IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:	
BRIAN PETERSON **Facility #57143** **Woodbury County, Iowa**	ADMINISTRATIVE ORDER NO. 2014-AFO-22

TO: Brian Peterson
Peterson Feedlot
1739 Charles Avenue
Lawton, Iowa 51030

I. SUMMARY

This Administrative Order (Order) requires you to comply with the provisions 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:
Brandon Miner, Field Office 3
Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51031-2200
Phone: 712/262-4177

Relating to appeal rights:
Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Appeal, if any, addressed to:
Director, Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Penalty of payment to:
Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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 a violation of Iowa Code Chapter 455B, Division III, Part 1 or 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. Brian Peterson owns and operates a combined open lot and confinement beef cattle operation with a permitted capacity of 11,000 open lot cattle and 950 head of cattle in confinement buildings. The cattle confinement buildings consist of deep-bedded hoop buildings. The facility is located at 1771 180th Street, Sioux City, Iowa (Sections 12 & 13, Woodbury Township, Woodbury County, Iowa) and Big Whisky Creek is located within 1,000 feet to the east of the facility.

2. On March 9, 2011, DNR issued IDNR NPDES #9757143 to Peterson Feedlot. The permit required that there be no discharge except when precipitation events greater than the 25-year, 24-hour rainfall event (5.2 inches) cause an overflow of the production area. The permit states "When a precipitation event causes an overflow, then pollutants in the overflow may be discharged into waters of the United States provided the manure control system is designed, constructed, operated and maintained to contain all manure including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event." The basins must be properly designed, constructed, maintained and operated.

3. In July 2013, DNR issued a construction permit for an expansion to 24,000 head of open lot cattle, but the NPDES permit has not yet been amended to reflect the increase in animal units. Runoff from the existing 90-acre open feedlot is stored in three settled open feedlot effluent basins (SOFEBs) with a total design storage volume of 34,616, 504 gallons.

4. On June 16, 2014, Dan Peterson with Peterson Feedlot contacted DNR Field Office 3 and spoke with Don Cunningham, environmental specialist. Dan Peterson stated that heavy rainfall had resulted in the three SOFEBs at the facility being nearly full and the facility needed to pump the effluent to a corn field and a rye field because the center pivot irrigation system was not working because the ground was saturated. Dan Peterson stated that if the effluent was not pumped from the SOFEBs that the berms would be damaged.

5. Later in the day on June 16, 2014, Brandon Miner, DNR Field Office 3 environmental specialist, received a complaint stating that the effluent from one of the facility's SOFEBs was being pumped directly to Big Whisky Creek. On June 17, 2014, DNR Field Office 3 continued to receive complaints regarding effluent from the SOFEBs being pumped into a road ditch that led directly to Big Whisky Creek.

6. On June 16 and June 17, Mr. Miner spoke with Brian Peterson on the telephone. Brian Peterson reiterated what Dan Peterson had stated regarding the facility's SOFEBs being nearly full because of the heavy rainfall in excess of the 25-year, 24-hour storm event. Brian Peterson stated that he was concerned that the berms would be compromised so effluent was being pumped from two SOFEBs. Mr. Miner asked if the effluent was being pumped to the road ditch or to the creek. Mr.

Peterson stated that the effluent was being pumped to the corn field and to the rye field but not directly to the ditch or the creek. Mr. Miner told Brian Peterson to only pump enough effluent to keep the SOFEBs from overflowing. Brian Peterson did state that some of the runoff had reached the creek, but that the runoff was flowing through approximately ¼ mile of crop field first. In a later telephone conversation, Brian Peterson called and stated that a new portion of the feedlot was under construction but it did not have cattle in it yet. Mr. Peterson stated that the water in the new north SOFEB was only storm water and that the water needed to be pumped out to complete the concrete work. Mr. Peterson said there was concern about the berms being over-topped and falling. Mr. Peterson asked if the water could be pumped out of the unfinished north SOFEB; he stated that the water would go to the road ditch and then to Big Whisky Creek. Since animals had not been in the new area and the water was only storm water, DNR Field Office 3 gave Mr. Peterson the authority to pump the storm water from the new north SOFEB.

