MINUTES OF THE **ENVIRONMENTAL PROTECTION COMMISSION M**EETING

July 17, 2018

State of Iowa Capitol 1007 East Grand Avenue, Des Moines, IA

Approved by the Commission 8/21/18

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Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Ralph Lents at 10:00 a.m. on July 17, 2018 at the State of Iowa Capitol in Des Moines, Iowa.

The Environmental Protection Commission, at the direction of the chair, is implementing changes in the way the Commission will be receiving oral public comment. Public comment will be heard **only on specific agenda items** prior to the commission's decision on each item. The implementation of this change will allow commissioners to gather direct input on specific agenda items for which they are tasked with decision making. As before, the Commission will continue to accept written comments.

COMMISSIONERS PRESENT

Mary Boote Nancy Couser, Secretary Rebecca Guinn Harold Hommes Ralph Lents, Chair

COMMISSIONERS ABSENT

Howard Hill
Joe Riding, Vice Chair
Bob Sinclair
Vacant Seat – Finance & Commerce

APPROVAL OF AGENDA

David Scott, DNR Attorney, and Eldon McAfee, Attorney representing Clark Farms, believe a settlement will be reached between the parties and requested the EPC to delay its review and decision of the case by 30 days. If a settlement is reached, the Commission will not review the appeal. If a settlement is not reached, the appeal will come before the Commission during the August 2018 meeting.

Motion was made by Mary Boote to amend the agenda to remove the Clark Farms Contested Case decision from the agenda. Seconded by Harold Hommes. Agenda amended.

AGENDA APPROVED

APPROVAL OF MINUTES

Commissioners recognized the May 15, 2018 meeting minutes were in the packet rather than the June 19, 2018 meeting minutes. The June meeting minutes will be included in the August meeting packet for review and approval.

MONTHLY REPORTS

- Bill Ehm shared with the Commission the Environmental Council of the States (ECOS) is accepting award
 nominations for state achievements. They are not accepting paper applications but rather video
 submissions. The Department is developing a video application for the achievements of the Manure
 Management Plan (MMP) program going electronic for MMP submission and payment. Once the video
 application is submitted, the Department will post it on its website and share it with the Commission.
- Bill Ehm shared an update related to the unclassified feedlots. Some sites were categorized to require a
 Nutrient Management Plan and others a Manure Management Plan. For each of these facilities, a Letter of
 Non-Compliance or Notice of Violation has been issued. In some cases, there will be a referral to the Legal
 Services Bureau. As large animal feeding operations are being categorized, the Department is working with
 them to be in compliance.
- The monthly report(s) has been posted on the DNR website under the appropriate meeting month: http://www.iowadnr.gov/About-DNR/Boards-Commissions

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INFORMATION

ACTING DIRECTOR'S REMARKS

Acting Director Bruce Trautman thanked the DNR staff, Commissioners, and State of Iowa Capitol hosts for the work they do. Project Aware occurred last week where 300-500 daily volunteers spent a week cleaning up a river segment during the day and attending educational programs in the evening. Volunteers and the University of Iowa will continue to lead the event with the DNR as a partner. He also shared an update that former Director Chuck Gipp is enjoying retirement. He encouraged attendees to stop by the DNR building during the Iowa State Fair. Even though the building and grounds did receive some flooding damage, the DNR fairgrounds building and courtyard will be cleaned up and ready for the Iowa State Fair.



CONTRACT WITH IDALS FOR SILVER CREEK (HOWARD COUNTY) WATER QUALITY PROJECT

Steve Konrady presented a contract for watershed improvement projects. He explained the different approaches for breaking the projects into phases which usually average about a 10 year time frame. An accomplishment thus far from completed projects is the reintroduction of trout to segments of Silver Creek. Public Comments – None

Motion was made by Nancy Couser to approve the agenda item as presented. Seconded by Mary Boote. Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH IDALS FOR YELLOW RIVER HEADWATERS WATER QUALITY PROJECT

Steve Konrady presented a contract for watershed improvement projects. He described the water sampling process and frequency for the river segment along with factors that may produce exceedances in the water quality standards. An accomplishment thus far from completed projects is the reintroduction of trout to segments of Yellow River.

Public Comments - None

Motion was made by Mary Boote to approve the agenda item as presented. Seconded by Harold Hommes. Motion passes.

APPROVED AS PRESENTED

CONTRACT AMENDMENT FOR CONTRACT #14ESDWQBPCALE-0006-A06 WITH THE UNIVERSITY OF IOWA ON BEHALF OF THE OFFICE OF THE STATE ARCHAEOLOGIST

Jean Mayne presented a contract amendment. She described how the master contract qualified multiple firms to perform the work. When projects are identified, the multiple firms bid on the projects which allows the Department to select the most qualified bid for the project budget and timeline. Up to this point, the Office of the State Archaeologist has been selected as the most qualified bidder for more projects than anticipated. The amendment increases the not-to-exceed amount of compensation available for work done by the Office of the State Archaeologist.

Public Comments - None

Motion was made by Nancy Couser to approve the agenda item as presented. Seconded by Rebecca Guinn. Motion passes.

APPROVED AS PRESENTED

REFERRAL TO THE ATTORNEY GENERAL - WALZ ENERGY LLC

Carrie Schoenebaum, DNR Attorney, distributed a packet of materials to the Commissioners which contained (1) DNR photos from the October 2017 discharge to a water of the state, (2) the facility's NPDES permit, (3) DNR photos from the May 2018 discharge to a water of the state, and (4) EPA site visit inspection photos from June 2018. To her aid were technical DNR staff Michael Steuck, Tom McCathy, and Joe Sanfilippo. Of all the materials provided in the packet, she had specific pages marked to explain what was being observed in the photos. The photos highlighted the areas of sediment loss, sediment in the waterways, and aerial maps indicating the location of the facility, sampling sites, and path of discharge. She also had marked pages from the NPDES permit requiring various actions to control sediment.

Within Carrie Schoenbaum's presentation she explained the environmental damage from sediment in the waterway. Throughout her presentation, rebuttal, and answers to questions, she focused on the facility inadequately controlling sediment run-off. Through standard construction practices or following the NPDES permit, stabilization practices could have been put in place. Without complying with the Field Office instructions or following the permit, she believed the Department has no further abilities to ensure compliance without referral to the Attorney General.

Eldon McAfee represented Walz Energy. To his aid were Jon Haman and Heath Kellogg. During their presentation, they explained how the operation works to utilize organic material with manure to create natural gas. The technology has been used for over 20 years and is envisioned to be a renewable energy for the future. They had a retention basin to contain sediment run-off which failed. After the basin failure in October 2017, a 20 foot berm was constructed to ensure no further sediment run-off would leave the property. They expressed frustration with the time period to obtain the appropriate storm water NPDES permit from DNR.

Mr. McAfee, Haman, and Kellogg continued to describe the May 2018 alleged discharge into a tile line. Mr. McAfee noted that there is uncertainty under federal law whether a sub-surface discharge is a violation under the Clean Water Act. Even if it is, the tile leads to the lagoon and does not reach a water of the state. Additionally, Walz Energy is not the only user of the tile line. There are other properties that use the tile line which may have contributed to the alleged sediment discharge.

Mr. McAfee, Haman, and Kellogg shared their approach for seeding the property, adding corn stocks and hay, and adding the 20 foot berm. The seeding was not placed on topsoil and so vegetation did not grow on many portions of the property. Corn stocks and hay could not be disked into the earth due to the soil

freezing. Additional corn stocks were added at various times but they blew away. Mother Nature also provided a wet spring which prevented machinery from performing required tasks. Changes to the lagoon liner and contractors moving on to other jobs have resulted in delay in construction. They do hope to have the facility completed by the end of the calendar year.

Public Comments

Pam Mackey Taylor – Iowa Sierra Club

Pam Mackey Taylor shared with the Commission an old saying that past behavior is an indicator for future behavior unless stopped. She believes the DNR has been more than generous to provide Walz Energy opportunities to improve. DNR coaching did not work for Walz Energy to comply. The 10,000 head facility is already working towards skirting the law. Walz Energy is calling the lagoon an industrial site so they don't have to comply with AFO laws. It is not a complex or technical business process. It is time to refer Walz Energy to the Attorney General.

Larry Stone – Clayton County Conservation Awareness Network and Neighbor

Larry Stone supports the DNR to refer Walz Energy to the Attorney General. Starting a year ago, he informed DNR staff they need to be paying more attention to this construction site because of watershed issues and sinkholes on the property. In addition the karst topography at the site can lead to groundwater contamination of the Jordan aquafer. He met with Jon Haman last year about the project and received a tour. He told Mr. Haman he commended him for the idea of biogas and managing manure but was also upfront about the facility not being in the right place due to the sensitive watershed, trout streams, and tourism. About 60 people from the area sent a letter to the EPA and encouraged the agency to ensure that the DNR staff were monitoring the site properly.

Monty Marty - Neighbor

Monty Marty lives in the area of Walz Energy and goes by the facility every week. Nothing has been going on at the site this calendar year. Last year there were a number of violations and he feels the industry is running rampant. He shared a story how he parked on the road to look at the site and take photos but Jarrod Walz confronted him. He encouraged the Commission to refer the case to the Attorney General. The EPC and DNR are the voice of the environment and this is a chance to step up and do the right thing. He is hopeful the laws that let this site get approved will be taken up by the legislature. There are loopholes in the law that need addressed. In 50 years, we aren't going to be here and we have a legacy to leave behind.

Written Comments in favor of the referral to the Attorney General were submitted by:

Larry Stone – Clayton County Conservation Awareness Network and Neighbor

Pam Mackey Taylor – Iowa Sierra Club

Tim Mason – McGregor, Iowa Resident

Motion was made by Rebecca Guinn to refer Walz Energy to the Attorney General. There was no second to the motion.

Chairperson Lents sought additional motions and there were none.

ACTION REMAINS WITH THE DEPARTMENT

GENERAL DISCUSSION

Jerah Sheets summarized the August and September meetings and educational tour logistics.

Chairperson Lents adjourned the Environmental Protection Commission meeting at 12:00 p.m. on July 17, 2018.



Sheets, Jerah <jerah.sheets@dnr.iowa.gov>

July EPC Meeting Written Comments & Request to Speak for Item #8

1 message

Jerah Sheets < jerah.sheets@dnr.iowa.gov>

Tue, Jul 10, 2018 at 8:28 AM

To: DNR ESD EPC Commissioners <epccommissioners@dnr.iowa.gov>

Cc: William Ehm <william.ehm@dnr.iowa.gov>, Ed Tormey <ed.tormey@dnr.iowa.gov>, "sharon.tahtinen"

<sharon.tahtinen@dnr.iowa.gov>, "Schoenebaum, Carrie" <carrie.schoenebaum@dnr.iowa.gov>

Bcc: Bob Sinclair <bob@sinclairtractor.com>, hjhommes@mchsi.com, Mary Boote <mjboote@courtavenuesuites.com>, Joe Riding <terracehillsgc@aol.com>, Barbara Hovland <hovland10@hotmail.com>, Chenette Thompson

<ThompsonChenetteM@johndeere.com>, "Hill, Howard" <hhill@iowaselect.com>, Nancy Couser <ncouser@gmail.com>, Ralph Lents <rid>rl4star@hotmail.com>, Rebecca Guinn <guinnerebeccaa@johndeere.com>

Commissioners.

With the concurrence of the chair, I would like to speak at the July 17 EPC meeting to address the item of the possible referral of Walz Energy to the Iowa Attorney General.

I will be representing myself and the Clayton County Conservation Awareness Network, whose letter to the commissioners is attached.

Thanks for your consideration.

Larry

Larry A. Stone
23312 295th St.
Elkader, IA 52043
563-245-1517
cell 563-419-6742
Lstone@alpinecom.net
http://www.LarryStoneslowa.com



Walz, CCCAN supports referral to atty gen.docx 134K

July 9, 2018

Re: Walz Energy

CCCAN supports referral of Walz Energy case to Iowa Attorney General

Dear EPC commissioners:

On behalf of the Clayton County Conservation Awareness Network (CCCAN), we urge you to approve the recommendation of Iowa DNR staff to refer Walz Energy LLC to the Iowa Attorney General's office to address Walz's continuing violations of state and federal permits. We understand that this item is on the agenda for your July 17 meeting. We hope to have a spokesperson there to answer questions.

As you may know, Walz Energy's proposed 10,000-head cattle feeding and methane digester operation has been under construction in Clayton County near Monona for more than a year. During that time, CCCAN and others repeatedly have voiced concerns over the location of the project in the watershed of Bloody Run Creek, which is an Outstanding Iowa Water and a popular trout stream. These concerns seem to have been justified by multiple violations of the NPDES permit, which have been documented by DNR staff. It also should be noted that the NPDES permit only was issued after construction had been under way for several months.

It also should be noted that Walz refused to agree to a DNR consent order, which the staff had proposed to settle the matter administratively, rather than judicially.

While some might commend Walz for a proposal to convert livestock waste to natural gas, and perhaps reduce problems associated with handling manure, we believe the watershed of a premier northeast lowa stream is the wrong place for such an experiment. The site is underlain with fractured limestone (karst,), which means that waste could enter the groundwater or sinkholes. The risks of contamination of Bloody Run, pollution of the Jordan aquifer, and impacts on nearby tourist destinations such as Spook Cave, are simply too great. We urge that you request the lowa Attorney General to take whatever actions are necessary to assure the protection of lowa's waters and lands.

The Clayton County Conservation Awareness Network is a nonprofit organization that strives to build public knowledge and concern about environmental issues affecting Clayton County and adjacent regions of northeast lowa.

Daryl Bruxvoort
President, Clayton County Conservation Awareness Network
http://www.claytoncountycan.com/



IOWA CHAPTER

July 13, 2018

EPC Commissioners, via E-mail to:

Mary.Boote@dnr.iowa.gov,Nancy.Couser@dnr.iowa.gov,Rebecca.Guinn@dnr.iowa.gov,Howard.Hill@dnr.iowa.gov,Harold.Hommes@dnr.iowa.gov,Ralph.Lents@dnr.iowa.gov,Bob.Sinclair@dnr.iowa.gov,Joe.Riding@dnr.iowa.gov,Jerah.Sheets@dnr.iowa.gov

Re: Referral of Walz Energy to the Attorney General's Office

Dear Environmental Protection Commission members:

The Iowa Chapter of the Sierra Club supports the referral of Walz Energy to the Attorney General's Office for enforcement action due to discharges of storm water into Bloody Run Creek and violations of its permits.

The discharges into Bloody Run Creek are no small matter. Bloody Run is a cold water stream. Its water quality is so good that it is considered an Outstanding Iowa Water. The stream maintains a population of native brown trout. Plus the Iowa Department of Natural Resources (DNR) stocks it with rainbow and brook trout. Bloody Run is a favorite of anglers who travel long distances to Clayton County to fish.

Storm water runoff pollutes any stream, including cold water trout streams with silt and other pollutants. Trout cannot survive and thrive in polluted water. Furthermore, the permits and plans developed for the Walz construction site were created to avoid the runoff into Bloody Run Creek.

The Walz actions have resulted in storm water runoff numerous times. This isn't just a single accident. It is repeated violations over a period of many months. The first documented contacts between the Department of Natural Resources and Walz Energy about the need for storm water permits were in March and April, 2017. Violations continued through May and June, 2018. DNR staff have even been on-site and had discussions with Walz, to no avail.

These are not merely technical violations; they are serious infringements.

The Walz's and Mr. Hamon know that Bloody Run Creek is an important resource to the community, to the state, and to visitors from neighboring states. Testimony from the public

during the public hearing on the storm water permit was passionate about the need to keep Bloody Run Creek free of silt and other pollution. The Walz family attended the public hearing.

Yet the Walz's and Mr. Hamon have continued to thumb their noses at the DNR requirements. It is obvious that previous notices of violation have had no impact in changing the behaviors of the Walz Energy owners, employees, and contractors. The only way to deal with these violations is to refer Walz Energy to the Attorney General where more effective penalties can be applied.

Sincerely,

Pamela Mackey Taylor Acting Director



Sheets, Jerah <jerah.sheets@dnr.iowa.gov>

Monona Shit Factory!

1 message

Timothy Mason <tirumwmason@outlook.com>
To: "Jerah.Sheets@dnr.iowa.gov" <Jerah.Sheets@dnr.iowa.gov</pre>

Tue, Jul 17, 2018 at 10:21 AM

Please advice the commissioners to do their jobs & PROTECT THE ENVIROMENT!

I and many other folks over the last 40 years have worked hard to protect the little cold water trout stream here in Clayton County, called Bloody Run Creek.

You may know the history of "Stop the Highway, Save Bloody Run" campaign.

In minutes your commission will debate and vote to send the greed mongers known as Waltz Energy Limited Liability Company's case to the Attorney General for prosecution.

Several years ago the other nearby watershed of Sny MaGill trout stream was heavily impacted by the Plastic House of Greed's scheme to use public monies to construct River Bluffs Resort LLC. That soil erosion case was sent on to the AG. The precedent has been set!

As most all of the land & water here in lowa has been negatively impacted by the greed driven mono culture of today's agri-industry, we see the Driftless Area of NE lowa as being the last hope of environmental preservation. We cherish our home.

Again please forward this communiqué to your commissioners.

Timothy Mason

McGregor Iowa

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- 2. NPDES Permit Issued January 12, 2018
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- 4. Pictures of Un-stabilized Site, taken by EPA on June 6, 2018
- Aerial showing location of Walz Energy LLC and Spook Cave Recreational Area

First Illegal Discharge Site Inspection Pictures October 11, 2017

Waterway to Bloody Run Meyer property Property Fence Line Strom water containment structure Google Walz Energy LLC Construction Site Flow Direction disturbed Area Highway 52

Site Map 1 - Walz Energy LLC October 11, 2017

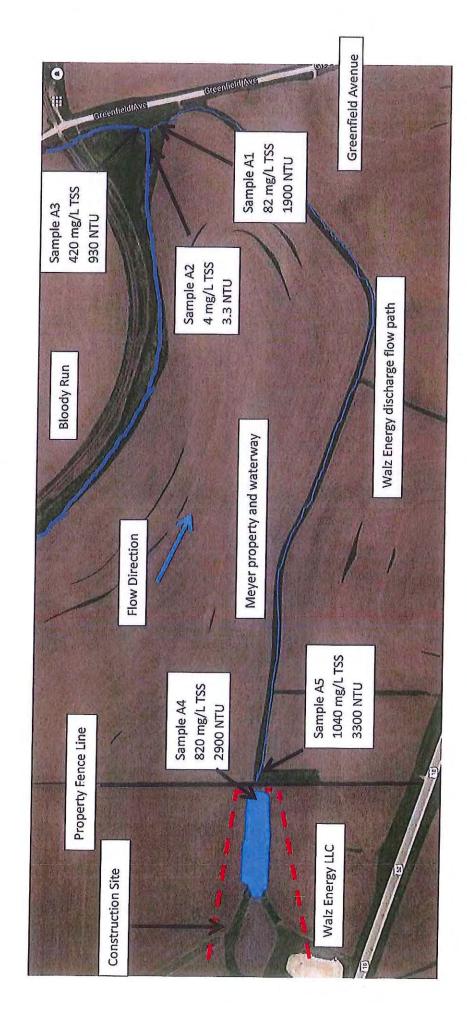
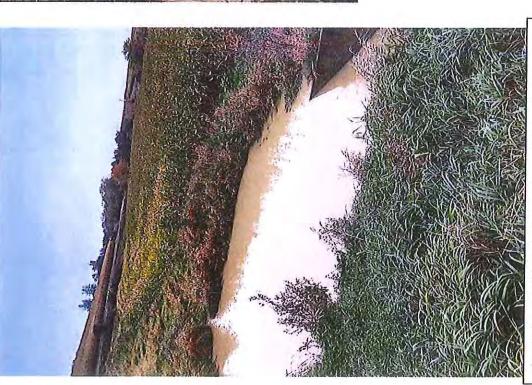


Photo Page 1 - Walz Energy Site Inspection, October 11, 2017.

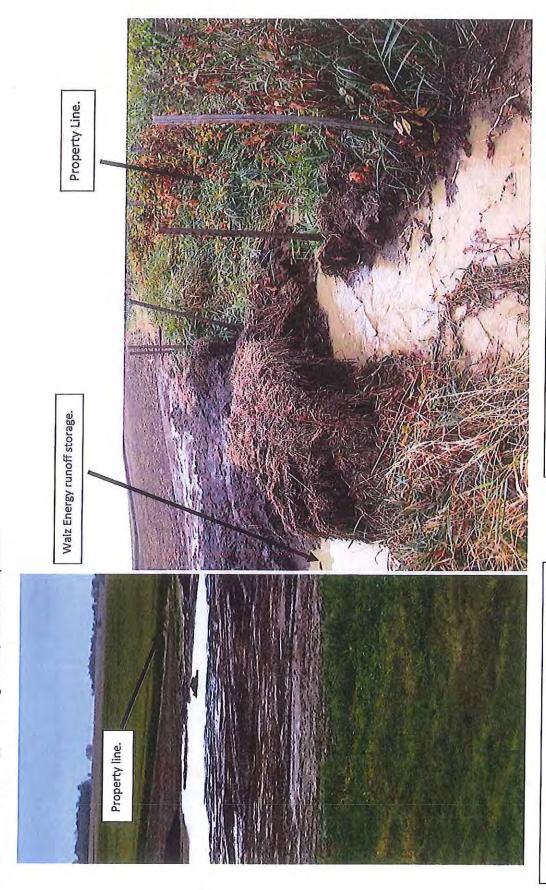


Bloody Run looking east, downstream of Greenfield Avenue road crossing.



