

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

<p>IN THE MATTER OF:</p> <p>BRIAN AND CAROLE SIPLEY</p> <p>Chickasaw County AFO #60037</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2024-AFO-19</p>
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TO: Brian and Carole Siple
606 Clover Lane
Fredericksburg, Iowa 50630

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian and Carole Siple for the purpose of resolving a violation of the animal feeding operation construction permit regulation. This administrative consent order requires the Sipleys 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:

<p><u>Relating to technical requirements:</u> Brian Jergenson, Field Office 1 Iowa Department of Natural Resources 1101 Commercial Ct, Suite 10 Manchester, Iowa 52057 Phone: 563-927-2640</p>	<p><u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Wallace State Office Building 502 East Ninth Street Des Moines, Iowa 50319-0034 Phone: 515/210-3408</p>
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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 459 and the rules adopted or permits issued pursuant

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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. Brian and Carole Siplely own and operate a dairy facility known as BCS Farms. The facility is located at 2570 Quinlan Avenue; Fredericksburg, Iowa (Section 1, Dresen Township, Chickasaw County).

2. On May 31, 2023, DNR issued Construction Permit CP-A2023-014 to Brian and Carole Siplely for the construction of a dairy free stall confinement barn with a manure control system that consists of bedding pack on a concrete floor with a reception pit that would drain into an existing flume system. The construction permit contained multiple conditions for construction and operation. Condition 1 of the construction permit stated that “no material change in construction could occur unless first authorized by the DNR.” Condition 3 of the construction permit requires that “a new construction permit shall be obtained prior to making any additions or alterations to the manure control system, making any process changes that would materially affect the manure control system, expanding the animal capacity, or increasing the volume of manure.” Condition 4 of the construction permit requires written approval from the DNR before populating the new building or storing any manure in the new structure. These conditions were specifically identified in the cover letter than accompanied the construction permit.

3. On November 30, 2023, Brian Jergenson, DNR Environmental Specialist Senior, visited BCS Farms to check the construction status at the facility. During the visit, Mr. Jergenson observed that an above-ground cylindrical, metal flushing tank had been constructed instead of the permitted below-ground reception pit. This was done without approval from the DNR. Mr. Jergenson noted that there were no protective barriers around the backup flush tank valves and there was no emergency response plan. Mr. Jergenson also noted that the new free stall confinement building had been populated with animals and the flushing tank was being used although the facility had not received approval for use of the structures. DNR had not issued written approval to utilize the new structures because DNR had not received certification indicating that the construction had met requirements listed in the construction permit. Mr. Jergenson explained to Mr. Siplely that the construction and population of the building was done in violation of the construction permit and a Notice of Violation letter would be issued.

4. On December 27, 2023, DNR issued a Notice of Violation to Brian and Carole Siplely for the construction permit violations observed during the November 2023 field office visit to the facility. The letter required that the Sipleys provide documentation that the above ground storage structure complies with the rules and provide the engineer/manufacturer’s design for the above ground storage structure

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as well as verification that it was constructed in accordance with the design. The letter also stated the violations may be 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.

2. 567 IAC 65.7(10) requires that a person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit. During the site visit in November 2023, DNR Field Office 1 noted that an above-ground cylindrical, metal flushing tank had been constructed instead of the permitted below-ground reception pit without the DNR's approval. It was also noted that the new confinement building was populated without the DNR's authorization and that manure was stored in the new storage structure without the DNR's authorization. These actions were in violation of the conditions in the Sipleys' construction permit. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.15(20) requires that a formed manure storage structure constructed to store manure wholly or partially above ground and which had an external outlet or inlet below the liquid level shall have all of the following: 1) two or more shutoff valves on any external outlet or inlet below the liquid level; 2) all external outlets or inlets below the liquid level shall be barricaded, encased in concrete, or otherwise protected; 3) construction shall be done in compliance with the manufacturer's requirements; and 4) there must be an emergency response plan. During the site visit in November 2023, DNR Field Office 1 noted that the above ground storage structure did not have the requirements listed in this rule provision. DNR Construction permitting and the Sipleys continue to work toward certifying the structure. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Brian and Carole Sipley agree to do the following:

1. Provided documentation to DNR Field Office 1 demonstrating the following within 60 days of the date the Director signs this administrative consent order:
 - a. A sign has been attached to the newly installed flushing tank indicating that there is "Buried Piping Below" or similar language to alert anyone who may be digging near the tank.

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- b. Construction of a containment around the flush tank;
 - c. An updated emergency plan should be provided listing protocols for tank leaks, ruptures and others releases from the tank; and
2. 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.” There was little to no economic benefit received by the Sipleys for these violations; therefore, no 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. When a facility alters the construction plans without approval, constructs unapproved structures, or begins using the structures without the required written approval it bars the DNR from reviewing the design and location of the construction project. These actions circumvent the protections put in place by the rule requirements and threatens the integrity of the animal feeding operation regulations. Therefore, \$3,000.00 is assessed for this factor.

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Culpability – Brian and Carole Siple have a duty to know the regulations and to be aware that their actions are subject to the regulations. The construction permit and cover letter made the construction permits conditions clear that any changes could not occur without DNR's approval and that the new structures could not be populated without DNR's authorization. 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 Brian and Carole Siple. For that reason, Brian and Carole Siple waive 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Brian A Siple
BRIAN SIPLEY

Dated this 17th day of
April, 2024

Carole A Siple
CAROLE SIPLEY

Dated this 17th day of
April, 2024