7. On June 18, 2014, Michelle Sabatini, DNR Field Office 3 environmental specialist, and Mr. Miner visited the facility. They observed effluent from the middle SOFEB being pumped directly to the road ditch. The effluent flowed under Charles Avenue and into Big Whisky Creek. Due to the heavy rainfall, the water in Big Whisky Creek was cloudy and murky and brown in color. Mr. Miner noted that the darker colored effluent mixing with the water in Big Whisky Creek. Mr. Miner met with Brian Peterson to discuss the situation. Brian Peterson stated he was concerned about more rainfall falling at his facility so he was continuing to pump from the middle SOFEB, but that pumping from the south SOFEB had stopped before the field office personnel arrived. Mr. Miner told Brian Peterson that the effluent from the middle SOFEB was not flowing into the field but rather into the ditch and then to Big Whisky Creek. Brian Peterson and Mr. Miner viewed the middle SOFEB and observed several feet of freeboard. Mr. Miner asked that the pumping stop from the middle SOFEB. Mr. Miner and Brian Peterson also noted several feet of freeboard in the south SOFEB. Mr. Miner noted that the effluent from the south SOFEB had been pumped to the adjacent corn field and flowed approximately 1,200 feet to the south before entering Big Whisky Creek.

8. Mr. Miner and Brian Peterson continued to the unfinished feedlot and SOFEB located to the north of the existing facility. Water was being pumped from the unfinished SOFEB to an unnamed tributary of Big Whisky Creek. Mr. Miner noted that it appeared that during the heavy rainfall that runoff from another open cattle lot located to the north of the unfinished feedlot had flowed into the SOFEB. The water in the unnamed tributary was murky and the majority of the flow in the tributary appeared to be coming completely from the pumping of the unfinished SOFEB. A field test of the water being pumped from the unfinished SOFEB indicated an elevated level of ammonia. DNR Field Office 3 initially told Brian Peterson that it was acceptable to discharge the storm water from the unfinished SOFEB when Mr. Peterson earlier requested to do so. At the time of the initial request Mr. Peterson stated that the storm water did not contain feedlot manure.

However due to the elevated ammonia field test, Mr. Miner told Brian Peterson that the pumping from the unfinished SOFEB would need to be stopped immediately. A laboratory sample of the water was also collected.

9. While Mr. Miner spoke to Brian Peterson, Ms. Sabatini collected field and laboratory samples of the runoff from the pumping activities and also from upstream and downstream locations. The field samples indicated the following ammonia levels: upstream=0.7 mg/L; downstream= >3 mg/L; and storm water=1.6-1.8 mg/L. The upstream sample was collected on Big Whisky Creek approximately one mile upstream from where the feedlot effluent entered and approximately a ½ mile upstream of where the effluent was being pumped from the unfinished SOFEB to Big Whisky Creek. The downstream sample was collected where the pumped effluent was observed mixing with the water in Big Whisky Creek. The storm water sample was taken from where the effluent being pumped from the unfinished SOFEB flowed under Charles Avenue. The laboratory samples indicated the following concentrations:

Location	Ammonia (mg/L)	E. Coli (Col/100 mL)	BOD (mg/L)
Upstream	0.32	>24,000	<2
Downstream	55	650,000	12,000
Storm water	3.3	69,000	1,500

10. On June 20, 2014, Mr. Miner spoke to Brian Peterson on the telephone regarding the water in the unfinished north SOFEB. Mr. Peterson asked if the water could be pumped to the creek. Mr. Miner stated that it would need to be land applied. Mr. Peterson asked if the water could be pumped to the creek if the samples collected came back low. Mr. Miner stated the water would need to be irrigated on crop fields.

11. On August 6, 2014, DNR issued a Notice of Violation and Referral letter to Brian Peterson for the discharge violations discovered during the June 2014 investigation.