Confluence of waterway discharge from Walz Energy to Bloody Run. Looking west.

Photo Page 2 - Walz Energy Site Inspection, October 11, 2017.



Walz Energy runoff containment. Looking northeast.

Discharge through Walz Energy runoff containment dike. Looking north.

Photo Page 3 - Walz Energy Site Inspection, October 11, 2017.



Discharge from Walz Energy property entering Meyer property. Looking east.



Taking sample A5 of Walz Energy discharge. Looking west to Walz Energy property and containment storage.



Meyer crop field and waterway border. No discharge from field. Looking east.



Meyer waterway approaching Greenfield Avenue and Bloody Run. Looking northeast.

NPDES Permit Issued January 12, 2018

IOWA DEPARTMENT OF NATURAL RESOURCES

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT

4

PERMITTEE

Walz Energy, LLC 22578 Hwy 18 Monona, IA 52159 IDENTITY AND LOCATION OF FACILITY

Walz Energy Feedlot and Biogas Project

22578 Hwy 18, Monona, IA 52159

IOWA NPDES PERMIT NUMBER: 22-00-1-05

RECEIVING WATERCOURSE:

Bloody Run

DATE OF ISSUANCE: January 12, 2018

DATE OF EXPIRATION: January 11, 2023

YOU ARE REQUIRED TO FILE

FOR RENEWAL OF THIS PERMIT BY: July 15, 2022

EPA NUMBER - IA0052856

This permit is issued pursuant to the authority of section 402(b) of the Clean Water Act (33 U.S.C. 1342(b)), Iowa Code section 455B.174, and rule 567--64.13, Iowa Administrative Code. You are authorized to operate the disposal system and to discharge the pollutants specified in this permit in accordance with the monitoring requirements and other terms set forth in this permit.

You may appeal any conditions of this permit by filing written notice of appeal and request for administrative hearing with the director of this department within 30 days of receipt of this permit.

Any existing, unexpired Iowa operation permit or Iowa NPDES permit previously issued by the department for the facility identified above is revoked by the issuance of this Iowa NPDES operation permit.

FOR THE DEPARTMENT OF NATURAL RESOURCES

By ______ Joe Griffin
NPDES Section
Environmental Protection Division

Permit Number: 22-00-1-05 Final permit

- B. KEEPING PLANS CURRENT The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants discharge from the permitted site or in otherwise achieving the general objectives of controlling pollutants in storm water discharge associated with construction activities. In addition, the pollution prevention plan shall be updated to: expeditiously change the site map to include changes at the site, include contractors identified after the submittal of the application as co-permittees, identify any change in ownership or transference of the permit and permit responsibilities; or, if required, by the occurrence of a hazardous condition.
- C. <u>CONTENTS OF THE POLLUTION PREVENTION PLAN</u> The storm water pollution prevention plan shall include the following items:
- 1. <u>SITE DESCRIPTION</u> Each plan shall provide a description of the following:
 - A. a description of the nature of the construction activity;
 - B. estimates of the total area of the site and the area of the site that is expected to be disturbed by excavation, grading, or other activities;
 - c. an estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;
 - D. a site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, the location of structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and
 - E. the name of the receiving water(s) and the ultimate receiving water(s).
- 2. <u>CONTROLS</u> The plan shall include a description of controls that will be implemented at the construction site. The plan shall clearly describe the intended sequence of major activities and for each activity, the appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description of controls shall address the following minimum components:

A. EROSION AND SEDIMENT CONTROLS

- A.(1). STABILIZATION PRACTICES A description of temporary and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed areas are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Stabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where soil-disturbing activity will not occur for a period of 21 or more calendar days, later than the 14th day after no soil-disturbing activity has occurred on such areas.
- A.(2). STRUCTURAL PRACTICES A description of structural practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include silt fences, earth dikes, brush barriers, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining

Permit Number: 22-00-1-05 Final permit

B.(1). Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; and infiltration of runoff onsite; and sequential systems (which combine several practices). A goal of 80 percent removal of total suspended solids from those flows which exceed predevelopment levels should be used in designing and installing storm water management controls (where practicable). Where this goal is not met, the permittee shall provide justification for rejecting each practice based on site conditions.

B.(2). Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. maintenance of hydrologic conditions present prior to the initiation of construction activities).

C. OTHER CONTROLS

- C.(1). WASTE DISPOSAL All wastes composed of building materials must be removed from the site for disposal in permitted disposal facilities. No building material wastes or unused building materials shall be buried, dumped, or discharged at the site.
- C.(2). Off-site vehicle tracking of sediments shall be minimized.
- C.(3). The plan shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.
- plan procedures and requirements specified in applicable sediment and erosion site plans or storm water management plans approved by State or local officials. Applicable requirements specified in sediment and erosion plans, site permits or storm water management plans approved by State or local officials. Applicable requirements specified in sediment and erosion plans, site permits or storm water management plans approved by State or local officials that are applicable to protecting surface water resources are incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit.
- 3. <u>MAINTENANCE</u> A description of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures identified in the site plan.
- 4. <u>INSPECTIONS</u> Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been stabilized with a perennial, vegetative cover of sufficient density to preclude erosion at least once every seven calendar days. Unless erosion is evident or other conditions warrant them, regular inspections are not required on areas that have been stabilized with a perennial, vegetative cover of sufficient density to preclude erosion.
 - A. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.
 - **B.** Based on the results of the inspection, the description of potential pollutant sources identified in the plan as required by this permit and pollution prevention measures identified in the plan as required by this permit shall be revised as appropriate as soon as practicable after such inspection. Such modifications shall provide for implementation of any changes to the plan within seven calendar days following the inspection.
 - C. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water

Permit Number: 22-00-1-05 Final permit

2. DUTY TO COMPLY

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Issuance of this permit does not relieve the permittee of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of your facility.

3. DUTY TO REAPPLY

If the permittee wishes to continue to discharge after the expiration date of this permit, the permittee must file a complete application for reissuance at least 180 days prior to the expiration date of this permit.

4. NEED TO HALT OR REDUCE ACTIVITY

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

5. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

6. PROPERTY RIGHTS

This permit does not convey any property rights of any sort or any exclusive privilege.

7. TRANSFER OF TITLE OR OWNER ADDRESS CHANGE

If title to your facility, or any part of it, is transferred the new owner shall be subject to this permit. The permittee is required to notify the new owner of the requirements of this permit in writing prior to any transfer of title. The Department shall be notified in writing within 30 days of the transfer. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.

8. PROPER OPERATION AND MAINTENANCE

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit.

9. DUTY TO PROVIDE INFORMATION

The permittee must furnish to the Department, within a time specified by the Department, any information the Department may request to determine compliance with this permit or determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, in accordance with 567 IAC 64. The permittee must also furnish to the Department, upon request, copies of any records required to be kept by this permit.

10. PERMIT MODIFICATION, SUSPENSION OR REVOCATION

- (a) This permit may be modified, suspended, or revoked and reissued for cause including but not limited to those specified in 567 IAC 64.3(11).
- (b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits.

Permit Number: 22-00-1-05 Final permit

MONITORING AND RECORDS OF OPERATION

(a) Maintenance of records. The permittee shall retain for a minimum of three years all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records.

(b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or both.

17. USE OF CERTIFIED LABORATORIES

Effective October 1, 1996, analyses of wastewater, groundwater or sewage sludge that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of Iowa. Routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567 IAC 63.3(4) are excluded from this requirement.

18. INSPECTION OF PREMISES, RECORDS, EQUIPMENT, METHODS AND DISCHARGES

The permittee is required to permit authorized personnel to:

- (a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this permit.
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- (c) Inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
- (d) Sample or monitor, at reasonable times, to assure compliance or as otherwise authorized by the Clean Water Act.

19. FAILURE TO SUBMIT FEES

This permit may be revoked, in whole or in part, if the appropriate permit fees are not submitted within thirty (30) days of the date of notification that such fees are due.

20. OTHER INFORMATION

Should the permittee become aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, the permittee must promptly submit such facts or information. Should the permittee become aware that it failed to submit any relevant facts in the submission of in any report to the Department, including records of operation, it shall promptly submit such facts or information.

21. NOTICE OF CHANGED CONDITIONS

The permittee is required to notify the Department of any changes in existing conditions or information on which this permit is based. This includes, but is not limited to, the following:

- (a) If your facility is a publicly owned treatment works (POTW) or otherwise may accept waste for treatment from an indirect discharger or industrial contributor (see 567 IAC 64.3(5) for further notice requirements).
- (b) If your facility is a POTW and there is any substantial change in the volume or character of pollutants being introduced to the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- (c) As soon as the permittee knows or has reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit.

Permit Number: 22-00-1-05 Final permit

24. SEVERABILITY

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

PART V. DEFINITIONS

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Construction site" means a site or common plan of development or sale on which construction activity, including clearing, grading and excavating, results in soil disturbance. A construction site is considered one site if all areas of the site are contiguous with one another and one entity owns or controls all areas of the site.

"CWA" or "Clean Water Act" means the Federal Water Pollution Control Act.

"Department" means the Iowa Department of Natural Resources.

"Final Stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70%, sufficient to preclude erosion, for the entire disturbed area of the permitted project has been established or equivalent stabilization measures have been employed or which has been returned to agricultural production.

"Hazardous condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance on to the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. 455B.381(2) 1991, Code of Iowa

"Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons, radioactive materials; sludges; and organic solvents. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United State Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act (49 CFR 172.101). 455B.381(1), 1991 Code of Iowa

"Permittee" means Walz Energy, LLC.

"Qualified personnel" means those individuals capable enough and knowledgeable enough to perform the required functions adequately well to ensure compliance with the relevant permit conditions and requirements of the Iowa Administrative Code.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

Permit Number: 22-00-1-05 Final permit

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

- (vi) facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
 - (vii) Steam electric power generating facilities, including coal handling sites;
- (viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-4225), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this definition are associated with industrial activity;
- (ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;
- (x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale;
- (xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225, (and which are not otherwise included within categories (ii)-(x));
- "Storm water discharge associated with industrial activity for construction activities" ineans activities that fall under subparagraph (x) in the definition of storm water discharge associated with industrial activity.
- "Topsoil" means the fertile, uppermost part of the soil containing significant organic matter largely devoid of debris and rocks and often disturbed in cultivation.
- "Uncontaminated groundwater" means water that is potable for humans, meets the narrative water quality standards in subrule 567-61.3(2) of the Iowa Administrative Code, contains no more than half the listed concentration of any pollutants in subrule 567-61.3(3) of the IAC, has a pH of 6.5-9.0 and is located in soil or rock strata.

Second Illegal Discharge Site Inspection Pictures May 4, 2018

Photos of Walz Energy on 05/04/18, page 1.

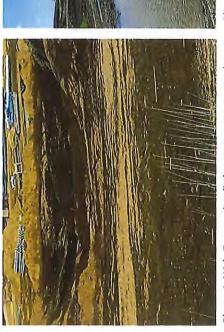


Photo 1, Walz Energy site, little storm water control noted.



Photo 2, Storm water basin, looking northwest.

Photo 3, East storm water basin, looking west.



Photo 5, Northwest storm water basin, water level had dropped several feet.

Photo 4, East storm water basin. Looking west towards

cattle buildings. Water level had dropped recently.



Photo 6, Site 1, three tile outlets east of Walz Energy. Middle black tile is from Walz Energy.

Photos of Walz Energy on 05/04,10/18, page 2.



Photo 7, Site 2, turbid water from Walz tile meeting clear water flowing from the west.

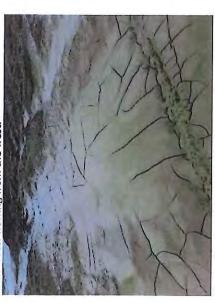


Photo 10, East storm water basin. Standing water appears to have soaked into the tile.



Photo 8, Site 3, Greenfield Ave. Bridge over Bloody



Photo 11, East storm water basin. Standing water appears to have soaked into the tile.



Photo 9, Site 5, Spook Cave Rd. Bridge over Bloody Run Creek.



Photo 12, Red tile riser in the southwest portion of Walz Energy site. Note no tile sock or rock around



Photo 16, Black tile from Walz Energy. Precipitated silt in and around the Walz tile outlet.

Pictures of Un-stabilized Site Taken by EPA on June 6, 2018

PHOTO LOG

Facility Name / Address: Walz Energy

22578 Highway 18, Monona, IA 52159

State Facility ID#: N/A

Facility EPA ID#: IA-0052856

Date: June 6, 2018

Image Numbers: DSCN2248 - DSCN2278

File Name (if any): N/A Photographer: Joe Heafner

Type of Camera: Nikon Coolpix AW100, Serial #: 32157507

Digital Recording Media: Flashcard

All digital photos were copied by: Joe Heafner on June 12, 2018

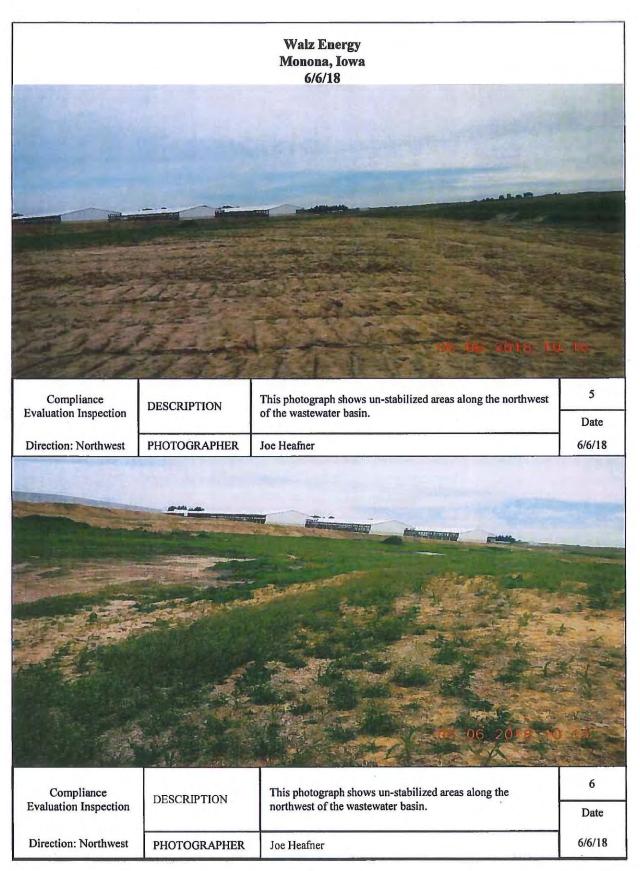
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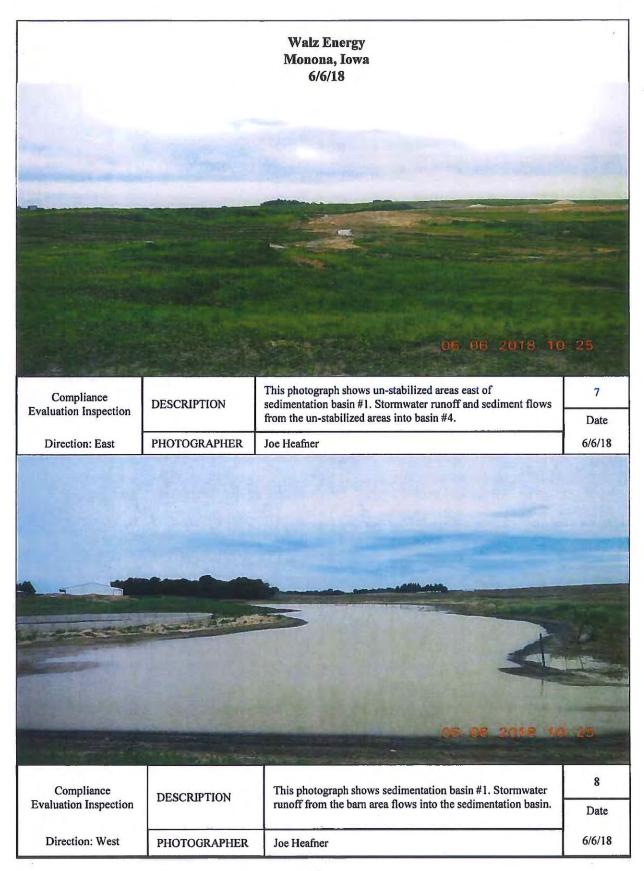
Original copy is stored in: CD-R. Digital photos were downloaded to CD-R all by Joe Heafner. No

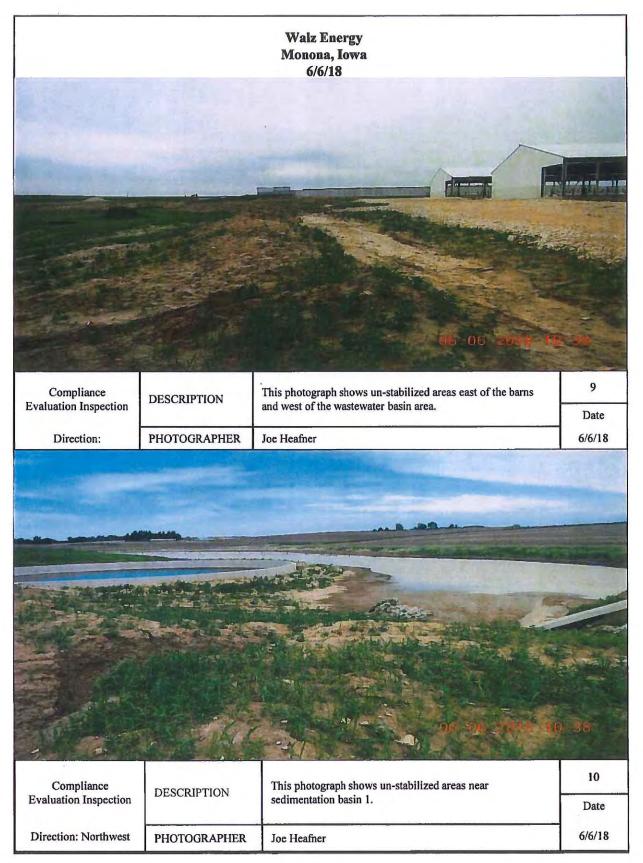
changes were made in the original image files prior to storage on the CD-R.

Report Photo#	Photographer	Date	Approx. Time	Flashcard Name (DSCNxxxx.JPG)	Description
1.	Joe Heafner	6/6/18	0956	DSCN2248	This photograph shows the area of the wastewater storage basin and the tile trench along the southwest toe of the berm.
2.	Joe Heafner	6/6/18	1000	DSCN2249	This photograph shows the area along the northeast toe of the storage basin and sediment basin #4.
3.	Joe Heafner	6/6/18	1000	DSCN2250	This photograph shows the south portion of sediment basin #4. Sediment from the wastewater basin construction area flows into the basin.
4.	Joe Heafner	6/6/18	1002	DSCN2251	This photograph shows silt fencing around the top soil storage area east of sediment basin #4.
5.	Joe Heafner	6/6/18	1016	DSCN2252	This photograph shows un-stabilized areas along the northwest of the wastewater basin.
6.	Joe Heafner	6/6/18	1017	DSCN2253	This photograph shows un-stabilized areas along the northwest of the wastewater basin.
7.	Joe Heafner	6/6/18	1025	DSCN2254	This photograph shows un-stabilized areas east of sedimentation basin #1. Stormwater runoff and sediment flows from the unstabilized areas into basin #4.
8.	Joe Heafner	6/6/18	1025	DSCN2255	This photograph shows sedimentation basin #1. Stormwater runoff from the barn area flows into the sedimentation basin.
9.	Joe Heafner	6/6/18	1038	DSCN2256	This photograph shows un-stabilized areas east of the barns and west of the wastewater basin area.
10.	Joe Heafner	6/6/18	1038	DSCN2257	This photograph shows un-stabilized areas near sedimentation basin 1.
11.	Joe Heafner	6/6/18	1044	DSCN2258	This photograph shows chemical storage area north of the barns. Stormwater runoff from the chemical storage area flows north into sedimentation basin #1.
12.	Joe Heafner	6/6/18	1045	DSCN2259	This photograph shows label of drum within the chemical storage area north of the barns.
13.	Joe Heafner	6/6/18	1052	DSCN2260	This photograph shows tile outlet that leads to sedimentation basin #1. Tile conveys stormwater from south of the barns underneath the barns to the sedimentation basin.
14.	Joe Heafner	6/6/18	1053	DSCN2261	This photograph shows the area leading from the tile outlet seen in photo 13 toward the sedimentation basin 1.

