

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

IN THE MATTER OF:

JONATHAN LOES

Facility #56966
Dubuque County Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-27

TO: Jonathan Loes
23843 Garryowen Road
Cascade, Iowa 52033

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jonathan Loes for the purpose of resolving water quality violations resulting from a manure release from Mr. Loes' open feedlot. This administrative consent order requires Mr. Loes to: 1) develop a Plan of Action for the operation of the open feedlot and 2) pay a \$4,650.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Brian Jergenson, DNR Field Office 1
Iowa Department of Natural Resources
1101 Commercial Court, Suite 10
Manchester, Iowa 52057
Phone: 563-608-6749

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

Payment of penalty to:

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

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. Jonathan Loes owns and operates an animal feeding operation with 700 head of cattle in an open feedlot. The feedlot operates with a NRCS designed solids settling structure. The solids settling structure is designed to discharge settled effluent to a vegetated buffer prior to the material reaching the receiving stream. The facility is located at 23843 Garryowen Road, Cascade, Iowa (Section 34, Whitewater Township, Dubuque County).

2. On June 5, 2024, DNR Field Office 1 received a complaint stating that a manure storage structure at Mr. Loes' feedlot was overflowing. The field office personnel explained that the facility is designed to discharge settled effluent to a vegetated buffer and not designed as a total containment structure. The complainant stated manure was flowing into the creek at a heavy rate and the complainant believed the effluent was causing a water quality violation in the creek.

3. Brian Jergenson, DNR Field Office 1 environmental specialist senior, traveled to Mr. Loes' feedlot and met with Mr. Loes. Mr. Jergenson noted that the solids settling structure was full of liquid and solid manure and was discharging effluent at a very high rate to the vegetated buffer to the south. Mr. Loes stated he had scraped manure solids from the open feedlot pens into the solids settling structure that morning. Mr. Jergenson informed Mr. Loes that the solids settling structure is designed to settle solids from runoff and is not intended to be utilized for manure storage. Mr. Jergenson further explained that the scraped manure from the open feedlot should be stockpiled and land applied. Mr. Loes stated that the solids settling structure had not operated as it was promised since it was constructed 20 years prior. He stated he would lower the wooden slats at the discharge point.

4. Mr. Jergenson observed a heavy flow of effluent from the solids settling structure enter the vegetated buffer and then crossed under the road through a culvert to a pasture before entering the stream. The effluent had a strong odor and the water was turbid and foaming. Mr. Jergenson noted that the area did not fit the designation as a water of the state, but rather an ephemeral segment of the stream. There was no water flow from above the area, with no bed and bank at this location. Mr. Jergenson determined this area was being maintained as a vegetated filter strip. Mr. Jergenson collected a laboratory sample from the effluent as it entered this area. The laboratory sample indicated an ammonia nitrogen concentration of 490 mg/L.

5. Mr. Jergenson continued approximately 1,100 feet downstream where the stream crossed under 245th Street. In this area there were defined bed and banks with visual indication that the stream maintains a flow of water. This area is

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the start of the unnamed tributary of the North Fork Maquoketa River. Mr. Jergenson noted a manure odor and turbid water. There were no manure solids noted in the water. Mr. Jergenson did observe some pasture cows in the area, but no evidence that they contributed to the impaired water. Mr. Jergenson collected a laboratory sample from the tributary and laboratory sample indicated an ammonia nitrogen concentration of 12 mg/L. Mr. Jergenson continued another 1,000 feet downstream where conditions were similar to the area at 245th Street. Mr. Jergenson collected a laboratory sample from the tributary and laboratory sample indicated an ammonia nitrogen concentration of 15 mg/L.

6. Following the inspection, Mr. Jergenson spoke to Mr. Loes about his findings. Mr. Loes confirmed he lowered the slat to prevent manure from leaving the solids settling structure. Mr. Jergenson also encouraged Mr. Loes to contact Iowa State Extension to discuss strategies to prevent discharges of manure from the open feedlot.

7. On June 26, 2024, DNR issued a Notice of Violation letter to Mr. Loes for the violations discovered during the early June investigation. The letter informed Mr. Loes that the matter was being referred for further enforcement. Mr. Jergenson contacted Mr. Loes regarding the laboratory samples and informed him the violations would be referred for further enforcement. Mr. Loes informed Mr. Jergenson that he had removed and land applied the manure solids from the solids settling structure.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the June 2024 investigation, DNR Field Office 1 noted that runoff from the Loes facility entered the unnamed tributary of the North Fork Maquoketa River. The above-mentioned facts indicate a violation of these provisions.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. During the June 2024 investigation, DNR Field Office 1 noted that runoff from the Loes facility entered the unnamed tributary causing elevated pollutants a manure odor, and discolored water. The above-mentioned facts indicate violations of the general water quality criteria.

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4. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Loes complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

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

1. Develop a Plan of Action detailing the following matters: 1) how the scraped manure will be managed at the facility; 2) confirmation that manure solids have been removed from the solids settling structure and how the structure will be operated in the future; and 3) description of the controls that will be implemented at the facility to prevent future discharges. The Plan of Action must be submitted to DNR Field Office 1 within 30 days of the date the Director signs this administrative consent order and must be implemented immediately upon approval of the Plan of Action by DNR Field Office 1 and
2. Pay an administrative penalty in the amount of \$4,650.00 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 \$4,650.00. 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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Loes gained an economic benefit from delaying the costs associated with transporting the scraped manure

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solids to a stockpile or immediately land applying the manure solids. Mr. Loes also gained an economic benefit associated with the improper operation and maintenance of the solids settling structure. It is estimated that Mr. Loes has gained an economic benefit of at least \$650.00 and that amount is 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 release from Mr. Loes' facility resulted in the degradation of water quality, including elevated pollutants, a manure odor, and discolored water. The manure containment requirements and are integral parts of the animal feeding operation programs and violations of the regulations threaten the integrity of the animal feeding operation regulations. Based on the information above, \$2,000.00 is assessed for this factor.

Culpability – Mr. Loes has a duty to know the regulations and to be aware that his actions are subject to the regulations. Mr. Loes was aware that the solids settling structure had not operated correctly since it was installed. Based on the information above, \$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 Mr. Loes. For that reason, Mr. Loes 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



JONATHAN LOES

Dated this 30 day of
August, 2024.