12. DNR Field Office 3 has visited the feedlot on two prior occasions. In August 2006, DNR Field Office 3 visited the facility and noted that manure had likely been land applied within 200 feet of a water source. Field Office personnel also observed that two of the basins at the facility did not have enough storage available. It was also noted that the basins were built without permits. In September 2007, a Notice of Violation letter was sent to Brian Peterson for manure application too close to a water source and the construction of an earthen basin without the required permitting or authorization. In March 2006, DNR Field Office 3 documented effluent from the facility reaching Big Whisky Creek. The effluent was discharging from the feedlot to the northeast to a crop field. The effluent then

flowed towards the southeast where it eventually entered Big Whisky Creek. The laboratory samples indicated elevated levels of fecal coliform, ammonia, and BOD at the discharge point as well as downstream of the discharge point. The sample results and the memo from the visit were forwarded to the United States EPA for possible enforcement.

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. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Brian Peterson pumped effluent from the SOFEBs to the road ditch which then flowed directly to Big Whisky Creek. The laboratory samples collected by the field office confirmed elevated levels of pollutants. The above-mentioned facts indicate a violation of this provision.

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. The laboratory results indicated elevated pollutants. Additionally, DNR Field Office 3 personnel observed discolored water with an objectionable odor and floating debris in Big Whisky Creek. The above mentioned facts indicate violations of the general water quality criteria.

4. 567 65.101(2) and the facility's NPDES permit allow an overflow and subsequent discharge of pollutants if the site receives rainfall in excess of the 25-year, 24-hour rainfall event and all provisions of the permit are followed, including the proper operation and maintenance of the manure control structures. Although the feedlot did experience rainfall greater than a 25-year, 24-hour rainfall event, the permit does not allow for a discharge to waters of the United States resulting from pumping effluent from a SOFEB directly to the road ditch which flows to a creek. Unless allowed by the permit, the discharge of open lot runoff to a water source is prohibited. Proper operation does not include pumping runoff from the settling basin or SOFEB to a water source. Additionally, the permit allowed for an overflow, not dewatering of the basins. DNR Field Office 3 informed the facility that it could pump enough manure to avoid an overflow; however DNR Field Office 3 noted that two of the basins had several feet of freeboard at the time of the inspection. This exceeds what is allowed by the permit. The above mentioned facts indicate violations of these provisions.

V. ORDER

THEREFORE, the DNR orders Mr. Peterson to do the following:

1. Operate and maintain all animal feeding operation structures that he owns or operates in compliance with all applicable DNR rules and regulations;

2. Immediately cease discharging any runoff from the production areas to water sources; and

3. Pay an administrative penalty in the amount of $10,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of 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 $10,000.00. 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." Brian Peterson gained an economic benefit by failing to properly operate the facility in accordance with the facility's NPDES permit and by failing to properly land apply the feedlot effluent rather than pumping it from the SOFEB to the road ditch which then flowed directly to Big Whisky Creek. This allowed Mr. Peterson to avoid the costs associated with proper land application. Additionally, Mr. Peterson gained an economic benefit by pumping more manure than necessary. Mr. Peterson was only allowed to pump enough feedlot effluent to avoid an overflow but DNR Field Office 3 noted several feet of freeboard in each of the basins. This allowed Mr. Peterson to further avoid the costs associated with proper land application. These costs would have included hiring a commercial applicator or the costs associated with the operation of

application equipment, including but not limited to fuel, employee costs, and general equipment usage. Based on the above facts, the economic benefit Mr. Peterson received was at least $3,000.00 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. DNR Field Office 3 documented a manure discharge that led to documented water quality violations. Additionally, DNR Field Office 3 noted that the middle and south SOFEBS were pumped down several feet indicating the effluent had likely been discharging to a water source for several days. 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 for the violations listed in Section IV, Paragraphs 2 and 3 a penalty of $2,750.00 is assessed and for the violations listed in Section IV, Paragraph 4 a penalty of $1,250.00 is assessed for a total of $4,000.00 for this factor.

Culpability –Brian Peterson 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. Peterson is obligated to operate the facility in accordance with the facility's NPDES permit as well as the state regulations. Therefore, $3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC Chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and 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 Order. Failure to comply with this 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: BRIAN PETERSON

Chuck Gipp

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 1st day of December, 2014.

Facility #57143; Kelli Book; DNR Field Office 3; EPA; I.C.1, VIII.D.1.b and VIII.D.3.a