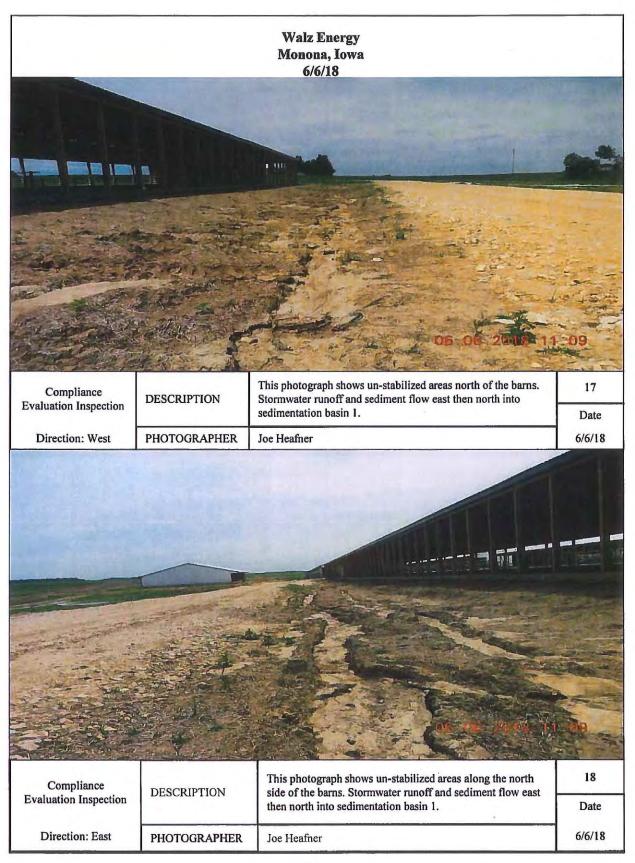
Report Photo #	Photographer	Date	Approx. Time	Flashcard Name (DSCNxxxx.JPG)	Description
15.	Joe Heafner	6/6/18	1101	DSCN2262	This photograph shows un-stabilized areas north of the barns with deep rill erosion noted in the photo.
16.	Joe Heafner	6/6/18	. 1108	DSCN2263	This photograph shows the concrete washout area north of the barns.
17.	Joe Heafner	6/6/18	1109	DSCN2264	This photograph shows un-stabilized areas north of the bams. Stormwater runoff and sediment flow east then north into sedimentation basin 1.
18.	Joe Heafner	6/6/18	1109	DSCN2265	This photograph shows un-stabilized areas along the north side of the barns. Stormwater runoff and sediment flow east then north into sedimentation basin 1.
19.	Joe Heafner	6/6/18	1112	DSCN2266	This photograph shows un-stabilized areas between the north and middle barns. Stormwater runoff and sediment flow south into the wastewater basin work area then into sedimentation basin 4.
20.	Joe Heafner	6/6/18	1113	DSCN2267	This photograph shows un-stabilized areas between the middle and south barns. Stormwater runoff and sediment flow south into the wastewater basin work area then into sedimentation basin 4.
21.	Joe Heafner	6/6/18	1115	DSCN2268	This photograph shows the tile inlet south of the barns. Stormwater and sediment from the un-stabilized areas flow into the tile and discharge into sediment basin #1. Tile outlet seen in photo 13.
22.	Joe Heafner	6/6/18	1121	DSCN2269	This photograph shows un-stabilized areas south of the barns. Concrete washout seen in photo. Stornwater and sediment flow into tile seen in photo 21.
23.	Joe Heafner	6/6/18	1136	DSCN2270	This photograph shows the feedstock storage area process wastewater storage basin. Process wastewater from the feedstock storage area flows into basin then into sedimentation basin #4.
24.	Joe Heafner	6/6/18	1145	DSCN2271	This photograph shows the feedstock storage area process wastewater storage basin. Process wastewater from the feedstock storage area flows into basin then into sedimentation basin 4.
25.	Joe Heafner	6/6/18	. 1146	DSCN2272	This photograph shows un-stabilized areas east and south of the feedstock storage area process wastewater basin.
26.	Joe Heafner	6/6/18	1155	DSCN2273	This photograph shows black tile outlet from around the proposed wastewater storage basin. Tile outlet is approximately ¼ mile east of the facility along Greenfield Ave. Water from the tile flows approximately 60 yards then into Bloody Run Creek.
27.	Joe Heafner	6/6/18	1159	DSCN2274	This photograph shows area north of tile outlet along Greenfield Avenue between the outlet and Bloody Run Creek.
28.	Joe Heafner	6/6/18	1159	DSCN2275	This photograph shows area north of tile outlet along Greenfield Avenue between the outlet and Bloody Run Creek.
29.	Joe Heafner	6/6/18	1159	DSCN2276	This photograph shows the confluence of water from the tile outlet and Bloody Run Creek west of Greenfield Ave.
30.	Joe Heafner	6/6/18	1203	DSCN2277	This photograph shows Bloody Run Creek from the Greenfield Avenue bridge.
31.	Joe Heafner	6/6/18	1203	DSCN2278	This photograph shows Bloody Run Creek from the Greenfield Avenue bridge.

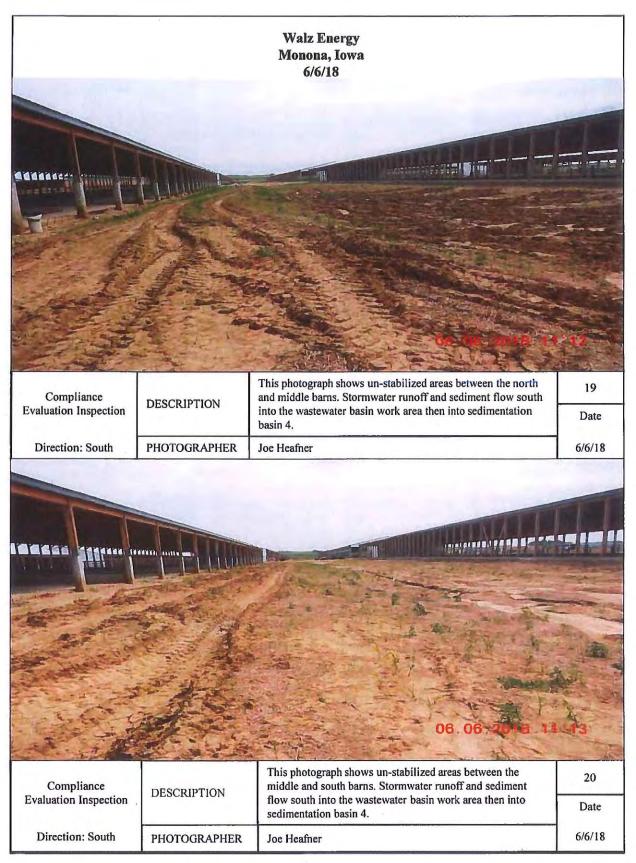


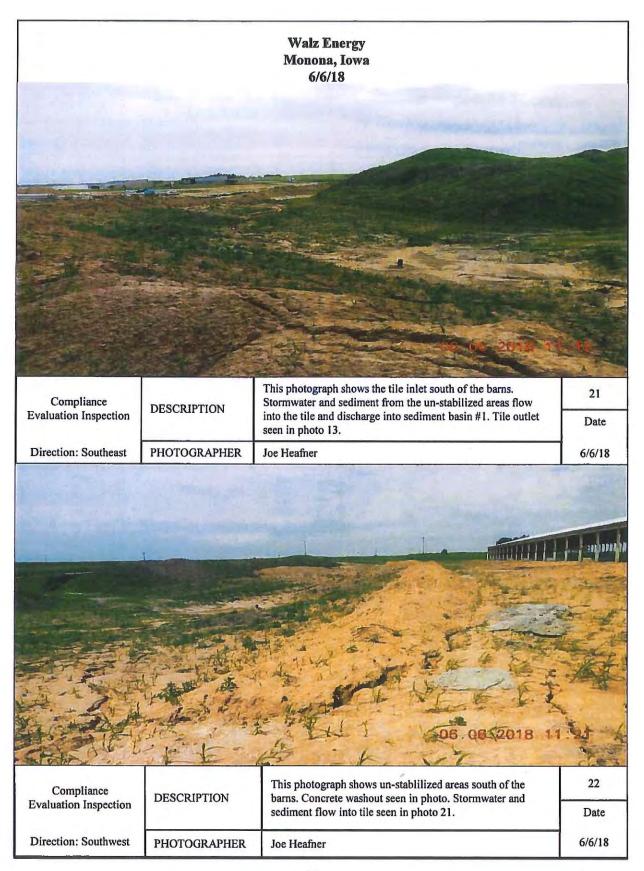


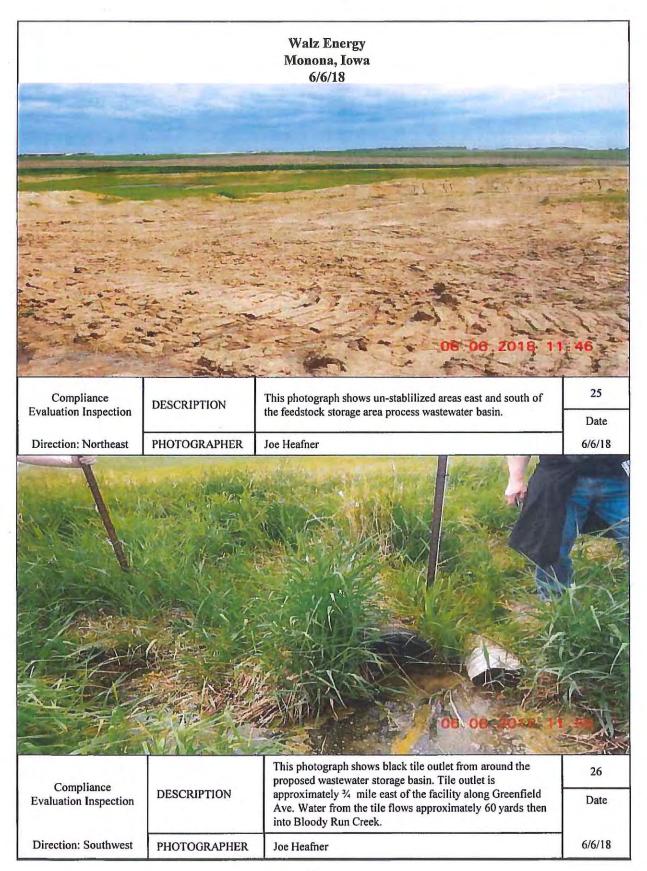


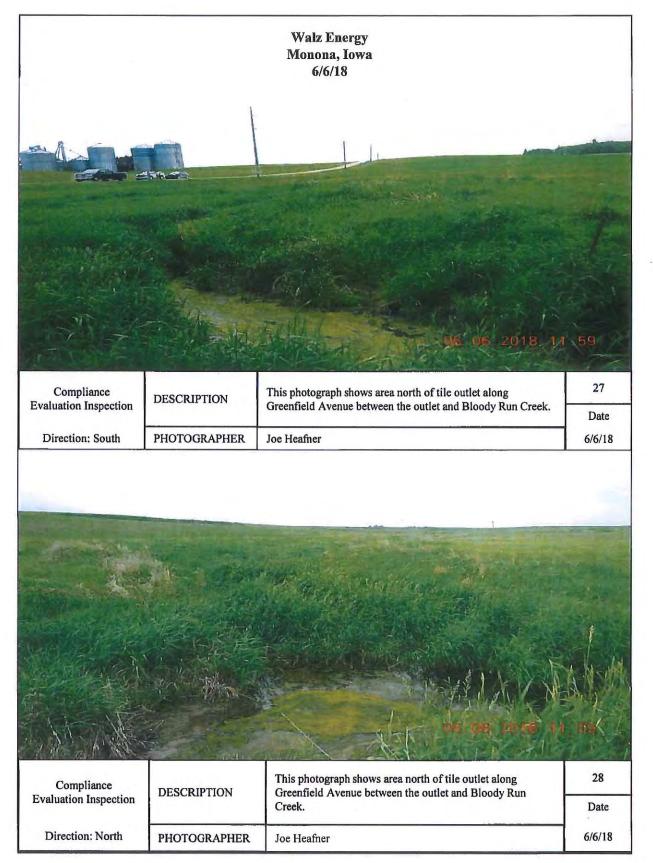


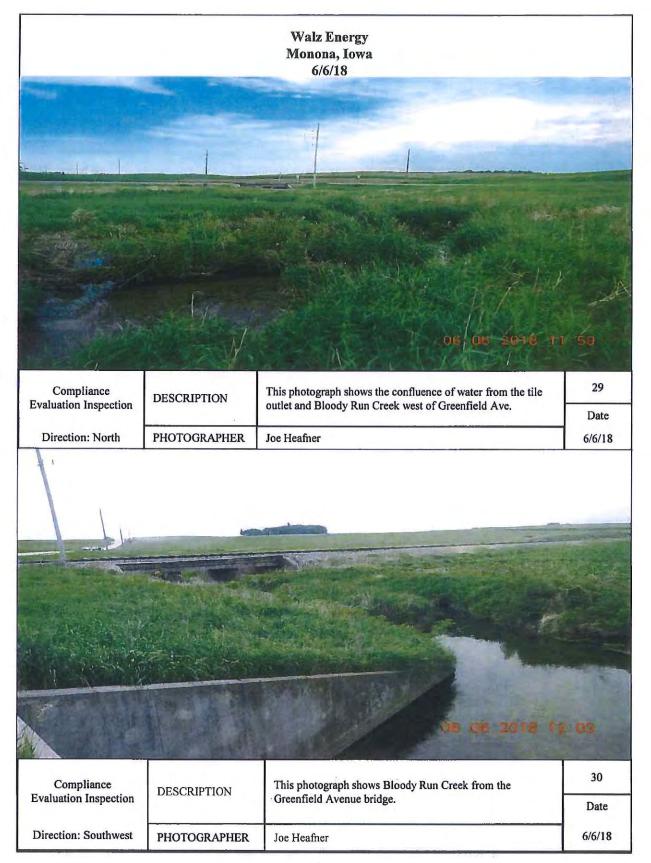


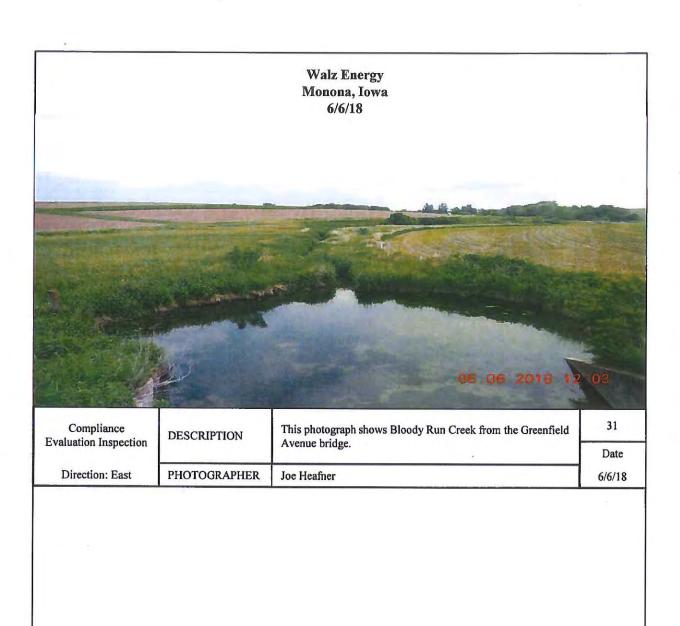


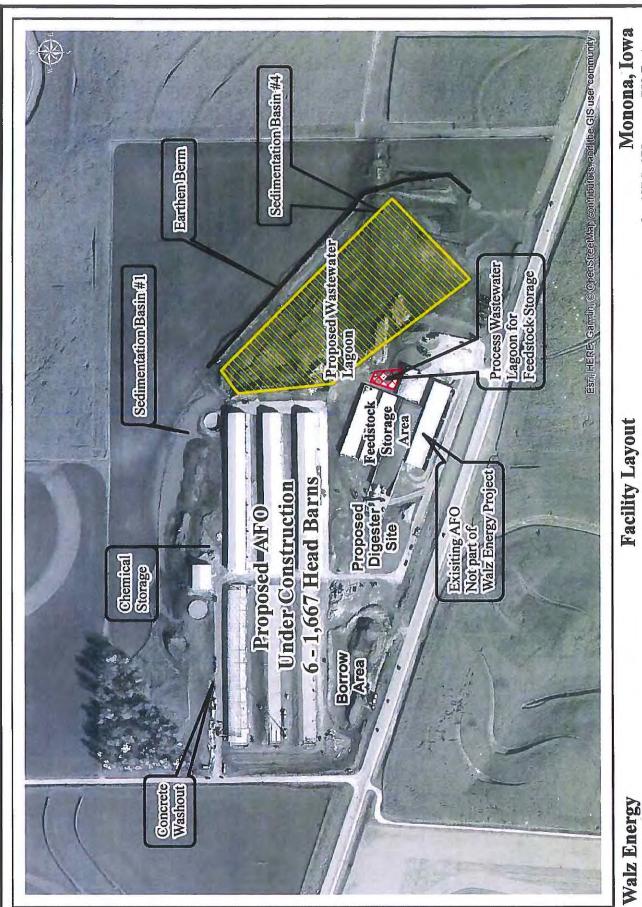












Facility Layout

Monona, Iowa **750 Feet** 187.5 375

PO LO PAGE ATTACHMENT



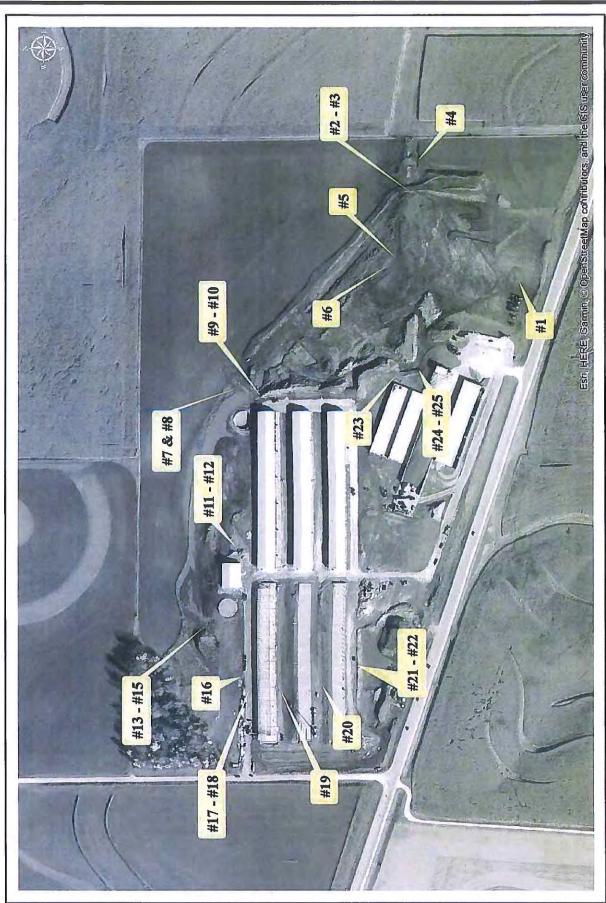


Photo Locations

Monona, Iowa 750 Feet 0 187.5 375

ATTACHMENT 6 PAGE 2 OF 5



Walz Energy

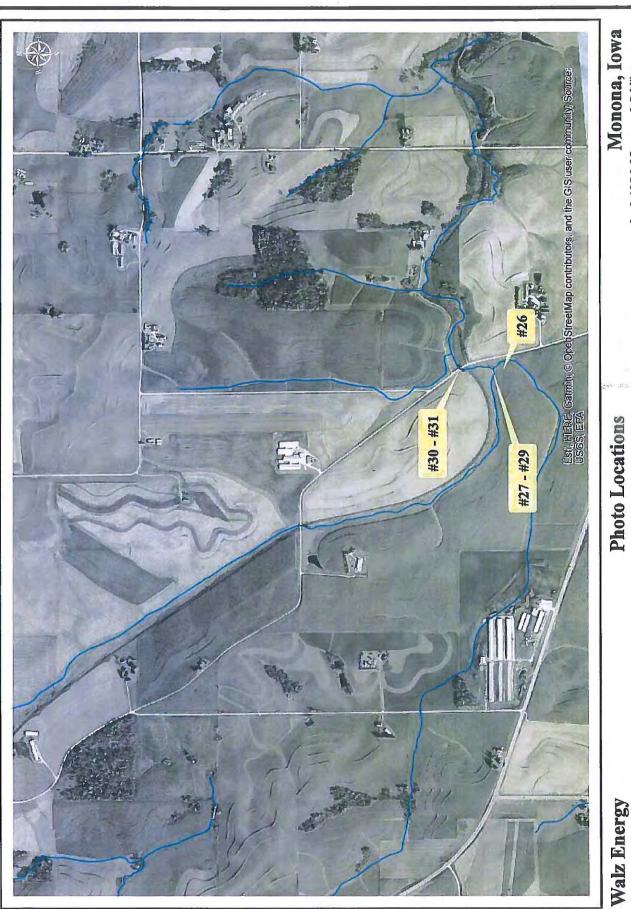
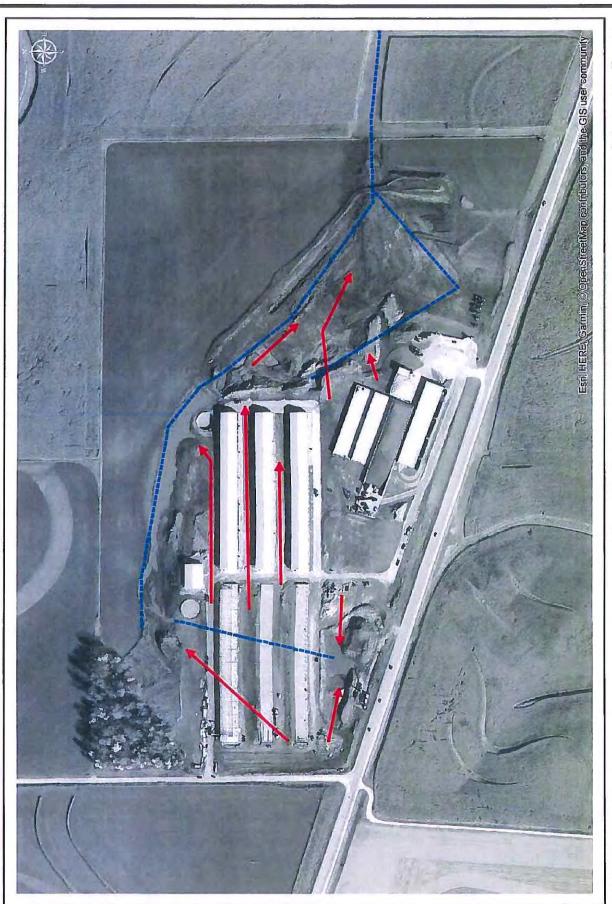


