

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

MICHAEL BUTIKOFER
Facility #68352

Clayton County, Iowa

ADMINISTRATIVE ORDER
NO. 2024-AFO-21

TO: Michael Butikofer
20585 Fawn Hollow Road
St Olaf, Iowa 52072

I. SUMMARY

This administrative order (Order) requires Michael Butikofer to comply with the provision in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Brian Jergenson, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Court, Suite 10
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Appeal or Payment of penalty to:

Director
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

II. JURISDICTION

This 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 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: MICHAEL BUTIKOFER

III. STATEMENT OF FACTS

1. Michael Butikofer operates an animal feeding operation know as the Fawn Hollow Feedlot (Fawn Hollow). The facility is a large concentrated animal feeding operation (CAFO) with 1,700 cattle capacity open feedlot and 100 cattle capacity confinement. The CAFO is broken down into three adjoining facilities. The current NMP, recently submitted and approved, indicated that the facility will be expanding to add another 700 open feedlot cattle in the 10% deep-pitted open feedlot barn. The address of the main facility is located at 19742 Fawn Hollow Road, Farmersburg (Wagner Township, Clayton County). The confinement portion of the secondary facility is located at 19851 Fawn Hollow Road, Farmersburg, and the feed storage only area is located at 20385 Fawn Hollow Road, Farmersburg. Fawn Hollow operates under the designation as a non-discharging CAFO and the facility does not have a National Pollutant Discharge Elimination System (NPDES) permit.

2. In 2017, DNR Field Office 1 inspected the facility and in 2018, the facility was inspected by the Environmental Protection Agency (EPA). Neither of the inspections documented a discharge to a water of the United States; however, both inspections noted concerns with the potential to discharge.

3. On March 29, 2023, Brian Jergenson, DNR Field Office 1 environmental specialist senior, conducted an inspection at the Fawn Hollow facility. Mr. Jergenson first visited the open feedlot area and noted that the manure stockpile was within 400 feet to an onsite well. The open feedlot area has two basins. Basin 1 is designed to overflow into a second effluent basin (basin 2), located southeast of basin 1. During the inspection, Mr. Jergenson noted material overtopping basin 2 was traveling across the ground to a letdown drain, overland through a ravine, and to a field tile inlet. Mr. Jergenson conducted a field test on the water entering the tile intake. The field test indicated the strong presence of nitrogen ammonia (above 3 mg/L). The field tile is presumed to discharge into Howard Creek prior to the creek's confluence with Roberts Creek. Mr. Jergenson explained to Mr. Butikofer that since the facility is a large CAFO without an NPDES permit that he must either immediately remove the potential to discharge to Howard Creek or apply for a NPDES permit. In the evening of March 29, Mr. Butikofer sent Mr. Jergenson photographs showing that the drain located east of basin 2 had been removed and plugged with soil. The area was protected by an elevated soil berm.

4. Mr. Jergenson then traveled to the confinement portion of the operation. Mr. Jergenson noted that the bedding was stockpiled on a concrete slab outside of the confinement structure, but noted that it was located within 400 feet of a sinkhole. The confinement structure was recently converted from an open feedlot structure. Mr. Jergenson noted that the confinement structure was located within 1,000 feet of two mapped sinkholes.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: MICHAEL BUTIKOFER

5. On April 11, 2023, DNR issued Mr. Butikofer a Notice of Violation letter for the multiple violations discovered during the March inspection. The letter stated the DNR may pursue additional enforcement for the violations.

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 65.11(8)"b" states that stockpiles from a confinement feeding operation shall not be located within 400 feet from a designated area. 567 IAC 65.1(1) includes known sinkholes in the definition of a designated area. During the March 2023 inspection, DNR Field Office 1 noted that the manure stockpile from the confinement feeding operation was within 400 feet of a known sinkhole. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.11(3) states that the separation distance between any confinement feeding operation, including a small animal feeding operation, and a known sinkhole is 1,000 feet. During the March 2023 inspection, DNR Field Office 1 noted that the converted confinement building was constructed within 1,000 feet of two known sinkholes. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.101(3) states that 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. During the March 2023 inspection, DNR Field Office 1 noted that manure from the Fawn Hollow open feedlot area entered a tile intake that discharges to Howard Creek. The above-mentioned facts indicate violations of this provision.

5. 567 IAC 65.101(8)"b" states that stockpiles of scraped solids and settled solids from open feedlot operations shall not be located within 400 feet from a designated area. 567 IAC 65.1(1) includes wells in the definition of a designated area. During the March 2023 inspection, DNR Field Office 1 noted that the manure stockpile from the open feedlot operation was within 400 feet of an onsite well. The above-mentioned facts indicate a violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: MICHAEL BUTIKOFER

V. ORDER

THEREFORE, the DNR orders Michael Butikofer to do the following:

1. Provide written verification that the open feedlot and confinement structure stockpiles comply with the separation distance requirements. The verifications shall be submitted to DNR Field Office 1 within 60 days of the date the Director signs this Order;
2. Choose one of the following options to address the discharge from the open feedlot portion of the facility:
 - a. Provide written and photographic documentation that the discharge potential has been removed;
 - b. Submit an application and receive a NPDES permit for the facility;
or
 - c. Reduce the facility capacity below 300 head.The facility shall submit its written decision to DNR Field Office 1 within 60 days of the date the Directors signs this Order;
3. Submit a plan of action to comply with the separation distance from the sinkhole and confinement building within 60 days of the date the Director signs this Order. Once the plan is approved by the DNR, the actions shall be completed within 90 days of approval; and
4. Pay a \$4,000.00 administrative penalty within 60 days of the date the Director signs this 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 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: MICHAEL BUTIKOFER

“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. Butikofer has gained a minimal economic benefit in costs associated with the location of the stockpiles and the confinement building. It is estimated the economic benefit is \$100.00 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 1 documented a manure release and the facility has a history with manure control issues. Additionally, the stockpiles and confinement building constructed too close to known sinkholes create the potential for environmental harm. 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, \$3,000.00 is assessed for this factor.

Culpability – Mr. Butikofer has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Mr. Butikofer has been warned of the potential discharges from the facility in the past. However, Mr. Butikofer did take immediate steps to remedy the discharge and limit the impact of the manure release. Therefore, \$900.00 is being assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: MICHAEL BUTIKOFER

Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources