

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

<p>IN THE MATTER OF:</p> <p>JEFFREY AND TINA SMITH</p> <p>Facility #61058 Monroe County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align: center;">NO. 2024-AFO-17</p>
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TO: Jeffrey and Tina Smith
3244 Chickadee Lane
Duluth, Minnesota 55810

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jeffrey and Tina Smith for the purpose of resolving an animal feeding operation violation resulting from the failure to remove the manure from a discontinued animal feeding operation once owned by Jeffrey and Tina Smith located in Monroe County. This administrative consent order requires Jeffrey and Tina Smith to: 1) remove and land apply all liquid manure and manure solids from the lagoon and building pits; 2) submit quarterly status reports; and 3) pay a stipulated administrative penalty if the removal is not completed by December 31, 2024.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bill Gibbons, DNR Field Office 5
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-0268

Relating to appeal rights:

Kelli Book, DNR Attorney
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

Payment of penalty, if any, 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

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III, Part 1; Iowa Code chapter 459 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. Jeffrey and Tina Smith owned and operated an animal feeding operation located at 6696 205th Trail; Albia, Iowa (Section 15, Troy Township, Monroe County). The facility had two confinement buildings with deep pits that emptied to a two-cell earthen lagoon. Based on information from the Monroe County Assessor, Jeffrey and Tina Smith continue to own this property; however, the Monroe County Treasurer lists Andrea Long as the responsible party for the payment of property taxes.

2. In 2011, Jeffrey and Tina Smith purchased the facility and operated the facility. In May 2014, Mr. Smith informed DNR Field Office 5 that the facility had been closed and he wanted to close the lagoons. DNR Field Office 5 sent a letter to Mr. Smith with the requirement to remove the manure from the discontinued animal feeding operation by December 31, 2014. In September 2015, DNR Field Office 5 spoke with Mr. Smith who stated that the manure was scheduled to be removed from the facility by the fall. In October 2016, DNR Field Office 5 spoke with Mr. Smith who stated the manure would be removed by the fall.

3. In April 2020, DNR Field Office 5 conducted an inspection at the Smith facility. The manure was still in the lagoon and there was evidence that liquid manure had overflowed the lagoon. In April 2020, DNR issued a Notice of Violation to Jeffrey and Tina Smith for the violations and required all the manure to be removed from the facility by October 31, 2020.

4. In June 2021, DNR Field Office 5 conducted an inspection at the Smith facility. During the inspection, it was discovered that the property had been sold on contract to Andrea Long. Additionally, manure was still in the lagoon and there was evidence that liquid manure had overflowed the lagoon.

5. In June 2023, DNR issued a Notice of Violation letter to Jeffrey and Tina Smith for failing to remove the manure from the discontinued animal feeding operation. The letter informed them that the matter was being referred for further enforcement.

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.

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2. 567 IAC 65.2(8) states as soon as practical but not later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operations and its manure control facility and be land-applied. As noted by DNR Field Office 5, the facility has been depopulated since at least May 2014 and the manure remains at the facility. The above-mentioned information indicates a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Jeffrey and Tina Smith agree to do the following:

1. Remove and land apply all liquid manure and manure solids from the lagoon and building pits and properly close the animal feeding operation by December 31, 2024;
2. Submit a status update on the removal of the manure to DNR Field Office 5 on April 15, 2024; July 15, 2024, October 15, 2024, or until the manure has been removed and properly land applied; and
3. If the removal of all liquid manure and manure solids is not completed by December 31, 2024, Jeffrey and Tina Smith shall pay a stipulated penalty in the amount of \$1,000.00 per month for each month the requirements in Paragraph 1 are not completed up to \$5,000.00.

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 Environmental Protection Commission (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 these rules, 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 of the compliance schedule of this administrative order. Jeffrey and Tina Smith are jointly and severally liable for the payment of the stipulated penalties.

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 remove all manure from the facility.

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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 – Jeffrey and Tina Smith have gained an economic benefit by failing to remove the manure from the discontinued animal feeding operation. They have avoided the costs of properly removing and land applying all manure from the discontinued animal feeding operation including transportation and application fees. Therefore, \$1,000.00 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 manure storage structures at the facility have remained full for several years and the potential of a discharge from one of the structures could result in environmental harm including water quality violations. Failing to properly remove all manure after a facility is discontinued threatens the integrity of the regulatory programs because compliance with the animal feeding operation regulations is required of all persons in this state. Therefore, \$2,000.00 is being assessed for this factor.

Culpability – Jeffrey and Tina Smith have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's regulations. Jeffrey and Tina Smith have been previously notified on multiple occasions that the manure must be removed from the discontinued animal feeding operation. 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 Jeffrey and Tina Smith. For that reason, Jeffrey and Tina Smith waive the right to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Compliance with paragraph 1 of 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

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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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



JEFFREY SMITH

Dated this 1ST day of
April, 2024.



TINA SMITH

Dated this 1ST day of
April, 2024.