Photo Locations

Monona, Iowa 0 0.1250.25

P ATTACHMENT 6 PAGE 3





Walz Energy

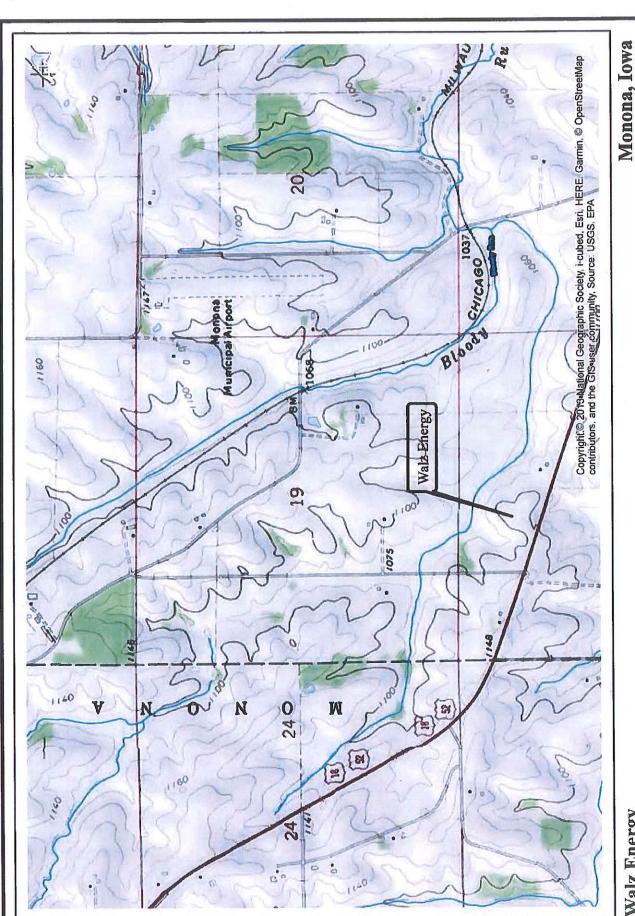
Flow Patterns

Stormwater or Process Wastewater

Monona, Iowa o 187.5 375 750 Feet

ATTACHMENT 6 PAGE 4 OF 5





Walz Energy



2,800 Feet 700 1,400

P PAGE 0 ATTACHMENT

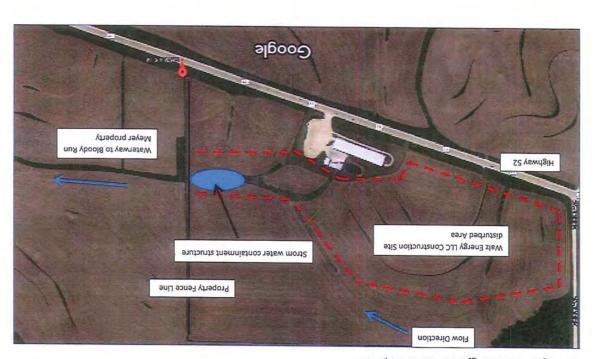
Aerial Showing the Location of Walz Energy LLC and Spook Cave Recreational Area



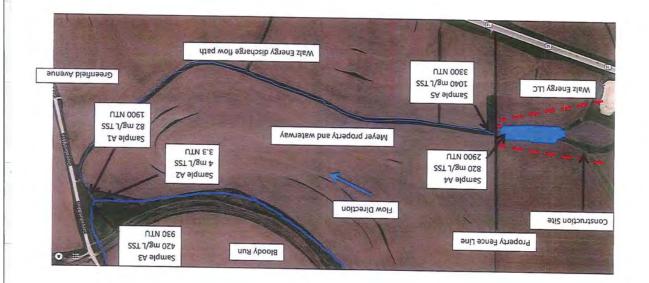
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- 1. First Illegal Discharge Site Inspection Pictures, taken on October 11, 2017
- 2. NPDES Permit Issued January 12, 2018
- 3. Second Illegal Discharge Site Inspection Pictures, taken on May 4, 2018
- 4. Pictures of Un-stabilized Site, taken by EPA on June 6, 2018
- 5. Aerial showing location of Walz Energy LLC and Spook Cave Recreational Area

First Illegal Discharge Site Inspection Pictures October 11, 2017



Site Map 2: Walz Energy LLC Sampling Locations





Confluence of waterway discharge from Walz Energy to Bloody Run. Looking west.





Discharge through Walz Energy runoff containment dike.

Walz Energy runoff containment. Looking northeast.



Walz Energy property and containment storage. Taking sample A5 of Walz Energy discharge. Looking west to



Photo Page 3 - Walz Energy Site Inspection, October 11, 2017.

property. Looking east. Discharge from Walz Energy property entering Meyer



Photo Page 4 - Walz Energy Site Inspection, October 11, 2017.



from field. Looking east. Meyer crop field and waterway border. No discharge

NPDES Permit Issued January 12, 2018

IOWA DEPARTMENT OF NATURAL RESOURCES

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT

PERMITTEE

Walz Bnergy, LLC 22578 Hwy 18 Monona, IA 52159

IDENTITY AND LOCATION OF FACILITY

Walz Energy Feedlot and Biogas Project

22578 Hwy 18, Monona, IA 52159

*

RECEIVING WATERCOURSE:

Bloody Run

IOWA NPDES PERMIT NUMBER: 22-00-1-05

DATE OF EXPIRATION: January 11, 2023

DATE OF ISSUANCE: January 12, 2018

YOU ARE REQUIRED TO FILE FOR RENEWAL OF THIS PERMIT BY: July 15, 2022

EPA NUMBER - 1A0052856

This permit is issued pursuant to the authority of section 402(b) of the Clean Water Act (33 U.S.C. 1342(b)), flows Code section 455B.174, and rule 567–64.13, lows Administrative Code. You are authorized to operate the disposal system and to discharge the pollutants specified in this permit in accordance with the monitoring requirements and other terms set forth in this permit.

You may appeal any conditions of this permit by filing written notice of appeal and request for administrative hearing with the director of this department within 30 days of receipt of this permit. Any existing, unexpired lows operation permit or lows NPDES permit previously issued by the department for the facility identified above is revoked by the issuance of this lows NPDES operation permit.

FOR THE DEPARTMENT OF NATURAL RESOURCES

By Joe Griffin NPDES Section Environmental Protection Division.

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Facility Name: Walz Energy Feedlot and Biogas Project Pernit Number: 22-00-1-05 Final permit.

- B. KEEDING PLANS CURRENT. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minuizing pollutants discharge from the permitted site or in otherwise achieving the general objectives of courtolling pollutants in storm water discharge associated with construction activities. In addition, the pollution prevention plan shall be updated to: expeditiously change the site map to include changes at the site, include contractors identified after the submittal of the application as co-permittees, identify any change in ownership or transference of the permit and permit responsibilities; or, if required, by the occurrence of a hazardous condition.
- C. CONTENTS OF THE POLLCTION PREVENTION PLAN. The storm water pollution prevention plan shall include that following items:
- SITE DESCRIPTION Each plan shall provide a description of the following:

1

- a description of the nature of the construction activity;
- estimates of the total area of the site and the area of the site that is expected to be disturbed by excavation, grading, or other activities;
- C. an estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;
- D. a site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil distribute, the location of structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water, and
- E. the name of the receiving water(s) and the ultimate receiving water(s).
- CONTROLS. The plan shall include a description of controls that will be implemented at the construction site. The plan shall clearly describe the intended sequence of major activities and for each activity, the appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be actively will be network will be actively will be actively will be removed after final stabilization). The description of controls shall address the following minimum components:

A. EROSTON AND SEDIMENT CONTROLS

A.(1). STABILIZATION PRACTICES. A description of temporary and permanent stabilization practices, including sile-specific setdeduling of the implementation of the practices. Stie plans should ensure that existing vegetation is preserved where attainable and that disturbed areas are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, projection of frees, preservation of mature vegetation, and other appropriate measures. Stabilization measures stable be influided on all disturbed areas as soon as practical but in no case where soil-disturbing activity will not occurred on such a period of 21 or more calendar days, later than the 14th day after no soil-disturbing activity has occurred on such areas.

A.(2). STRUCTURAL PRACTICES. A description of structural practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include silt fences, earth dikes, brush barriers, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining

Facility Name: Walz Energy Feedlot and Biogas Project Permit Number: 22-00-1-05 Final permit

- B.(1). Such practices may include: storm water detention structures (including wet ponds); storm water refertion structures; flow attenuation by use of open vegetated swaltes and natural depressions; and infiltration of ranoff onsite; and sequential systems (which combine several practices). A goal of 80 percent removal of total suspended solids from those flows which exceed predevelopment levels should be used in designing and installing storm water management controls (where practicable). Where this goal is not met, the permittee shall provide justification for rejecting each practice based on site conditions.
- B.(2). Velocity dissipation devices shall be placed at discharge locations and along the longth of any outfull channel as necessary to provide a non-erosivo velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. maintenance of hydrologic conditions present prior to the initiation of construction activities).

C. OTHER CONTROLS

- C.(J). WASTE DISPOSAL. All wastes composed of building materials must be removed from the site for disposal in permitted disposal facilities. No building material wastes or unused building materials shall be buried, dumped, or discharged at the site.
- C.(2). Off-site vehicle tracking of sediments shall be minimized.
- C.(3). The plan shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.
- D. AFPROVED STATE OR LOCAL PLANS. The permittee must include in the storm water pollution prevention plan procedures and requirements specified in applicable sediment and envision site plans or storm water management plans approved by State or focal officials. Applicable requirements specified in sediment and envision plans, site permits or storm water management plans approved by State or local officials that are applicable to protecting stufface water resources are incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit.
- MAINTENANCE. A description of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures identified in the site plan.
- 4. INSPECTIONS Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been stabilized with a perennial, vegetative cover of sufficient density to preclude exosion at least once every seven calendar days. Unless prosion is evident or other conditions warrant them, regular inspections are not required on areas that have been stabilized with a perennial, vegetative cover of sufficient density to preclude erosion.
- A. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Froston and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are checkive in preventing significant impacts to receiving vaters. Locations where vehicles enter or exit the site shall be impacted for evidence of offsite sediment tracking.
- B. Based on the results of the inspection, the description of potential pollutant sources identified in the plan as required by this permit and pollution prevention measures identified in the plan as required by this permit shall be revised as appropriate as soon as practicable after such inspection. Such modifications shall provide for implementation of any changes to the plan within seven calendar days following the inspection.
- C. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water

Facility Name: Walz Energy Feedlot and Biogas Project Permit Number: 22-00-1-05 Final permit

DUTY TO COMPLY

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for suforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Issuance of this permit does not relieve the permittee of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of vour facility.

DUTY TO REAPPLY

If the permittee wishes to continue to disolarge after the expiration date of this permit, the permittee must file a complete application for reissuance at least 180 days prior to the expiration date of this permit.

NEED TO HALT OR REDUCE ACTIVITY

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

DULY TO MITTIGATE

The permittee shall take all reasonable steps to mbirnize or prevent any dischange in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

PROPERTY RIGHTS

This permit does not convey any property rights of any sort or any exclusive privilego.

TRANSFER OF TITLE OR OWNER ADDRESS CHANGE

If fithe to your facility, or any part of it, is transferred the new owner shall be subject to this permit. The permittee is required to notify the new owner of the requirements of this permit in writing prior to any transfer of this. The Department shall be notified in writing within 30 days of the transfer. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer of title. Whenever the address of the owner is shanged, the department is fall be notified in writing within 30 days of the address change. Electronic notification is not sufficient, all title transfers or address clanges must be reported to the department by mail.

PROPER OPERATION AND MAINTENANCE

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit.

DUTY TO PROVIDE INFORMATION

The permittee must furnish to the Department, within a time specified by the Department, any information the Department may request to determine compliance with this permit or determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, in accordance with 567 IAC 64. The permittee must also furnish to the Department, upon request, copies of any records required to be kept by this permit.

PERMIT MODIFICATION, SUSPENSION OR REVOCATION

10.

- (a) This permit may be modified, suspended, or revoked and reissued for cause including but not limited to those specified in 5671AC 64.3(11).
- (b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits.

Facility Name: Walz Energy Feedlot and Biogas Project. Permit Number: 22-00-1-05 Final permit

16. MONITORING AND RECORDS OF OPERATION

- (a) Maintenance of records. The permittee shall retain for a minimum of three years all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records.
 - (b) Any person who falsities, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a line of not more than \$10,000 or by imprisonment for not more than two years, or both.

USE OF CERTIFIED LABORATORIES

Effective October 1, 1996, analyses of wastewater, groundwater or sewage sludge that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of lowe. Routing, onside nonitoring for pH, temperature, disabled oxygen, total residual chiorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567 IAC 63.3(4) are excluded from this requirement.

18. INSPECTION OF PREMISES, RECORDS, HOUPMENT, METHODS AND DISCHARGES

The permittee is required to permit authorized personnel to:

- (a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this penuit.
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this
 permit.
- inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
 - Sample or monitor, at reasonable times, to assure compliance or as otherwise authorized by the Clean Water Act.

FAILURE TO SUBMIT FEES

This permit may be revoked, in whole or in part, if the appropriate permit fees are not submitted within thirty (30) days of the date of notification that such fees are due.

OTHER INFORMATION

Should the permittee become aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, the permittee must promptly submit such facts or information. Should the permittee become aware that it failed to submit any relevant facts in the submission of in any report to the Department, including records of operation, it shall promptly submit such facts or information.

21. NOTICE OF CHANGED CONDITIONS

The permittee is required to notify the Department of any changes in existing conditions or information on which this permit is based. This includes, but is not limited to, the following:

- If your facility is a publicly owned treatment works (POTW) or otherwise may accept waste for treatment from an indirect discharger or industrial contributor (see 567 IAC 64.3(5) for further notice requirements).
- (b) If your facility is a POTW and there is any substantial change in the volume or character of pollutants being introduced to the POTW by a source introducing pollutants into the POTW at the time of issuance of the
- pertur.

 (c) As soon as the permittee knows or has reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit.

Pacifity Name: Walz Energy Feedlot and Biogas Project Permit Number: 22-00-1-05 Final permit

SEVERABILITY

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

PART V. DEFINITIONS

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to provent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, slidige or waste disposal, or draininge from raw material storage.

"Construction site" meens a site or common plan of development or sale on which construction activity, including clearing, grading and excevating, results in soil disturbance. A construction site is considered one site if all areas of the site are contiguous with one another and one entity owns or controls all areas of the site.

"CWA" or "Clean Water Act" means the Federal Water Pollution Control Act.

"Department" means the Iowa Department of Natural Resources.

"Final Stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70%, sufficient to preclude erosion, for the entire disturbed area of the permitted project has been established or equivalent stabilization measures have been employed or which has been returned to agricultural production.

"Hazardous condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance on to the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. 455B.381(2) 1991, Code of lowa

"Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that its toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity may be bazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; pertoleum products; poisons, adioactive materials; sludges; and organic solvents. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United State Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutum listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any bazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1777, or any starandous material designated by the secretary of transportation under the Hazardous Materials
Transportation Act (49 CFR 172, 101), 455B-381(1), 1991 Code of lowe

"Permittee" means Walz Energy, LLC.

"Qualified personne" means those individuals capable enough and knowledgeable enough to perform the required functions adequately well to ensure compliance with the relevant permit conditions and requirements of the lowa Administrative Code.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

11/13

Facility Name: Walz Energy Feedlot and Biogas Project Permit Number; 22-00-1-05 Final permit (v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vf) facilities involved in the recycling of materials, including metal sorae yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-4225), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (D-(vii) or (Ex)-(xi) of this definition are associated with industrial activity.

(ix) Treatment works treating domestic sewage or any other sewage shudge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including fand dedicated to the disposal of sewage shudge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503.

(x) Construction activity including elearing, grading and excavation activities except; operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale; (xt) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225, (and which are not otherwise included within categories (B)-(x));

"Storm water discharge associated with industrial activity for construction activities" means activities that fall under subparagraph (x) in the definition of storm water discharge associated with industrial activity.

"Topsoil" means the fertile, uppermost part of the soil containing significant organic matter largely devoid of debris and rocks and often disturbed in cultivation.

"Uncontaminated groundwater" means water that is potable for humans, meets the narraitve water quality standards in subrule 567-61.3(2) of the lowa Administrative Code, contains no more than half the listed concentration of any pollutants in subrule 567-61.3(3) of the IAC, has a pH of 6.5-9.0 and is located in soil or rock strata.

Photo 6, Site 1, three tile outlets east of Walz Energy. Middle black tile is from Walz Energy.

May 4, 2018

Photos of Walz Energy on 05/04/18, page 1. Photo 1, Walz Energy site, little storm water control Photo 2, Storm water basin, looking northwest. Photo 3, East storm water basin, looking northwest.

Photo 5, Northwest storm water basin, water level had

dropped several feet.

Photo 4, East storm water basin. Looking west towards cattle buildings. Water level had dropped recently.





Photo 9, Site 5, Spook Cave Rd. Bridge over Bloody







Photo 12, Red tile riser in the southwest portion of Walz Energy site. Note no tile sock or rock around tile.



Photo 11, East storm water basin. Standing water appears to have soaked into the tile.



Photo 10, East storm water basin. Standing water appears to have soaked into the tile.





Photo 16, Black tile from Walz Energy. Precipitated silt in and around the Walz tile outlet.

