

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

IN THE MATTER OF: GARY WEST Adams County	ADMINISTRATIVE CONSENT ORDER NO. 2024-AFO- 32
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TO: Gary West
2954 200th Street
Prescott, Iowa 50859

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gary West for the purpose of resolving an animal feeding operation violation resulting from the failure to remove the manure from Mr. West's discontinued animal feeding operation located in Adams County. This administrative consent order requires, Mr. West to: 1) remove and land apply all liquid manure and manure solids from the earthen lagoon and below building pits; 2) submit regular status reports; and 3) pay a stipulated administrative penalty if the removal is not completed by May 1, 2025.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

John Baker, DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to appeal rights:

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

Payment of penalty, if any, 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 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.

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III. STATEMENT OF FACTS

1. Gary West owns an animal feeding operation located at 2962 200th Street, Prescott, Iowa (Section 20, Union Township, Adams County). The facility consists of two confinement buildings with shallow pits that empty into an earthen lagoon with a pull plug system. The facility has not had animals in it since 2019 and DNR considers it a discontinued animal feeding operation.

2. On June 25, 2019, Jerry Jordison, DNR Field Office 4 senior environmental specialist, visited Mr. West's facility to conduct an unformed manure storage structure inspection. Mr. Jordison was informed that the site had been depopulated. On June 27, 2019, DNR sent Mr. West a letter explaining the requirement to remove the manure within six months of the facility being discontinued.

3. On December 14, 2020, Jake Theis, DNR Field Office 4 environmental specialist, conducted a facility inspection and noted that the facility was not populated. On January 6, 2021, DNR sent Mr. West a letter that required him to submit a plan by February 1, 2021 detailing when the manure would be removed and land applied. On April 6, 2021, Wendy Wittrock, DNR Field Office 4 environmental specialist senior, conducted a basin inspection at Mr. West's facility and noted the facility was not populated. On April 7, 2021, DNR sent Mr. West a letter that required him to submit a plan by May 3, 2021 detailing when the manure would be removed and land applied. On September 16, 2021, Ms. Wittrock conducted another inspection at Mr. West's facility and it remained depopulated.

4. On May 10, 2023, John Baker, DNR Field Office 4 environmental specialist, conducted a basin inspection at Mr. West's facility and verified that it remained depopulated. On May 11, 2023, DNR issued a Notice of Violation letter to Mr. West for failing to remove all manure from the facility after it was depopulated. The letter required that Mr. West submit a plan by June 1, 2023 detailing when the manure would be removed and land applied.

5. On March 22, 2024, Mr. Baker conducted a basin inspection at Mr. West's facility and verified the facility remained depopulated. On April 1, 2024, DNR issued a Notice of Violation letter to Mr. West for failing to remove all manure from the facility after it was depopulated. The letter required that Mr. West submit a plan by May 1, 2024. The letter also informed Mr. West the matter was being referred for further enforcement.

6. On July 2, 2024, Mr. Baker contacted Mr. West regarding the status of the plan of for cleaning out the basin. Mr. West stated he did not have a plan completed. Mr. Baker told Mr. West the plan must be submitted by July 30, 2024. To date, Mr. West has not submitted a plan detailing when the manure would be removed and land applied.

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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 65.100(6) 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 multiple visits by DNR Field Office 4, the facility has been depopulated since at least June 2019 and the manure remains at the facility. The above-mentioned information indicates a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Gary West agrees to do the following:

1. Remove and land apply all liquid manure and manure solids from the earthen lagoon and below building pits and properly close the animal feeding operation by May 1, 2025;
2. Submit a status update on the removal of the manure to DNR Field Office 4 on November 15, 2024 and March 15, 2025, 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 May 1, 2025, Mr. West 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. 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 violation is the issuance of an administrative consent order with stipulated penalties for violation of the compliance schedule of this administrative order.

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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. 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 10.30(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. West has gained an economic benefit by failing to remove the manure from the discontinued animal feeding operation. Mr. West has avoided the costs of properly removing and land applying all manure from the discontinued animal feeding operation including transportation and application fees. Therefore, \$3,000.00 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, \$1,000.00 is being assessed for this factor.

Culpability – Mr. West has 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. Mr. West has been previously notified on multiple occasions that the manure must be removed from the discontinued animal feeding operation. Therefore, \$1,000.00 is assessed for this factor.

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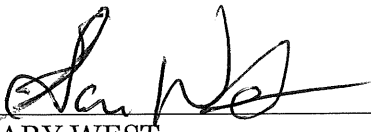
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Gary West. For that reason, Gary West waives 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 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



GARY WEST

Dated this 13 day of
NOV, 2024.