Mr. Klatt explained that since the discharge was through the ditch, a man-made conveyance, the facility was considered a medium concentrated animal feeding operation (CAFO) and the discharge from the facility was prohibited with a NPDES permit. Mr. Klatt stated that Miller Livestock could obtain a National Pollutant Discharge Elimination System (NPDES) permit, eliminate the discharge, or reduce the number of animals at the facility below 300 head. Mr. Miller and Mr. Klatt discussed possible improvements to the facility. Mr. Klatt explained that a Notice of Violation letter would be issued and a written response would be required.

4. On July 17, 2023, DNR issued a Notice of Violation letter to Mr. Miller for the violations noted during the May investigation. The letter informed Mr. Miller since the facility was considered a medium CAFO he would need to choose one of three options to bring the facility into compliance: 1) obtain a NPDES permit; 2) construct runoff controls to eliminate the discharge; or 3) reduce the number of the animals to less than 300 head. Mr. Miller was given until August 15, 2023 to submit a written response.

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5. On August 13, 2023, Mr. Miller emailed Mr. Klatt of the options that he was considering for his facility. He listed the following options: 1) roof the existing open feedlot; 2) construct a new facility; or 3) construct runoff controls to eliminate further discharges. On August 24, 2023, Mr. Klatt responded and informed Mr. Miller that the plan would need to be incorporated into an administrative consent order.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the 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 65.101(3) states an open feedlot operation which has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation which is a large CAFO, or a medium CAFO, or a designated CAFO, shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The Miller Livestock facility is a medium CAFO and during the May 2023 investigation, DNR Field Office 2 noted open effluent from the facility being discharged to an unnamed tributary of the Little Cedar River without an NPDES permit. The above-mentioned facts indicate a violation of this provision.

#### V. ORDER

THEREFORE, the DNR orders and Miller Livestock agrees to do the following:

1. Choose one of the following options to address the discharge from the facility:
  - 1) Apply for and obtain a NPDES permit within 30 days of the date the Director signs this administrative consent order;
  - 2) Reduce the number of animals at the facility below 300 head; or
  - 3) Eliminate the discharge. This could be done by: roofing the existing open feedlot; constructing a new facility; or constructing runoff controls to eliminate further discharges.
2. Notify DNR Field Office 2 of the option chosen and submit a plan of action of how the option will be completed within 30 days of the date the Director signs this administrative consent order. Miller Livestock shall submit

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proof of completion to DNR Field Office 2 within 10 days of completing the option;

3. Submit an update on the project status chosen from Paragraph 1 to DNR Field Office 2 on February 1, 2024; May 1, 2024; August 1, 2024, or until the project has been completed; and
4. If the discharge has not been completely eliminated by one of the options from Paragraph 1 by October 1, 2024, an administrative penalty in the amount of \$5,000.00 shall be assessed and shall be submitted by October 15, 2024.

## 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 stipulated penalties for violations the compliance schedule of the administrative consent order.

The stipulated penalties in this administrative consent order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to the parties for failing to eliminate the discharge from the facility. Such penalties are related to the probable severity of the violation in that not meeting the compliance schedule in this administrative consent order is a fairly serious matter in view of past deficiencies. The penalties would also be related to future culpability in that the parties have been put on notice by this administrative consent order that stipulated penalties will result if the compliance schedule is not met. 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.” Miller Livestock has gained an

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economic benefit by failing to eliminate a discharge from his facility. He has delayed costs associated with construction of proper controls. It is estimated the economic benefit is \$1,500.00 and that 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. DNR Field Office 2 documented a manure release from the facility. 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, \$1,500.00 is assessed for this factor.

Culpability – Miller Livestock 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. Therefore, \$2,000.00 is being assessed for this factor.

#### VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Miller Livestock. For that reason, Miller Livestock 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. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this administrative consent order.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Miller Livestock Inc.  
MILLER LIVESTOCK, INC.

Dated this 7 day of  
February, 2024