Pictures of Un-stabilized Site Taken by EPA on

June 6, 2018

PHOTO LOG

Facility Name / Address: Walz Energy 22578 Highway 18, Monona, 1A 52159

State Facility ID#: N/A
Facility EPA ID#: 1A-0052856
Date: June 6, 2018
Image Numbers: DSCN2248 – DSCN2278
File Name (if any): N/A
Photographer: Joe Heafire:
Type of Camera: Nikon Coolpix AW100, Serial #: 32157507
Digital Recording Media: Flashcard
All digital photos were copied by: Joe Heafiner on June 12, 2018
All digital photos were copied to: CD-R
Original copy is stored in: CD-R. Digital photos were downloaded to CD-R all by Joe Heafiner. No changes were made in the original image files prior to storage on the CD-R.

ox. Flashcard Name Description (DSCNxxxxJPG)	56 DSCN2248 This photograph shows the area of the westerwater storing basin and the tile trench slong the southwest toe of the bern.	DO DSCN2249 This photograph shows the area along the northeast toe of the storage basin and sediment basin #4.	DSCN2250 This photograph shows the south portion of sediment bosin #4. Sediment from the wastewater busin construction area flows that the basin.	DSCN2251 This photograph shows silt fencing around the top soil stonge area cast of sediment basin #4.	16 DSCN2252 This photograph shows un-stabilized areas along the northwest of the wastewater basin.	17 DSCN2253 This photograph shows un-stabilized areas along the northwest of the wastewater basin.	DSCN2254 This photograph stows un-stabilized areas east of sedimentation beast in H. Storwwater annoff and sediment flows from the unstabilized areas into basin #1.	25 DSCN2255 This photograph shows sedimentation basin #1. Stornwater runoff from the barn area flows into the sedimentation basin.	S8 DSCN2256 This photograph shows un-stabilized areas east of the barns and west of the wastewater basin area.	38 DSCN2257 This photograph shows un-stabilized areas near sedimentation basin 1.	DSCNZ258 This photograph shows chemical storage area north of the burns. Stormwater tunoff from the chemical storage area flows north into extinements that shall all the chemical storage area flows north into extinements that all it.	 DSCN2259 This photograph shows take or drain within the chemical storage area north of the harns. 	DSCN2260 This photograph shows tile outlet that leads to sedimentation basin it. I'll teamys stormwater from south of the bans underneath the bans to the sedimentation basin.	The state of the s
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Walz Energy Monona, Iowa 6/6/18

Approx. Flashcard Name Description (DSCNxxxx.PG)	1101 DSCN2262 This photograph shows un-stabilized areas north of the hams with deep rill crosson noted in the phato.	1108 DSCN2263 This photograph shows the concrete washout area north of the barns.	1109 DSCN2264 This phanograph shows un-stabilized areas north of the barss. Stormwater mind and sediment flow east then north into sedimentation bein 1.	1109 DSCN2265 This photograph shows un-stabilized areas along the north side of the harms. Stormware month and sediment flow east then north side sedimentation basin t.	1112 DSCN2266 This photograph shows in-stabilized areas between the north and mindle bruns. Showwarder posts and sediment flow senth into the wasteware bests work area their into sedimentation basin 4.	1113 DSCN2267 This photograph shows un-stabilized areas between the middle and south bare. Sourwater principle and south bare. Sourwater principle and south fine the wastewater basin work area then into sedimentation basin 4.	1115 DSCN2268 This photograph shows the tile inlet south of the barna. Stormwater and sediment from the un-stabilized areas flow into the tile and discharge into sediment basin #1. Tile outlet seen in photo 13.	1121 DSCN2269 This photograph shows unstabilized areas south of the burns. Converted wishing seen in photo. Stornward: and sediment flow into file seen in photo 21.	1136 DSCN2270 This photograph shows the feedstock storage area process waterstear from the feedstock storage area from a feed and storage area flows into basin then into sedimentation basin #4.	11.45 DSCN2271 This photograph shows the feedstock storage area process wasteware from the feedstock storage basis. Process wasteware from the feedstock storage area flows into basin then into sedimentation basin 4.	1146 DSCN2272 This photograph shows un-stabilized areas east and south of the feedstock storage area process wastewater basin.	DSCN2273 This photograph shows black tile outlet from around the proposed wastewness rounds about. Tile ontile a approximately be nike east of the facility along Greenfeld Ave. Water from the itle flows approximately 60 yates then into Bloody Run Creek.	1159 DSCN2274 This photograph shows area north of tile outlet along Greenfield Avenue between the outlet and Bloody Run Creek.	1159 DSCN2275 This photograph shows area north of file outlet along Greenfield Avenue between the outlet and Bloody Run Creek.	1159 DSCN2276 This photograph shows the confluence of water from the tile outlet and Bloody Run Greek west af Greenfield Ave.	1203 DSCN2277 This photograph shows Bloody Run Creek from the Greenfield	TOP
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Evaluation inspection:

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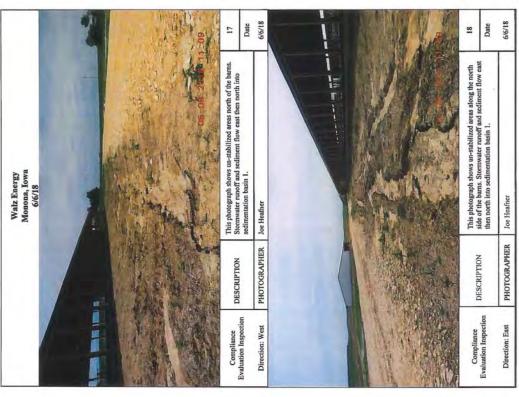
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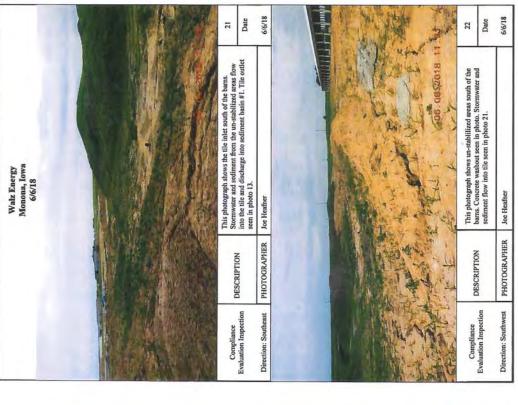
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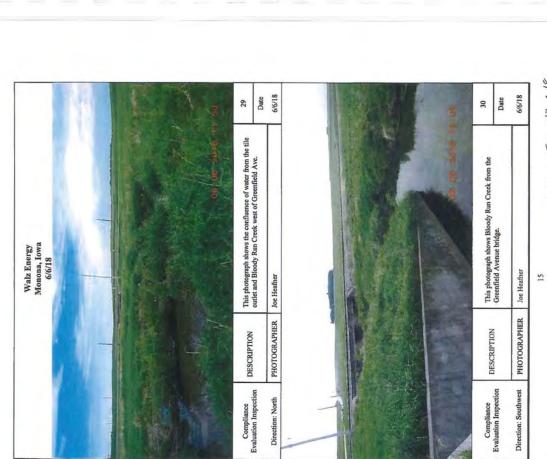
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Monona, Iowa

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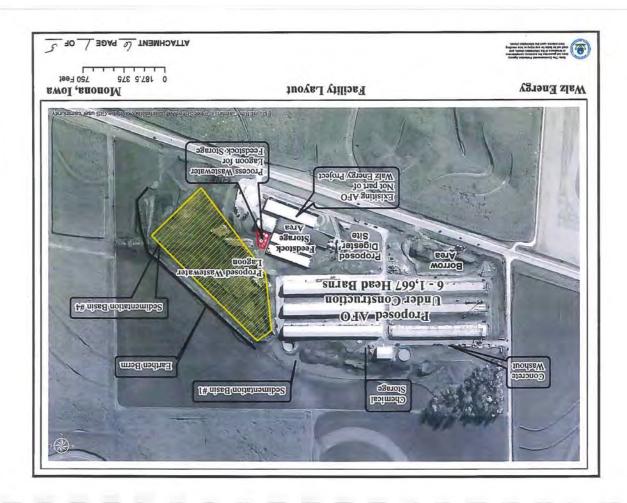
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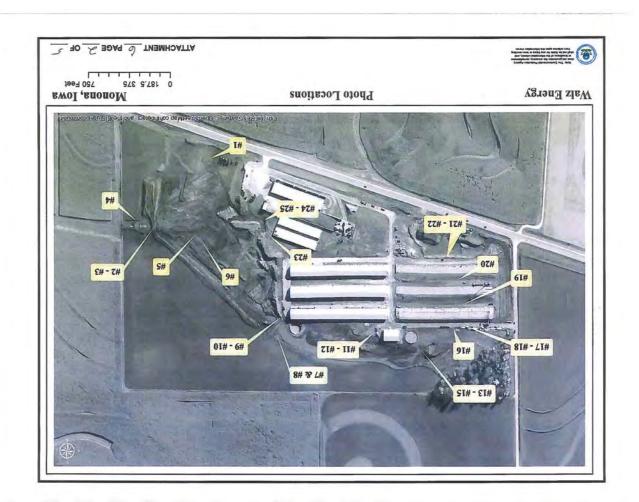
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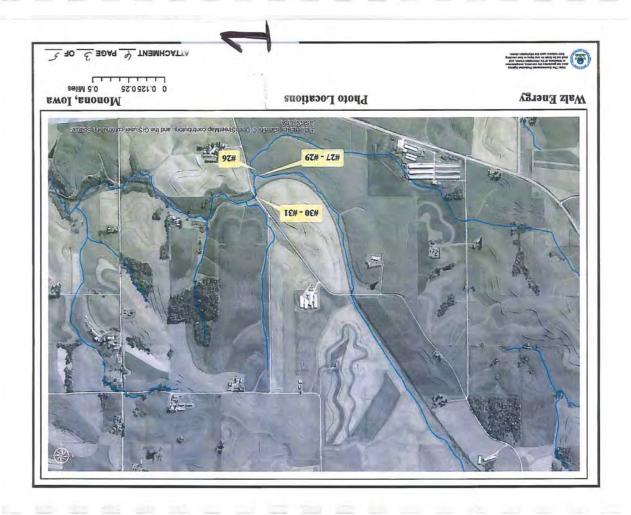
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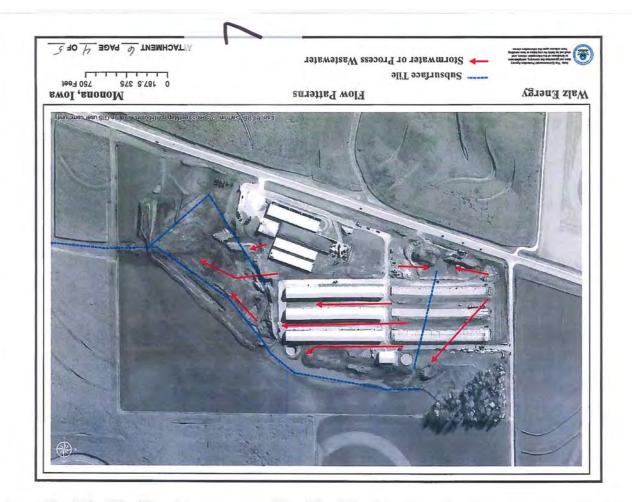
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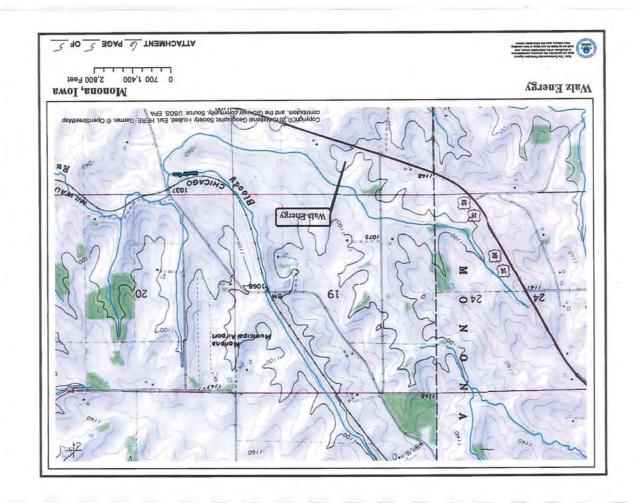








Aerial Showing the Location of Walz Energy LLC and Spook Cave Recreational Area







Agenda

Environmental Protection Commission

Tuesday, July 17, 2018 State of Iowa Capitol 1007 East Grand Ave Room 116 Des Moines, Iowa

Tuesday, July 17, 2018

10:00 AM - EPC Business Meeting

10:30 AM - Referral to the Attorney General - Walz Energy LLC

11:30 AM – Clark Farms' Appeal of the Proposed Decision

After the meeting – Educational Tour of Drinking Water Facility - Please note the educational tour requires advance registration to ensure adequate personal safety equipment (goggle/glasses, earplugs, hard hat, etc.) are provided for all attendees. Please contact Jerah Sheets at <u>Jerah.Sheets@dnr.iowa.gov</u> or 515-313-8909 by July 12th to register.

Public Participation¹ – There will be no scheduled period for public participation. At the discretion of the chairperson, requests to speak during the business meeting will be limited to comments that specifically address agenda items at the time the item appears on the agenda.

If you are unable to attend the business meeting, comments may be submitted to to Jerah Sheets at Jerah.Sheets@dnr.iowa.gov, 502 East 9th St, Des Moines IA 50319, 515-313-8909, or in-person or via mail and email by the start of the business meeting for the public record. The Commission encourages data, reports, photos, and additional information provided by noon the day before the meeting to allow ample time for review and consideration.

1	Approval of Agenda	
2	Approval of the Minutes	
3	Monthly Reports	Bill Ehm
4	Acting Director's Remarks	(Information) Bruce Trautman (Information)
5	Contract with IDALS for Silver Creek (Howard County) Water Quality Project	Steve Konrady
		(Decision)
6	Contract with IDALS for Yellow River Headwaters Water Quality Project	Steve Konrady
		(Decision)
7	Contract Amendment for Contract #14ESDWQBPCALE-0006-A06 with The	Jean Mayne
	University of Iowa on behalf of the Office of the State Archaeologist	(Decision)
8	Referral to the Attorney General – Walz Energy LLC	Carrie Schoenebaum
	,	(Decision)
9	Clark Farms' Appeal of the Proposed Decision	David Scott
		(Decision)
10	General Discussion	
	Educational Opportunity and Meeting Location Change in Derby,	
	Iowa for August 21, 2018	
11	Items for Next Month's Meeting	
T T	terns for Next Month's Miceting	

- Tuesday, August 21, 2018 EPC Business Meeting Des Moines
- Monday, September 17, 2018 EPC Educational Tour Clayton County
- Tuesday, September 18, 2018 EPC Business Meeting Clayton County

For details on the EPC meeting schedule, visit http://www.iowadnr.gov/About-DNR/Boards-Commissions

¹Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

Any person attending the public meeting and has special requirements such as those related to mobility or hearing impairments should contact the DNR or ADA Coordinator at 515-725-8200, Relay Iowa TTY Service 800-735-7942, or Webmaster@dnr.iowa.gov, and advise of specific needs.

MINUTES OF THE **ENVIRONMENTAL PROTECTION COMMISSION M**EETING

June 19, 2018

State of Iowa Capitol 1007 East Grand Avenue, Des Moines, IA

Approved by the Commission DATE

RECORD COPY

File Name Admin 1-1-1

Sender's Initials jzs

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Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Ralph Lents at 10:00 a.m. on June 19, 2018 at the State of Iowa Capitol in Des Moines, Iowa.

COMMISSIONERS PRESENT

Mary Boote
Nancy Couser, Secretary
Rebecca Guinn
Howard Hill
Ralph Lents, Chair
Joe Riding, Vice Chair
Bob Sinclair

COMMISSIONERS ABSENT

Harold Hommes Vacant Seat – Finance & Commerce

APPROVAL OF AGENDA

Motion was made by Joe Riding to approve the agenda as presented. Seconded by Mary Boote. Motion passes.

APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Mary Boote to approve the May 15, 2018 EPC minutes as presented. Seconded by Bob Sinclair. Motion passes.

APPROVED AS PRESENTED

MONTHLY REPORTS

Bill Ehm distributed a handout summarizing the work of the EPA AFO Workplan. He summarized the status of the requirements of the workplan and projects to be completed by the August 2018 deadline. He shared the approach for identifying and properly categorizing facilities not in the database. Many of them will not be regulated because their animal unit size is below the threshold of regulation. No matter the size of any operation, they are not allowed to pollute a water of the state.

The monthly report(s) has been posted on the DNR website under the appropriate meeting month: http://www.iowadnr.gov/About-DNR/Boards-Commissions

INFORMATION	
INFORMATION	

PUBLIC COMMENT

Erica Blair – Iowa Citizens for Community Improvement

Erica Blair shared with the Commission in 2007 ICCI along with two other organizations filed a petition alleging that the DNR was not in compliance with the Clean Water Act. There was a proliferation of factory farms but DNR, EPC, and legislators were avoiding necessary protective measures. The EPA did agree with ICCI that the DNR was not fulfilling its role. EPA required the DNR to be within compliance within 5 years. The DNR 5 year report is going to look like they are in compliance but they are not. There is a growing amount of pollution in the water and the DNR still has lots of work to do. ICCI cannot sign off on the DNR report until the water is clean and DNR is issuing tough fines and penalties, issuing NPDES permits, conducting good inspections, and DNR has a transparent database that indicates where the manure is located. She asked the Commission to do their job.

Dianne Siasoco – Iowa Citizens for Community Improvement

Dianne Siasoco read a letter on behalf of an ICCI member. The letter stated their property has 51 confinements within a 5 mile radius. In 2006, their acreage was beautiful with kids playing outside. Now that the hog confinements have gone up, there are 10 trucks every 2 hours going down the gravel road 24/7 and they are tearing up the roads. The trucks run at speeds that if they hit a child, that child would not survive. The dust, chemicals, and manure suffocate their family and they are unable to enjoy the outdoors or open their windows. The dead hogs are collected and piled in a heap. They have a poor quality of life and asked the Commission for environmental protection.

Linda Luhving – Iowa Citizens for Community Improvement

Linda Luhving moved back to Iowa 9 years ago and things have changed dramatically. NPDES permits are one way to regulate manure run-off to the water. All facilities that release pollutants are required to have a permit. As result of the deregulation petition, the DNR was told to start issuing permits for factory farms who pollute. To date, the DNR has not issued any NPDES permits to factory farms. If a factory farm was issued a permit it would provide broader coverage, greater maintenance and operation requirements, and allow higher penalties for violations. Iowa law caps at \$5,000 per violation and the state can't collect more than \$10,000 per order. Under the Clean Water Act, penalties can be up to \$30,000. She knows factory farms discharge into water and the DNR needs to bring them up to standards.

Julie Duhn - Iowa Citizens for Community Improvement

Julie Duhn provided a bottle of water to the Commission to demonstrate her concern with Iowa's water quality. She asked the Commission to do their job and hold the DNR responsible to keep citizens safe and regulate factory farms. She takes her dogs for a daily walk past her local lake and she has watched the lake get worse. She kayaked on the lake and developed a rash and her doctor has now advised her to stay off the lake. If the water was polluted, she wants the DNR to post advisories. Due to the polluted water, she had to cancel a family kayak trip. The lake has a culvert which is taking water from drainage tiles to the lowa River and eventually to the dead zone in the Gulf of Mexico. She displayed a photo of the lake. She invited the Commission to attend the Pine Lake Festival and she would provide them a hazmat suit to be in the lake.

Jan Wann – Iowa Citizens for Community Improvement

Jan Wann shared with the Commission each year the impaired waterways continue to increase. The 750 impaired waterways are because of bacteria from factory farms. She summarized the number of beach advisories for E.coli and blue green algae. ICCI will keep saying it over and over. She lives near Mason City with two chicken CAFOs within two miles of her home. The manure from these facilities are spread around a school and an assisted living center with the manure running into Clear Lake. Property values are tanking. The jobs being offered are not adding to the economy. She asked for the Clean Water Act to be fully enacted, a user friendly database created, and a moratorium on factory farms.

Luke Wright – Self

Luke Wright was registered to speak but was absent during the Public Participation portion of the agenda.

Gloria Troeger – Iowa Citizens for Community Improvement

Gloria Troeger shared with the Commission she is a former farm girl and asked for clean water instead of 750 polluted waterways. She inquired into how many impaired waterways it would take for the Commission to do something. One day everyone will have to drink bottled water and use a lot of chemicals to treat the pollution. She believes the Commission has the power to help and can start the process to make water clean. Water is life for me and for the Commission.

Jack Troeger - Iowa Citizens for Community Improvement

Jack Troeger grew up in the town of famed Meredith Willson who wrote the music for The Music Man and he even played some of Mr. Wilson's songs in his youth. He believes the Commission is closing their eyes to Iowa's giant manure situation. Iowa is a manure sewer. There are no free range grass operations but rather over 10,000 factory farm facilities. He asked for a moratorium. It takes big voices to stand up against big money. Farm Bureau doesn't care about the people but rather profit. There are 22 billion gallons of manure because the DNR doesn't enforce the Clean Water Act. He believes the Commissioners have to do more to protect the environment by making the DNR enforce the Clean Water Act.

Emma Schmit – Iowa Citizens for Community Improvement

Emma Schmit shared with the Commission there is an increase of over 100 confinement farms in her county and at the same time the DNR's resources are declining. There are now four times more pigs in her county compared to 10 years ago. With the new slaughterhouse coming, she knows there is going to be more pigs too. A newspaper reported the price of land sales is at record highs. She believes the DNR can't keep up with their current work and she questions why more factory farms are allowed to be built. The DNR only has 16 people to cover 10,000 factory farms. She asked the Commission to ensure compliance with the Clean Water Act.

John Clayton - Iowa Citizens for Community Improvement

John Clayton volunteers on the English River by collecting water samples every two weeks. The soil and water commission in his county uses all the EQIP money for cover crops and yet there are few cover crops on our fields. One major way to stop nutrient loss is through cover crops. He can't wait for the farm bill to support cover crops. He believes there needs to be more conservation practices to protect family farmers.

Marie Herring – Iowa Citizens for Community Improvement

Marie Herring remembers spending summers growing up on the family farm but farming is quite different today. Their animals didn't live in cages but rather in the fields. She entrusts the DNR to administer the Clean Water Act so the water is safe to drink. The DNR can't keep up with regulating over 10,000 factory farms. She lives on a 40 acre farm with a pond. She is concerned about her quality of life, property value, and drinking water if a CAFO goes up near her home. The Master Matrix has failed and strong penalties and fines are needed. She asked for a moratorium until the 750 impaired waterways are fixed. She believes the DNR needs to live up to their mission.

Pam Mackey Taylor - Sierra Club

Pam Mackey Taylor does not believe the DNR should consider their obligations as ending when the EPA AFO workplan ends in August. The experience over the past 5 years should be lessons learned how to protect people and land. With the increased list of polluted waters, it is unacceptable for a CAFO to exist without a manure management plan. The EPC's duty is environmental protection and not to protect the animal livestock industry. The Commission needs to oversee the DNR to ensure the DNR does their job.

Mark Edwards – Iowa Citizens for Community Improvement

Mark Edwards is a retired DNR water trails coordinator. He was fortunate to start the water trails program and watch the increased usage of the water trails. He has been paddling the Boone River for over 50 years and during that time he has watched the water quality diminish and it isn't safe. In 2017, the DNR stopped monitoring for nitrates. In 2015, the Boone River nitrate levels were over limit at 15 sites. Water quality is not improving.

Janis Elliott – Iowa Citizens for Community Improvement

Janis Elliott shared with the Commission her drinking water well nitrate levels have increased over the years. She installed a reverse osmosis system in her home to remove the nitrates from her drinking water that were twice the EPA limit. No one in her community fertilizes their yard so nitrates are coming from other sources. Some neighbors fill jugs or have water delivered which makes her community feel like a 3rd world country and not the USA. She welcomed new neighbors and let them know their baby might be drinking nitrate water. Brita filters don't remove nitrates. Over the past 4 years, she is only seeing waterways getting worse. She believes it is imperative for a moratorium on factory farms.

Amanda Malaski – Iowa Citizens for Community Improvement

Amanda Malaski expressed concern for the DNR having no coordinator for the AFO program. Gene Tinker was laid off after 14 years. He believes he was let go as retaliation for providing counties information on fighting factory farms. The AFO coordinator role has not been replaced. She believes there needs to be a coordinator. Gene Tinker also alleged mismanagement of manure funds. She asked for a moratorium on factory farms.

Jessica Fears - Iowa Citizens for Community Improvement

Jessica Fears thanked the Commission for their service for if it wasn't for the mismanagement of Iowa's waterways, she would have never found ICCI. DNR made revisions to Chapter 65 and didn't address any of the ICCI comments. ICCI filed a petition to fix the Master Matrix but DNR dismissed the petition. The EPC didn't even recommend to the legislature any bills to address factory farms. She has a 10 year old child and she needs clean water every day to bathe him and feed him.

Rod Bakken – Iowa Citizens for Community Improvement

Rod Bakken is from a part of the state with sinkholes, trout streams, and AFO expansion. Just two miles south of him, two factory farms were built on the hill and they drain into the river. Another factory farm is being planned to be built in the area. A 7 inch rain in one hour will not provide any protection of trout streams and sinkholes. The weak denial process of the Master Matrix allows approval with only a 50% score. To him, 50% is a F grade. DNR doesn't monitor once a factory farm is built, and they are cutting staff and allowing manure to be applied multiple times on the same location and on snow covered ground. He asked for a moratorium on factory farms.

Jean Lappe - Iowa Citizens for Community Improvement

Jean Lappe drove 3 hours to speak for 2 minutes. There are 20 hog confinements built in her community and no one is stopping it. She started to monitor the water with a friend who lives upstream from her. At her friend's place the nitrate level is 5 while just two miles downstream, her nitrate levels are at 20. The increase of nitrates in a short distance can't be from houses for there is no town and nothing between their homes except farms. These farms have no buffer systems. They farm up to the creek and even spray over the creek. She hopes the playing field will be leveled and everyone has to have a buffer system.

Dave Haynes – Iowa Citizens for Community Improvement

Dave Haynes read to the Commission the DNR mission statement. He questioned if the Commissioners' kids and grandkids could say mission accomplished. He read a book about Australia and how the aborigines

respect the air, land, and water and have been doing so for the past 5,000 years. Only after the last tree is cut down, last river poisoned, last fish caught, that people will realize that you can't eat money. The legislature won't do anything. He urged the Commission to have the legislature change the Master Matrix. A score of 50% is not a passing score. He asked for a moratorium on factory farms.

Brenda Brink – Iowa Citizens for Community Improvement

Brenda Brink shared with the Commission that ICCI and citizens are protecting our water. Communities in rural areas are not being protected and know their communities are dying. They are trying to attract business and are putting in bike trails. CAFOs are continuing to explode and no one is going to ride on a bike trail with CAFOs along the trail. You can't ride your bike fast enough past them. People won't spend time on the patio at a brewery smelling CAFOs. It's harmful to breathe in the particulates. If you can't believe the science then there is no one that can convince you otherwise. CAFOs are not the future of lowa. Iowa should be proud and progressive. She requested a moratorium on factory farms.

Pat Bowen – Iowa Citizens for Community Improvement

Pat Bowen questioned the Commission about the report distributed earlier that says everything is fine. If that is true then how come there are increasing numbers of impaired waters? Degradation is due to industrial farming. Agribusiness is not agriculture. People are scared to drink the tap water. She doesn't want lowa to turn into a Flint, Michigan. By not protecting the water, the DNR is endangering people's lives. She asked the EPC to do what is in their name and protect the environment. She asked the Commission to use their power and comply with the Clean Water Act. She requested a moratorium on factory farms.

Kenn Bowen – Iowa Citizens for Community Improvement

Kenn Bowen defined the word commission as a noun which means a group with supervisory power or authority. Commissioners are appointed to the EPC to protect the environment. He spent 30 years doing one job but he would not have lasted 30 days if he had the same job performance as the Commission. He believes the Commissioners should be fired and dismissed.

Brad Hartkopf – Iowa Association of Business and Industry

Brad Hartkopf represents the lowa Association of Business and Industry and its 1,500 members. ABI supports item #15 on the agenda. The Legislature passed funds for air quality permitting processes to be electronic and more timely. He is therefore in support of this agenda item.

Sharon Donovan – Iowa Citizens for Community Improvement

Sharon Donovan requested a moratorium on CAFOs. It is a solution to the water problem. Farmers' overuse of nitrogen must be changed. Liquid nitrogen needs to be applied to plants when they are growing. This ensures nitrogen does not escape or run off and increases yield. Rules must be changed to require this corrective practice.

Carolyn Uhlenhake Walker – Iowa Citizens for Community Improvement

Carolyn Uhlenhake Walker is a retired 5th grade science and environment school teacher. In the 1990s, she learned how to test the water quality of a stream. In turn, she taught her kids how to also collect water samples. She shared that 70% of the surface of earth is made of water but only 2.5% of the water is fresh water. And most of that fresh water is frozen, glaciers, and polar caps. There is only a tiny amount available for drinking water. If the earth's water filled a 5 gallon bucket only 3 teaspoons of drinking water would be available. We don't have enough to drink. We aren't taking care of it. She asked the EPC to implement the Clean Water Act and place a moratorium on factory farms.

Betty Salmon – Iowa Citizens for Community Improvement

Betty Salmon believes that people don't agree on much but everyone agrees that Americans value having choices and to protect themselves. She makes choices to eat food that is chemical free and without harmful additives. She avoids consuming foods with nitrates. She is a retired teacher with her degrees in biology and science. There are many studies that link nitrates to cancer. It is hard for her to avoid nitrates in her water. She trusts the state to protect her drinking water. She isn't in Des Moines all the time to drink expensive water from the city's nitrate removal system. Sometimes she goes camping or visits another town that could have nitrates. Boiling water and Brita filters do not remove the nitrates.

Deborah Bunka – Iowa Citizens for Community Improvement

Deborah Bunka appreciated a Commissioner asking how expensive it has been to implement the EPA AFO Workplan at the expense of the taxpayers. The Commissioner should be asking how expensive it has been for taxpayers to deal with corporate Ag pollution. She is a member of numerous groups which all support a moratorium on CAFOs until there are less than 100 impaired waterways. The song remains the same, we come and say the same thing, and Commissioners look like they are listening but evidence is contrary. The Commission has failed at protecting the environment but gets a gold star for protecting corporate Ag. Corporate Ag doesn't clean up their mess.

Chris Gruenhagen - Iowa Farm Bureau

Chris Gruenhagen described today's livestock producers as problem solvers who are always improving their processes. They are embracing innovation so, they, like any other business, can adapt and survive. In a recent survey, 99% of grocery shoppers indicated that they eat meat on a regular basis. Iowans get to raise and consume local meat. The DNR does their job and there is no reason to take away the DNR permitting program. Many of the allegations in the petition were not founded and for those requiring attention, a 5 year workplan was created. EPA will soon have to decide if DNR is in compliance with the workplan.

Stephen Tews - Iowa Citizens for Community Improvement

Stephen Tews lives in southeast Iowa and believes pollution flows downhill and everything in Iowa comes his way. There are 5,000 CAFOs that no one know were there. Using a computer doesn't confirm anything. One has to go onsite to review a facility. There is no blue water or red water there is only clean or dirty water. Iowa's waters are dirtier than ever. Officials should be concerned about their legacy.

Anne Maire - Self

Anne Maire was registered to speak but was absent during the Public Participation portion of the agenda.

Barbara Lang – Iowa Citizens for Community Improvement

Barbara Lang has lived on a farm for decades and has watched the air, land, and water degrade. She likes to get to the root of what is causing these changes. She believes it is the current system of maximizing profits at the detriment of the citizens. Farm Bureau, Monsanto, senators, and others are responsible for the regulatory neglect that is leading to the destruction of lowa's soil and water. lowa needs a sustainable agriculture balance without ruining rural living. Science is not a liberal conspiracy.

Shari Hawk – Iowa Citizens for Community Improvement

Shari Hawk grew up on family farm with pigs which lived mostly in pastures and not in tight quarters. Manure was spread on their fields but there was never enough manure to worry about it seeping into waterways. Losing a pig was rare but now there are dumpsters of dead hogs. The manure sprayed on fields bothers her eyes and people living around those applied areas are trapped in their homes. DNR and EPC do not provide any empathy but approve more CAFOs. She asked for the Master Matrix to be strengthened, that the Commission listen to those impacted, and a moratorium on factory farms be imposed.

Jess Mazour - Iowa Citizens for Community Improvement

Jess Mazour attended a DNR meeting with stakeholder groups on what to do after the work plan ended. Environmentalists, industry, and DNR staff met. The DNR staff said they used to be organized at a section level and now are an orphan program. They want funding to adequately staff the program. They wanted an established budget to support follow-up with facilities. They want a better AFO database. They want support from upper management. They want access to maps. They don't need smart phones or life jackets. They want to be able to follow up with factory farms that aren't compliant. Staff who do these inspections know the program is not sufficient. Industry wants to streamline paperwork and eliminate items no longer needed. She requested the Commission to back up the DNR and to do their job.

Mary Caponi – Iowa Citizens for Community Improvement

Mary Caponi read a statement for Jim Bratton – Iowans have an increasing threat of pollution from factory farms. The Governor, legislature, and DNR all know it. It is hard to watch the hog industry destroy the state. Both rural and urban should be concerned for they are destroying our water. Money has been a motivator for people. More and more factory farms are being approved and Iowa's water is not protected. It is time to be heard by our votes. He asked the Commission to enforce the Clean Water Act.

Gina Folson – Iowa Citizens for Community Improvement

Gina Folson is from Story County and wasn't planning to speak but her name was thrown in the hat. She asked the Commission to support the people who have spoken. She asked for a moratorium on factory farms because the pollution is devastating.

Susie Petra – Iowa Citizens for Community Improvement

Susie Petra expressed concern with the attempt to weaken E.coli monitoring. E.coli comes from factory farms and is the reason for the 750 impaired waterways. The DNR proposed new rules to weaken monitoring of E.coli. DNR wanted to give the appearance they are cleaning up the water by not being able to detect E.coli. We grew up swimming and eating fish but not now. Thankfully from over 700 lowans' comments, the DNR scrapped the rule change. The DNR is not doing their job and now we can't trust them. Iowa must have the Clean Water Act fully enforced and a moratorium on factory farms until the degraded waterways are cleaned up.

Dr. Claudia Addy - Self

Dr. Claudia Addy provided a basic biology lesson where humans can live 2 minutes without air, 2 days without water, and 2 weeks without food. Children are treated at birth for nitrate poisoning. Animals are now being treated for nitrogen poisonings. She believes birds, amphibians, and other wildlife are probably impacted by nitrates. Water is getting worse and worse. It was a single ship that decimated Alaska's coast. In the Gulf of Mexico, one oil well decimated the ocean. If there is a resource issue for the DNR, that is even more of a reason to stop building CAFOs. She asked the Commission to enforce the Clean Water Act.

Tyler Bettin – Iowa Pork Producers

Tyler Bettin thanked the Commissioners for their service. The DNR assessment of half of the 5,000 unclassified farms has demonstrated that they are under thresholds for regulation and only 12 have required regulation. Groups are overplaying the topic. Today's farmers contain manure and protect waterways through proper application methods. Iowa Pork Producer members drive research and protection for environmentally sustainable farms.

Heather Pearson – Iowa Citizens for Community Improvement

Heather Pearson is a horticulturist and bee keeper in the Loess Hills. A CAFO chicken factory farm has been approved to be built a few miles from her farm. There have been 5,000 factory farms flying under the radar.

There are only 16 people for the entire state at the DNR which isn't enough. The Clean Water Act requires permits to be provided to polluters. There have been over 800 manure spills and they don't have permits. The DNR continues approving CAFO. Iowans depend on clean water. She believes the Commission has no intention to hold the AFO industry accountable to the Clean Water Act. She demanded a moratorium on factory farms. Water is life. She distributed a letter that will be sent to the EPA as evidence the DNR is not in compliance with the Clean Water Act.

No written comments were submitted.

END OF PUBLIC COMMENT

ACTING DIRECTOR'S REMARKS

Acting Director Bruce Trautman thanked the DNR staff for their adaptability as changes keep occurring. He provided special recognition to DNR team members working on the Creston water concerns, the AFO team, and all other air, land, and water professionals. He is proud of the work all organizations do to aid in protecting the environment. We need everyone's help. Walking in the boots of the DNR team is not always easy for there are many compliance issues that need addressing. He said that if anyone had concerns with DNR's job, they could criticize him, but he would not stand for the criticism of his staff.



Chairperson Lents thanked the Department for their work with SIRWA to ensure adequate and safe drinking water.

CONTRACT WITH UNIVERSITY OF IOWA ON BEHALF OF THE STATE HYGIENIC LABORATORY FOR 2019 SHL SERVICES IN SUPPORT OF THE DNR AIR QUALITY BUREAU

Sean Fitzsimmons presented a contract for monitoring services with the University of Iowa. He explained the structure of the costs estimates and planning between the two organizations for equipment selection.

Motion was made by Joe Riding to approve the agenda item as presented. Seconded by Bob Sinclair. Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH THE UNIVERSITY OF IOWA ON BEHALF OF THE STATE HYGIENIC LABORATORY

Roger Bruner presented a contract with the University of Iowa. He described the frequency of the water reporting mechanisms for the public.

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Howard Hill. Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH THE UNIVERSITY OF IOWA ON BEHALF OF THE STATE HYGIENIC LABORATORY

Roger Bruner presented a contract with the University of Iowa. He further clarified the reporting frequency.

Motion was made by Mary Boote to approve the agenda item as presented. Seconded by Bob Sinclair . Motion passes.

APPROVED AS PRESENTED

DERELICT BUILDING GRANT PROGRAM – GRANT RECOMMENDATIONS

Scott Flagg presented grants for the Derelict Building Program. He inquired with the Commissioners the new use of Google Shared Photos and Slides to visually review projects. The Commissioners provided favorable comments and wished to continue to receive electronic information. Joe Riding expressed his appreciation of the program and wished for additional funding to assist more communities.

Motion was made by Howard Hill to approve the agenda item as amended for the correction of the city of Toledo being funded rather than the city of Tabor. Seconded by Mary Boote. Motion passes.

APPROVED AS AMENDED

CONTRACT AMENDMENT # 2 TO CONTRACT 15ESDLQBLGOLD WITH GRESHAM, SMITH AND PARTNERS

Leslie Goldsmith presented a contract amendment.

Motion was made by Mary Boote to approve the agenda item as presented. Seconded by Nancy Couser. Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH WINDSOR SOLUTIONS, INC.

Nick Page presented a contract for information technology support services.

Motion was made by Joe Riding to approve the agenda item as presented. Seconded by Rebecca Guinn. Motion passes.

Please note, Nancy Couser was absent for voting on this agenda item.

APPROVED AS PRESENTED

University of Northern Iowa, Iowa Waste Reduction Center – Iowa Waste Exchange Program technical assistance, database management and training

Bill Blum presented a contract with the University of Northern Iowa. He summarized the efforts the Iowa Waste Exchange program and how the funds are utilized. Additionally, the state statute requires the \$30,000 agreement between DNR and UNI.

Motion was made by Rebecca Guinn to approve the agenda item as presented. Seconded by Joe Riding. Motion passes.

APPROVED AS PRESENTED

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND — FY 2019 INTENDED USE PLANS

Jon Tack introduced his newest team member, Theresa Enright, who will be the SRF Coordinator and future presenter at Commission meetings. He continued to present the agenda item and answered questions regarding the recent legislative action to impose a one year moratorium on the use of the SRF for certain property purchases. Lee Wagner, with the DNR SRF Program, described the requirements and restrictions for applicants to utilize the program to purchase land.

Motion was made by Mary Boote to approve the agenda item as presented. Seconded by Howard Hill. Motion passes.

APPROVED AS PRESENTED

Acting Director Bruce Trautman summarized the Department's policy and approach for land purchases and management.

28E AGREEMENT FOR ADMINISTRATION OF THE IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD

Tim Hall presented an agreement for DNR to assume some responsibilities of the underground storage tank fund board. He described how the budget was established for the next two years. At that time, the group will reevaluate the need for this continued partnership. A contractor is planned to work on the project until the completion of the project.

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Nancy Couser. Motion passes.

APPROVED AS PRESENTED

Chairperson Lents called for a 15 minute break

GENERAL DISCUSSION - PART 1

Due to Commissioner Joe Riding needing to excuse himself from the remainder of the meeting, Chairperson Lents entertained feedback from the Commissioners on how to facilitate the Public Comment portion of the agenda. Ed Tormey provided the requirements and flexibility the lowa Code provides to the Chairperson in running the meeting.

INFORMATION

Commissioner Joe Riding was absent from the remainder of the meeting.

CONTRACT WITH ENFOTECH & CONSULTING, INC.

Jim McGraw presented a contract with Enfo Tech & Consulting. The bid pricing has been extended by the company. The company understands the legislative process takes additional time to secure funding.

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Mary Boote. Motion passes.

APPROVED AS PRESENTED

Notice of Termination: Asbestos Notification Fee - Chapter 30

Jim McGraw presented a termination of rulemaking.

Motion was made by Mary Boote to terminate the rulemaking initiated for notice of intended action. Seconded by Bob Sinclair. Motion passes.

RULEMAKING TERMINATED

2019 CONTRACT WITH LINN COUNTY AIR QUALITY DIVISION: AIR POLLUTION CONTROL IN LINN COUNTY

Christine Paulson presented a contract with Linn County. She provided the Commission with information on how any county may request to perform air quality work in their county and eligibility requirements.

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Rebecca Guinn. Motion passes.

APPROVED AS PRESENTED

2019 CONTRACT WITH POLK COUNTY AIR QUALITY DIVISION: AIR POLLUTION CONTROL IN POLK COUNTYChristine Paulson presented a contract with Polk County.

Motion was made by Mary Boote to approve the agenda item as presented. Seconded by Nancy Couser. Motion passes.

APPROVED AS PRESENTED

2019 CONTRACT UNIVERSITY OF NORTHERN IOWA – IOWA AIR EMISSIONS ASSISTANCE PROGRAM (IAEAP): SMALL BUSINESS ASSISTANCE PROGRAM

Christine Paulson presented a contract with the University of Northern Iowa.

Motion was made by Rebecca Guinn to approve the agenda item as presented. Seconded by Howard Hill. Motion passes.

APPROVED AS PRESENTED

PROTECT RATHBUN LAKE: WATERSHED PARTNERSHIPS

Allen Bonini introduced Marty Braster. Marty Braster distributed handouts and reviewed the different partners associated with the water quality improvements for the watershed. Included in the materials were the importance of the water quality, watershed area, landowner projects, and monitoring results. Within the materials were maps where he could point out various priorities and projects.

INFORMATION

CONTRACT WITH THE IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP (IDALS)

Allen Bonini presented a contract with IDALS.

Motion was made by Howard Hill to approve the agenda item as presented. Seconded by Mary Boote. Motion passes.

APPROVED AS PRESENTED

GENERAL DISCUSSION

- Jerah Sheets entertained the proposal to move the August meeting to Derby, lowa and include a tour of an animal feeding operation. After engaging with absent Commissioners, an announcement will be provided on the August meeting details.
- Jerah Sheets shared with the Commissioners Angie Clark will be providing coverage for the July meeting materials distribution during his absence.
- Jerah Sheets summarized the July meeting logistics and educational tour of a drinking water facility.
- Jerah Sheets gathered additional feedback from the Commissioners regarding alternative presentation options and utilizing Google shared visuals for future meetings.
- Ed Tormey summarized the July meeting to include an appeal and referral.

Chairperson Lents adjourned the Environmental Protection Commission meeting at 2:20 p.m. on June 19, 2018.



lav 2	nly Variance Report						
	DNR Reviewer	Facility/City	Program	Subject	Decision	Date	Agency Reference
	Jason Christopherson	City of Ames Water Treatment	Air Quality Constru Permits	ction Waiver of Initial Stack Test Requirement.	approved	5/1/18	18aqv148
	Rachel Quill	John Deere Dubuque Works		ction Waiver of Initial Stack Test Requirement.	approved	5/1/18	18aqv149
3	Ann K. Seda	Golden Grain Energy, LLC	Air Quality	Facility wanted to pour concrete for 3 new fermentation tar modified construction permits.	nks prior to receiving denied	5/2/18	18aqv150
	Danjin Zulic	Great Lakes Concrete, Inc.	Air Quality Constru Permits	iction Waiver of Initial Stack Test Requirement.	approved	5/2/18	18aqv151
	Reid Bermel	Corporation	Air Quality	Linwood wants to delay transferring products from LP-17 obtaining a modified construction permit.		5/2/18	18aqv152
;	Priyanka Painuly	RELCO Locomotives Inc.	Air Quality Constru Permits	action Waiver of Initial Stack Test Requirement.	approved	5/2/18	18aqv153
•	Brian Hutchins	Van Diest Supply Company	Air Quality	Van Diest requested a variance to operate Building 21, a asbuilt source, without the required construction permit.		5/3/18	18aqv154
	Matt Phoenix	MUSCATINE POWER & WATER	Water Supply Construct	ion A variance from requirements to construct conflicting sto main material and provide 18" of separation by instead con of DIP w/ nitrile gaskets and placing the water main in a seal	structing water main	5/3/18	18wcv158
	Rachel Quill	City of Coralville	Air Quality Constru Permits	ction Waiver of Initial Stack Test Requirement.	approved	5/4/18	18aqv155
0	Danjin Zulic	Rockwell Collins, Inc Manchester	Air Quality Constru Permits	ction Waiver of Initial Stack Test Requirement.	approved	5/4/18	18aqv157
1	Sara Smith	Sergeant Bluff Water Supply	Water Supply Construct	ion Allow construction of a detention tank 26 feet from a sanitar in recent years of sewer pipe. Tank bottom will be 11.5 fe groundwater (GW) is 19-20 ft below the ground and there i the plant.	et above the sewer,	5/7/18	18wcv159
2	Ashley Dvorak	Godbersen-Smith Construction Co.	Air Quality Constru Permits	ction Waiver of Initial Stack Test Requirement.	approved	5/9/18	18aqv156
3	Terry Kirschenman	Spencer	Wastewater Constructio	use slope of 0.10% for 56 feet of 12 inch PVC; 0.11% for PVC; and 0.20% for 1,085 feet of 8 inch PVC. PPROVAL	1,065 feet of 10 inch approved	5/10/18	18cpv160
4	Lanie Boas	DURANT WATER SUPPLY	Water Supply Construct	ion The water main shall be centrically inside a casing pipe with constructing storm sewer of water main material at crossing	end seals instead of approved	5/10/18	18wcv161
5	Dennis Thielen	Homeland Energy	Air Quality	Variance request to operate the scrubber below the perradditive feed rate for permit 07-A-970-P7 (EP S40).	mitted flow rate and approved	5/11/18	18aqv162
6	Rachel Quill	Magellan Pipeline Co - Milford Terminal	Air Quality Constru Permits	uction Waiver of Initial Stack Test Requirement.	approved	5/11/18	18aqv163
7	Rachel Quill	AVEKA Manufacturing	Permits	ction Waiver of Initial Stack Test Requirement.	approved	5/14/18	18aqv164
8	Ashley Dvorak	Monsanto Company - Boone	Air Quality Constru Permits	ction Waiver of Initial Stack Test Requirement.	approved	5/14/18	18aqv165
9	Reid Bermel	Grain Processing Corporation	Air Quality	GPC is requesting a variance to emit uncontrolled emissic CO2 scrubber to the RTO.		5/16/18	18aqv166
0	Ann Seda	Pattison Sand Co, LLC	Air Quality	Pattison Sand is requesting to pour concrete and set electri to the issuance of construction permits.		5/16/18	18aqv167
:1	Danjin Zulic	Trustile Doors of Iowa	Permits	iction Waiver of Initial Stack Test Requirement.	approved	5/16/18	18aqv168
2	Jason Christopherson	Barton Solvents Inc Council Bluffs	Permits	uction Waiver of Initial Stack Test Requirement.	approved	5/17/18	18aqv169
23	Ashley Dvorak	Georgia-Pacific Gypsum LLC - Fort Dodge	Permits	uction Waiver of Initial Stack Test Requirement.	approved	5/17/18	18aqv170
24	Matt Phoenix	Des Moines Water Works	Water Supply Construct	ion A variance from requirements to construct conflicting sto main material and provide 18" of separation by instead con of DIP w/ nitrile gaskets and placing the water main in a seal	structing water main	5/17/18	18wcv171

25	Matt Phoenix	Grinnell Water Department	Water Supply Construction	A variance from requirements to construct conflicting storm sewers of water main material where sewer/water main separations cannot be obtained by constructing water main of DIP w/ nitrile gaskets.		5/17/18	18wcv172
26	Ann Seda	Homeland Energy Solutions	Air Quality	Homeland is requesting to start construction on their second grain receiving area prior to the issuance of construction permits.	approved	5/18/18	18aqv173
27	Jason Christopherson	Hy-Capacity	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	5/18/18	18aqv174
28	Danjin Zulic	Little Sioux Corn Processors, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	5/18/18	18aqv175
29	Jason Christopherson	Curries Division of AADG, Inc.		Waiver of Initial Stack Test Requirement.	approved	5/22/18	18aqv176
30	Danjin Zulic	GCC Ready Mix		Waiver of Initial Stack Test Requirement.	approved	5/23/18	18aqv177
31	Ann Seda	Homeland Energy Solutions	Air Quality	Facility wants to use an alternative route for trucks to make needed repairs to their paved haul road without obtaining a modified construction permit.	denied	5/23/18	18aqv178
32	Danjin Zulic	Scranton Manufacturing	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	5/23/18	18aqv179
33	Karen Kuhn	Iowa Army Ammunition Plant	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	5/24/18	18aqv180
34	Emy) Wenxin Liu	Pekin Community School District	Wastewater	Pekin CSD has requested a variance to allow the lagoon to utilize riser piping buried adjacent to control strucutre to measure pond level in lieu of calibrated mast, pipe, or other level measuring devices installed in the pond.		5/24/18	18cpv184
35	Emy) Wenxin Liu	Pekin Community School District	Wastewater	Pekin CSD has requested a lagoon secondary cell to have two drawoff levels instead of a three drawoff levels required by IA 18C.7.6.4. A minimum of three drawoff levels for each secondary cell to the receiving stream must be provided based on IA 18C		5/24/18	18cpv185
36	Emy) Wenxin Liu	Pekin Community School District	Wastewater	Pekin CSD has requested variances to the current lowa wastewater lagoon standards 18C.7.4.4 & 18C.7.4.6 to allow lagoon influent line for the proposed controlled discharge lagoon to be located on top of the pond liner.		5/24/18	18cpv186
37	Lanie Boas	Washington Water Dept	Water Supply Construction	Construct water main of DIP with nitrile gaskets & where crossing under storm sewer instead of constructing storm sewer of water main material	approved	5/24/18	18wcv187
38	Sara Smith	Indianola Municipal Utilities	Water Supply Construction	At critical crossings with storm sewer replace it with 20 ft L RCP with O-ring gaskets or use 20 ft L DIP with nitrile gaskets for watermain. At critical crossings with sanitary sewer install water main in a 20 ft L steel casing pipe with end seals.		5/29/18	18wcv188
39	Jason Christopherson	Graham Division of AADG. Inc.	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	5/30/18	18aqv181
40	Karen Kuhn	Jebro Inc.		Waiver of Initial Stack Test Requirement.	approved	5/30/18	18aqv182
41	Tara Naber	Des Moines Water Works PWSID 7727031		When 3-10 ft horizontal separation between water main and sewer, stm sewer: construct water main of DIPw/nitrile gaskets, sanitary: construct water main of DIPw/nitrile gaskets within casing pipe; instead of constructing sewer of water main material.		5/30/18	18wcv189
42	Reid Bermel	GCC of America	Air Quality	GCC is requesting a variance to GCC) to allow two portable concrete plants to be located less than 1,000 feet of each other and will only one plant will operate at a time, as the second one is for backup.		5/31/18	18aqv183

Iowa Department of Natural Resources Environmental Protection Commission

#5

Decision Item

Contract with IDALS for Silver Creek (Howard County) Water Quality Project

Commission approval is requested for a contract with Iowa Department of Agriculture and Land Stewardship (IDALS), of Des Moines, IA.

Contract Terms:

Amount: Not to exceed \$154,300 **Dates:** 8/1/2018 to 8/31/2921.

DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract

by executing a signed amendment prior to the expiration of this Contract.

Funding Source(s): This contract will be funded through U.S. EPA Section 319 funds.

Statutory Authority: Funds are administered by DNR under statutory authority granted by Iowa Code 466B.32.

Contract Background: Silver Creek of Howard and Winneshiek counties is a tributary of the Upper Iowa River and has a 22,410 acre watershed containing part of the city of Cresco. The stream is impaired for E. coli indicator bacteria counts exceeding the water quality standard, which reduces its ability to support a primary contact recreation use category. Reductions in bacteria in the watershed have followed efforts by local landowners/operators to implement conservation practices primarily aimed at reducing livestock manure runoff as well as securing related nutrients and soils with cover crops, streambank restorations, and other strategies. Recent progress during Phase 1-2 of the water quality improvement project has led to reintroductions of native Iowa brook trout (South Pine Creek strain) to one tributary of Silver Creek, and another stocking at an additional location on the main branch of Silver Creek planned for 2018.

The purpose of this contract is to support the watershed project: Silver Creek (Howard County) Water Quality Project (Phase 2). The proposed contract would continue the progress of water quality improvement in Silver Creek by supporting key staff and funding best management practice (BMP) cost-share, particularly for large-scale livestock waste storage and feedlot protection projects that are the most effective way to reduce bacteria loading in this watershed as identified in the water improvement plan (Total Maximum Daily Load, or TMDL).

Selection Process Summary:

INTERGOVERNMENTAL: Intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Also contracts with state universities and other public agencies for laboratory work, scientific field measurement and environmental quality evaluation services necessary to implement Iowa Code Chapter 455B is authorized under Iowa Code section 455B.103(3).

Contract History:

In 2012 the Silver Creek (Howard) Watershed Management Plan (WMP) was developed to reduce bacteria loading and work towards removal of the water body from the impaired waters list. Implementation grants were awarded to the project in 2013 and 2015 for Phase 1 (years 1-3) and Phase 2 (current). Reductions of 13,631 lbs of nitrogen, 8,177 lbs of phosphorus, and 6,296 tons of sediment have been reported over the project's 4.5 year life to date, with associated bacteria load reductions seen in water monitoring results. This watershed project shall be co-managed by IDALS and DNR; IDALS shall be the entity to submit invoices for reimbursement to DNR.

Steven Konrady, Nonpoint Source Project Officer, Water Quality Bureau Environmental Services Division EPC Meeting: July 17, 2018

Silver Creek (Howard County) Water Quality Project Summary and Scope of Work

Project Name: Silver Creek (Howard County) Water Quality Project – Phase 2

Amount: \$154,300

Time Frame: August 1, 2018 to August 31, 2021 (three years)

<u>Description</u>: New contract to continue support for existing project in the Silver Creek watershed

of Howard and Winneshiek counties

Project Goal: To improve water quality and reduce E. coli indicator bacteria loading in the Silver

Creek (Howard) watershed

Project Summary

This project will (1) support a project coordinator position for Silver Creek (Howard) to implement grant funding and cost-share from multiple agencies, (2) improve water quality in Silver Creek and linked tributaries, and (3) work towards watershed plan goals and the removal of the Silver Creek impairment (bacteria).

Project Background

The Silver Creek (Howard) Watershed Management Plan was developed in 2012 to address *E. coli* indicator bacteria loading in the watershed. The project is now in Phase 2 of implementation. Progress from Phase 1 and the beginning of Phase 2 included removal of 13,631 lbs of nitrogen, 8,177 lbs of phosphorus, and 6,296 tons of sediment per year as reported to EPA. In addition, water quality improvement has supported the reintroduction of a native lowa strain of brook trout to one segment of a tributary in Winneshiek County, and an upcoming reintroduction to a segment of the main branch of Silver Creek near Cresco. This success was highlighted in a DNR press release and presented to US Congress as part of the Environmental Council of the States recent written testimony.

Project Management

Collaboration between DNR and Iowa Department of Agriculture and land Stewardship - Division of Soil Conservation (IDALS) will support this project. The efforts of DNR are coordinated through the Nonpoint Source (319) Program of the Watershed Improvement Section and efforts of IDALS are through watershed coordinator and Howard County Soil and Water Conservation District employee Neil Shaffer. Primary funding will be provided with U.S. EPA Section 319 (federal) funding for nonpoint source pollution prevention and demonstration. Other funding for the project includes local, state, and other federal funding.

Project Objectives

The proposed contract would continue work of the Silver Creek (Howard) Water Quality Project by supporting key staff and funding Best Management Practice (BMP) cost-share in conjunction with other IDALS, USDA-NRCS, and local funding partners for an additional three years (Phase 2).

Iowa DNR and IDALS will cooperate to obtain the following **objectives**:

- 1. Salary support for a project coordinator in the Silver Creek (Howard) watershed for the term (August 1, 2018 August 31, 2021).
- 2. Support other top-line costs including benefits, information/education, and travel/training of the watershed coordinator.
- 3. Support cost-share for important practices such as large-scale livestock waste storage and feedlot protection facilities, among others, in the watershed as described in the watershed management plan to address the pollutant of concern (bacteria).

Iowa Department of Natural Resources Environmental Protection Commission

#6

Decision Item

Contract with IDALS for Yellow River Headwaters Water Quality Project

Commission approval is requested for a contract with Iowa Department of Agriculture and Land Stewardship (IDALS), of Des Moines, IA.

Contract Terms:

Amount: Not to exceed \$89,387

Dates: August 1, 2018 to August 31, 2021.

DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract

by executing a signed amendment prior to the expiration of this Contract.

Funding Source(s): This contract will be funded through U.S. EPA Section 319 funds.

Statutory Authority: Funds are administered by DNR under statutory authority granted by Iowa Code 466B.32.

Contract Background: Yellow River Headwaters Watershed is 26,119 acres in Winneshiek and Allamakee counties and consists of two main stream branches, the North Fork Yellow River and Yellow River, and includes parts of the communities of Ossian and Castalia. These streams are impaired for E. coli indicator bacteria counts exceeding the water quality standard, which reduces its ability to support a primary contact recreation use category. An additional aquatic life impairment (biological impairment caused by low dissolved oxygen) has not had a Water Quality Improvement Plan (or Total Maximum Daily Load (TMDL)) developed for it to date. Monitored reductions in bacteria in the watershed have followed efforts by local landowners/operators to implement conservation practices primarily aimed at reducing livestock manure runoff and securing soils and nutrients with cover crops, streambank restorations, livestock exclusions (from the stream), and other strategies. Recent progress during Phases 1 and 2 has allowed for the reintroduction of native lowa brook trout (South Pine Creek strain) to a tributary of the Yellow River in 2017 and stockings will continue in the future.

The purpose of this contract is to support the watershed project: Yellow River Headwaters Water Quality Project (Phase 2). The proposed contract would continue the progress of water quality improvement in the Yellow River Headwaters by supporting key staff – a watershed project coordinator in the Winneshiek County Soil and Water Conservation District. Other sources of funding from IDALS, USDA-NRCS, and local funding will support Best Management Practices (BMPs) important to addressing the pollutant of concern (bacteria).

Selection Process Summary:

INTERGOVERNMENTAL: Intergovernmental contracting with IDALS is authorized under 11 IAC 118.4. Also contracts with state universities and other public agencies for laboratory work, scientific field measurement and environmental quality evaluation services necessary to implement lowa Code Chapter 455B is authorized under lowa Code section 455B.103(3).

Contract History:

In 2012 the Yellow River Watershed Management Plan (WMP) was completed with goals to reduce bacteria loading and work towards removal of the water body from the impaired waters list. Implementation grants were awarded to the project in 2013 and 2015 for Phase 1 (years 1-3) and Phase 2 (current). Reductions of 14,611 lbs of nitrogen, 10,303 lbs of phosphorus, and 7,921 tons of sediment per year have been reported over the project's 5 year life to date, with associated bacteria load reductions seen in water monitoring results. This watershed project shall be comanaged by IDALS and DNR; IDALS shall be the entity to submit invoices for reimbursement to DNR.

Steven Konrady, Nonpoint Source Project Officer, Water Quality Bureau Environmental Services Division EPC Meeting: July 17, 2018

Yellow River Headwaters Water Quality Project Summary and Scope of Work

Project Name: Yellow River Headwaters Water Quality Project - Phase 2

Amount: \$89,387

Time Frame: August 1, 2018 to August 31, 2021 (three years)

Description: New contract to continue support for existing project in the Yellow River

Headwaters in Winneshiek and Allamakee counties

<u>Project Goal:</u> To improve water quality and reduce *E. coli* indicator bacteria loading in the Yellow

River Headwaters watershed

Project Summary

This project will (1) support a project coordinator position for Yellow River Headwaters to implement grant funding and cost-share from multiple agencies, (2) improve water quality in Yellow River and linked tributaries, and (3) work towards watershed plan goals and the removal of the primary Yellow River Headwaters impairment (bacteria).

Project Background

The Yellow River Headwaters Watershed Management Plan was developed in 2011-2012 to address *E. coli* indicator bacteria loading in the watershed. The project is now in Phase 2 of implementation. Progress from Phase 1 and the beginning of Phase 2 included removal of 14,611 lbs of nitrogen, 10,303 lbs of phosphorus, and 7,921 tons of sediment per year as reported to EPA. In addition, water quality improvement has supported the reintroduction of a native lowa strain of brook trout to one segment of an unnamed tributary in Winneshiek County. This success was highlighted in a DNR press release and presented to US Congress as part of the Environmental Council of the States recent written testimony.

Project Management

Collaboration between DNR and Iowa Department of Agriculture and land Stewardship - Division of Soil Conservation (IDALS) will support this project. The efforts of DNR are coordinated through the Nonpoint Source (319) Program of the Watershed Improvement Section and efforts of IDALS are through watershed coordinator and Winneshiek County Soil and Water Conservation District employee Sam Franzen. Primary funding will be provided with U.S. EPA Section 319 (federal) funding for nonpoint source pollution prevention and demonstration. Other funding for the project includes local, state, and other federal funding.

Project Objectives

The proposed contract would continue work of the Yellow River Headwaters Water Quality Project by supporting key staff and implementing Best Management Practice (BMP) via cost-share through IDALS, USDA-NRCS, and local funding partners for an additional three years (Phase 2).

Iowa DNR and IDALS will cooperate to obtain the following **objectives**:

- 1. Salary support for a project coordinator in the Yellow River Headwaters watershed for the term (August 1, 2018 August 31, 2021).
- 2. Support other top-line costs including benefits, information/education, and travel/training of the watershed coordinator.
- 3. Implement practices using cost-share such as large-scale livestock waste storage and feedlot protection facilities, livestock exclusion, and streambank and riparian buffer restoration among others, in the watershed as described in the watershed management plan to address the primary pollutant of concern (bacteria).

Iowa Department of Natural Resources Environmental Protection Commission

7

Decision Item

Contract Amendment # 14ESDWQBPCALE-0006-A06 with The University of Iowa on behalf of the Office of the State Archaeologist

Commission approval is requested for a contract amendment with The University of Iowa on behalf of the Office of the State Archaeologist, of Iowa City, IA.

Amendment # 14ESDWQBPCALE-0006-A06 Terms:

Amendment Amount: \$340,000

Amendment Dates: 9/1/2018 to 6/30/2019

Funding Source(s): The administrative accounts of the Clean Water State Revolving Fund and the Drinking Water

State Revolving Fund.

Amendment Purpose: The purpose of this contract amendment is to increase the not-to-exceed amount of the total compensation to allow for continued use of this contract until the expected contract end date of June 30, 2019.

Original Contract Purpose: The work conducted through this contract is archeological and architectural history surveys in order to comply with federal requirements for the SRF water and wastewater infrastructure loan programs.

Original Selection Process Summary: The SRF team in ESD worked cooperatively with CRD staff to develop a joint RFP modeled after the master contracts for archeology/architectural history studies already in use by SRF. The RFP was posted on the TSB web site on March 25, 2013 and the RFP was issued to all on March 27, 2013. Proposals were due May 10, 2013. Bidders chose to submit proposals for CRD or SRF or both, and for archeology or architectural history or both. Proposals were scored separately by the CRD team and the SRF team and separate CRD and SRF contracts were offered to the successful bidders. SRF contracted with six contractors for either archeological work, architectural history work, or both. The Office of the State Archaeologist was contracted to provide both services.

Contract History:

Original Contract Terms: Amount \$ 90,000; Timeframe: July 1, 2013 to June 30, 2015; Purpose: The work conducted through this contract is archeological and architectural history surveys in order to comply with federal requirements for the SRF water and wastewater infrastructure loan programs.

Amendment Terms:

Original Contract Terms: Amount \$90,000; Timeframe: 7/1/13-6/30/15; Purpose: Archeological and Architectural History surveys

Amendment-1 Terms: Amount \$30,000; Timeframe: 6/30/2015-6/30/2017; Purpose: to extend contract for 2 year and to increase the not-to exceed amount of total compensation

Amendment-2 Terms: Amount \$0; Timeframe: 6/30/2015-6/30/2017; Purpose: to update the name and contact information for the Contractor's Principal Investigator

Amendment-3 Terms: Amount \$60,000; Timeframe: 6/30/2015-6/30/2017; Purpose: to increase the not-to exceed amount of total compensation

Amendment-4 Terms: Amount \$80,000; Timeframe: 6/30/2015-6/30/2017; Purpose: to increase the not-to exceed amount of total compensation

Amendment-5 Terms: Amount \$0; Timeframe: 6/30/2017-6/30/2019; Purpose: to extend the term of the contract

Jean Mayne, Environmental Specialist (SRF), Water Quality Bureau Environmental Services Division
July 17, 2018

LITIGATION REPORT

Prepared By: Carrie Schoenebaum

Date: June 25, 2018

I. Summary

The Iowa Department of Natural Resources (Department) seeks referral of Walz Energy LLC (Walz Energy) to the Attorney General's Office for judicial enforcement, due to serious violations of its National Pollutant Discharge Elimination System (NPDES) permit, multiple illegal discharges to a water of the State and a violation of its wastewater construction permit. Walz Energy began construction on a new animal feeding operation in the spring of 2017. In October of 2017, the first illegal discharge to a water of the state and an Outstanding Iowa Water (OIW) was documented by the Department. Subsequent to that discharge, on May 4, 2018, another discharge was documented by the Department. This discharge persisted intermittently, through May 11, 2018. These discharges occurred because exposed soil on the construction site was not properly stabilized in accordance with the terms of Walz Energy's NPDES permit. The stabilization methods that are required to be implemented, but were not, are include in Walz Energy's Storm Water Pollution Prevention Plan (SWPPP). The SWPPP is the portion of the NPDES permit that is written by the permittee and approved by the Department. Despite Walz Energy drafting the SWPPP itself, as of June 12, 2018, it was not fully implemented.

Walz Energy's NPDES permit requires that when soil disturbing activity will not occur for a period of 21 or more calendar days stabilization measures shall be implemented no later

¹ OIWs are waters which "constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected." 567 IAC 61.2(2) "c".

than 14 days after soil disturbing activities have ceased. Soil disturbing activities ceased for the winter no later than early December 2017. For that reason, the site should have been stabilized at the time the permit was issued January 12, 2018. Failure to stabilize the construction site results in significant erosion and the movement of sediment every time there is a rain event. Stabilization decreases the likelihood of a discharge of sediment to a water of the state. While Walz Energy did implement some stabilization methods, some of the methods used were not those identified in the SWPPP and if they were identified in the SWPPP they were not adequately implemented. This non-compliance has persisted despite multiple in person meetings with the Department, site inspections, NOV's and phone discussions. As of June 12, 2018, Walz Energy has been in non-compliance with its NPDES permit for approximately 152 days.

For these reasons this matter should be referred to Attorney General's Office for judicial enforcement.

II. Alleged Violator

Walz Energy LLC 5550 Wild Rose Lane, Suite 400 West Des Moines, IA

III. Description of Facility

Walz Energy has undertaken construction of an Animal Feeding Operation at Section 30, Township 95N, Range 4W, Clayton County, Iowa (22578 Hwy 18, Monona, Iowa). This site is known as Walz Energy Feedlot and Biogas Project (Walz Energy Feedlot or site). This construction site is approximately 48 acres and wastewater from this site flows east over land and via underground tile lines into the headwaters of Bloody Run Creek (Bloody Run). Bloody Run is an OIW and is a trout stream. The Department stocks Bloody Run with brook and rainbow trout and it also contains wild brown trout.

IV. Wastewater Violations

a. Facts

Background

- 1. On March 22, 2017, Walz Energy's Engineer, Nic Rowe, of ProAg Engineering, Inc. published a Notice of Intent (NOI) for a Storm Water NPDES General Permit No. 2 for the project titled Walz Energy LLC. The owner in this NOI was listed as Feeder Creek Energy LLC².
- 2. On April 3, 2017, the Department received a complaint regarding the operation of a confinement feeding site known as W 6 Farms. On the same date the Department received a NOI for the above referenced permit.

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² This entity is not registered with the Iowa Secretary of State.

- 3. On April 7, 2017, Brian Jergenson, a Senior Environmental Specialist with the Department, went to the site to investigate. Once on site, Mr. Jergenson met Jared, Mike and Dean Walz, the owners of W 6 Farms, and Jon Haman, the owner of Walz Energy. Mr. Jergenson did not document any violations regarding W 6 Farms; however, he observed construction activities at the adjacent site (Walz Energy Feedlot). Mr. Jergenson observed that storm water controls had not been implemented but he did not observe a discharge of storm water. Mr. Jergenson asked Mr. Haman if a NPDES permit had been obtained for the construction site. Mr. Haman indicated that he thought the site did have a permit. Then, Mr. Jergenson recommended that the facility implement storm water controls.
- 4. On April 17, 2017, the Department informed Walz Energy that because of the location of the site and its potential to discharge to Bloody Run creek which is an OIW, an individual storm water NPDES permit was required.
- 5. On May 30, 2017, Walz Energy submitted an application for an individual storm water NPDES permit with the Department.
- 6. On August 18, 2017, a draft individual storm water NPDES permit was placed on public notice. During the public notice period a hearing on the NPDES permit was requested and a hearing was held on November 29, 2017.
- 7. On September 29, 2017, the Department issued a wastewater construction permit to Walz Energy for construction of an anaerobic lagoon at the location of Walz Energy Feedlot. This permit required that no construction activities be commenced until Walz Energy obtained a storm water NPDES permit.

First Illegal Discharge

- 8. On October 11, 2017, Rick Martens Environmental Specialist and Clark Ott, a Senior Environmental Specialist with the Department, conducted a follow-up investigation. Once on site they observed and documented the following:
- a. Site A1 (adjacent to the point where Greenfield Avenue road crosses Bloody Run): Department staff looked downstream and towards Bloody Run. Looking downstream they observed turbid brown colored water, no odor or foam was observed. Water samples were taken and sent to the University of Iowa State Hygienic Laboratory for analysis (laboratory samples) and the results were as follows: Total Suspended Solids (TSS) 82 milligrams per liter (mg/L) and turbidity 1900 Nephelometric Turbidity units (NTU);
- b. Site A2 (25 feet upstream of the point at which the water flowing from Walz Energy Feedlot site entered Bloody Run): Department staff observed that the water discharging from Walz Energy Feedlot was turbid and brown in color, but at the location of A2 the water was clear with no observed turbidity. Laboratory samples were taken at this location and the results were as follows: TSS 4 mg/L and turbidity 3.3 NTUs;
- c. Site A3 (25 feet downstream from the point at which the water flowing from the Walz Energy Feedlot entered Bloody Run): At this location Department staff observed that the water was turbid and brown. Laboratory samples were taken and the results were as follows: TSS 420 mg/L and turbidity 930 NTUs.
- d. Department staff met with Mr. Haman at the Walz Energy Feedlot. Mr. Haman noted that several rain events had occurred recently and in the last 24 hours one and a half inches of rain had fallen. Together they proceeded to Site A4 (the storm water retention basin located on

the east property line). Department staff observed that the water in the basin was turbid and brown in color. Laboratory samples were taken and the results were as follow: TSS 820 mg/L and turbidity was 2900 NTUs.

- e. Department staff observed that much of the site had exposed soils, was wet, muddy and had pooled water. At the property fence line a bale and soil structure dike had been placed by Walz Energy to retain storm water. Nevertheless, a steady flow of turbid water from the basin was passing through the structure and entering a waterway located on the property of Nicholas and Phillip Meyer. Department staff followed the water flowing from the retention basin, crossed the property line and entered the property owned by the Meyers. They proceeded to Site A5 (approximately 20 feet below the property line) and took laboratory samples of the water, the results were as follows: TSS 1040 mg/L and turbidity 3300 NTUs.
- f. Last, Department staff told Mr. Haman to repair the retention basin and cease the discharge.
- 9. On October 24, 2017, a Notice of Violation (NOV) was issued for the above discussed violations. Included with this NOV was a copy of the relevant investigation report and a summary of the relevant law.
- 10. On November 7, 2017, Tom McCarthy a Senior Environmental Specialist with the Department and Mr. Martens returned to conduct a follow-up investigation. During this investigation, no discharge of sediment laden storm water was observed. Department staff met with Mr. Haman and the site manager for the project. Together they inspected the storm water controls at the location of the Meyer's and Walz Energy's property line. Mr. Haman discussed the earthen dike which had been installed to prevent runoff and stated that the field tiles had been

modified to divert clean water around the facility. The Department recommended that additional storm water controls be implemented to protect exposed soil and recommended that the site meet all the requirements of storm water General Permit No. 2 pending approval of the individual NPDES storm water permit.

- 11. On November 10, 2017, Mr. Haman contacted the Department and stated that additional controls, including a silt fence had been implemented.
- 12. On November 16, 2017, Mr. Haman notified the Department that construction on the wastewater anaerobic lagoon had begun on October 2, 2017.
- 13. On November 17, 2017, a NOV was sent to Walz Energy for construction of the wastewater anaerobic lagoon prior to obtaining a storm water NPDES permit in violation of the wastewater construction permit.
- 14. On January 12, 2018, NPDES Permit No. 22-00-1-05 was issued to Walz Energy for discharges related to the above discussed construction site.

Failure to Stabilize in Accordance with NPDES Permit

Once on site, the Department documented that a large retention basin had been added in accordance with the SWPPP.³ However, the representative of Walz Energy, Blake Dougherty, stated that soil disturbing activities had ceased in late November or early December yet, the site had not been stabilized. The Department noted the following violations: (1) the SWPPP required that wood fiber matting be used on berms that have a back slope greater than 3:1, yet there was

³ A SWPPP is part of a storm water NPDES permit it is written by the Permittee. It must be submitted to the Department prior to issuance of a storm water NPDES and the SWPPP is required to be fully implemented.

no stabilization on these slopes; (2) the SWPPP required silt fence on the back sides of temporary soil piles, yet there was no protection on the back side of the temporary soil pile that was adjacent to the large retention basin; (3) the SWPPP required stabilization using discanchored mulch on slopes that were less than 4:1, yet there were large areas with no stabilization; and (4) a portable toilet was observed on the site despite not being addressed in the SWPPP.

- 16. On February 21, 2018, a NOV was sent for the above discussed violations. A summary of the relevant law and a copy of the relevant inspection report were included with this NOV.
- 17. On March 29, 2018, in response to a complaint, Mr. Ott returned to the site to conduct a follow-up inspection. Mr. Ott did not observe any soil moving activity taking place. Mr. Ott observed that mulch had been placed over a large portion of the disturbed soil; however, several areas appeared to have lost cover due to wind or rain. There were also areas of disturbed soil that had no stabilization material. The berm for the lagoon was mulched with straw on the downstream side; however the straw had not been disk-anchored into place. Further, the SWPPP had not been updated to include this method of stabilization; it stated that wood fiber matting would be used on berms that had a back slope of greater than 3:1. The downslope side of the temporary soil pile on the east side of the property did not have any erosion controls including a silt fence as required in the SWPPP. Mr. Ott observed two portable toilets at the site that were not addressed in the SWPPP.

Next Mr. Ott met with Mr. Dougherty and asked if there had been any changes to the SWPPP since the January 25, 2018, inspection. Mr. Dougherty stated that no changes to the SWPPP had been made. Then Mr. Ott discussed the following deficiencies noted in the January

inspection that were still present: (1) the need for a silt fence on the downslope side of the temporary soil piles; (2) the wood fiber matting for the berm and disk-anchored mulch requirements in the SWPPP; (3) and the failure to address the location of the portable toilets in the SWPPP. Mr. Ott then reviewed the SWPPP inspection notes (the permittee is required to conduct site inspections). Despite inspections being done timely the inspections failed to document the above discussed deficiencies.

- 18. On April 3, 2018, Walz Energy made the following change to its SWPPP: "Immediately following grading of slopes of 3:1 or greater which drain to waters of the state slopes will be stabilized with shredded corn stalks (or other method approved by the engineer) over approved seed mixture and 4 inches of topsoil."
- 19. On April 4, 2018, a NOV was sent for the above discussed violations. A summary of the relevant law and a copy of the relevant inspection report were included with this NOV.

Second Illegal Discharge

- 20. On May 4, 2018, the Department received a complaint alleging water was being discharged from the Walz Energy site into Bloody Run Creek. Mr. McCarthy and Brett Meyers, an Environmental Specialist with the Department, went to the site to investigate. Once on site, they observed and documented sediment laden storm water flowing from the Walz Energy site via an underground tile line to an unnamed tributary to Bloody Run and eventually to Bloody Run. Laboratory samples were taken and the following observations were made at the below locations:
- a. Site B1 (where the Walz Energy tile line discharges into an unnamed tributary to Bloody Run): TSS 220 mg/L, water was turbid and yellow in color. The color of the water

flowing out of the tile line was consistent with the color water in the retention basins and exposed sediment on the Walz Energy Site;

b. Site B2 (10 feet downstream of site 1 which is upstream of the flow from the Walz Energy site): TSS 2mg;L, water was clear;



c. Site B3 (where Bloody Run flows under the Greenfield Avenue Bridge): TSS 13 mg/L, water was turbid and yellow in color;⁴



⁴ Because the observed stream conditions appeared to contain more suspended solids than this result indicates the sample was re-run by the lab on June 15, 2017. The result was 32 mg/L. TSS dissipates over time; the recommended holding time, which is 7 days, was exceeded. Nevertheless, this result shows that the initial result of 13 mg/L is likely an error.

- d. Site B4 (where Bloody Run flows under the Hickory Avenue Bridge): TSS 42 mg/L, water was turbid and yellow in color; and
- e. Site B5 (where Bloody Run flows under the Spook Cave Road Bridge): TSS 42 mg/L, water was turbid and yellow in color.



Next, Department staff went back to the Walz Energy site and met with Mike and Dean Walz who stated they were not the owners but did work there. Department staff then explained that the yellowish clay color silt and turbid water found on site was the same appearance as the water in the tile discharge and that it appeared the storm water on site was discharging via a tile line to Bloody Run. The Department urged Mike and Dean Walz to investigate and stop any contaminated tile flow off the property as soon as possible. While on site, Department staff observed that no soil moving activities were ongoing, yet there were large areas of disturbed soil on the site that still had not been properly stabilized with silt fences, cover material or planted vegetation (see the below picture).



21. On May 10, 2018, Joe Sanfilippo, Environmental Program Supervisor with the Department, Mr. McCarthy and Mr. Meyers met with Mr. Dougherty and Mr. Haman at the Walz Energy site. Mr. Haman explained that during the day on May 8, 2018, the Walz Energy tile discharge was clear but that night the area received .45 inches of rain and after that rain event the discharge from the Walz Energy tile line was cloudy. He provided Department staff with a site map which detailed approximately 1500 feet of tile line running through the site. Mr. Haman explained that the tiling was installed at a depth of up to 22 feet, and that at approximately 8 to 13 feet deep, rock covered the socked tile; but in some areas only 6 inches of soil covered the tile line. Mr. Haman further explained that the Walz Energy tile connects to the Meyer tile at a depth of 8 feet and flows east. Last, he explained that the portable toilet had been moved and that the area will be covered with top soil and hydro-seeded in two weeks.

As Department staff walked the site they noted that it appeared that the standing storm water in the eastern basin soaked through the ground and into the tile line. Mr. Haman stated that it appears the tile was overwhelmed by the large amount of standing water. Everyone agreed that several feet of soil on top of the tile lines should help prevent soil from entering the

tile. Department staff reiterated the immediate need for additional silt fencing and soil cover in order to reduce the large amount of run-off into the storm water retention basins and ultimately into the tile lines.

Next Department staff went to the location of site 1 (where the Walz Energy tile line discharges to an unnamed tributary to Bloody Run on the Meyer's property). There they met with Nick and Phillip Meyer. Department staff observed a large amount of silt in and around the Walz Energy tile, but at the time clear water was flowing out of it. The Meyers stated that on May 9, 2018, following rain the evening of May 8, 2018, cloudy water was flowing out of the Walz Energy tile line.

- 22. On May 11, 2018, Mr. Sanfilippo returned to the site for a follow-up investigation and he took laboratory samples and made the following observations:
- a. Site C1 (Meyer's property where Walz Energy tile line discharges to an unnamed tributary to Bloody Run): TSS 42mg/L, water flowing out of the tile line was yellow in color and slightly cloudy.
- b. Site C2 (approximately 20 feet upstream of the point at which the Walz Energy tile line discharges into the unnamed tributary to Bloody Run): TSS 3 mg/L, water was clear.
- c. Site C3 (where the tile line discharges into the unnamed tributary of Bloody Run):
 TSS 31mg/L, water was yellow in color and slightly cloudy.
- d. Site C4 (20 feet downstream of the discharge of the Walz Energy tile line): TSS 8 mg/L, the water was less cloudy than at site C1 and C3.

Next, Mr. Sanfilippo called Mr. Haman who gave him permission to enter the Walz Energy site. On site, Mr. Sanfilippo observed that additional soil had been placed over the tile line that runs along the north side of the site. That appeared to be the only soil moving activity to have taken place since late November or early December. Mr. Sanfilippo also observed the site had still not been properly stabilized.

- 23. On May 31, 2018, an NOV was sent for the above discussed violations. Along with this NOV was a copy of the investigation report and a summary of the deficiencies noted and the relevant law.
- 24. On June 6, 2018, the Department along with the Environmental Protection Agency (EPA) went to the site. The Department and EPA observed that the site had not been properly stabilized in accordance with its SWPPP but volunteer weeds had begun to cover the site.
- 25. On June 12, 2018, Mr. McCarthy returned to the site. He observed that the site had not been stabilized in accordance with its SWPPP, but volunteer grasses and weeds had become better established on the site since the prior visit.

b. Violations

Walz Energy has engaged in 2 distinct illegal discharges to waters of the State. The second illegal discharge persisted intermittently for multiple days. Further, Walz Energy has been in violation of it NPDES permit since it was issued in January 2018 because, as of June 12, 2018, it failed to properly stabilize the construction site. Walz Energy's actions violated 1 Iowa Code provision, 3 Iowa Administrative Code provisions and 8 permit conditions.

The specific provisions of law violated are below:

Iowa Code

1. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other

waste in accordance with rules adopted by the commission. The above stated facts demonstrate non-compliance with this provision.

Iowa Administrative Code Provisions

- 2. 567 IAC 61.3(2) "c" and "f" state that
- c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

. . .

f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

The above stated facts demonstrate non-compliance with these provisions.

- 3. Department subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts demonstrate non-compliance with this provision.
- 4. Department subrule 567 64.2(1) provides that "[n]o person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director[.]" Wastewater Construction Permit No. 2018-0109S required that a storm water NPDES permit be obtained prior to construction. The above stated facts demonstrate non-compliance with this provision of law.

NPDES Permit Conditions

5. NPDES Permit No. 22-00-1-05 Part II provides that "[t]he storm water pollution prevention plan submitted to the Department prior to issuance of this permit and as later

amended, must be implemented." The above stated facts demonstrate non-compliance with this provision.

- 6. NPDES Permit No. 22-00-1-05 Part II C. 2. A.(1) requires that a SWPPP must contain "[a] description of temporary and permanent stabilization practices [.] Also "[s]tabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where soil-disturbing activity will not occur for a period of 21 or more calendar days, later than the 14th day after no soil-disturbing activity has occurred on such areas." Walz Energy told the Department that soil disturbing activities ceased by early December 2017. Yet at the time of the June 12, 2018, inspection the site had not been stabilized in accordance with the SWPPP.
- 7. NPDES Permit No. 22-00-1-05 Part II C. 2. A.(2) requires that a description of structural practices which include silt fences be included in the SWPPP. Structural practices should be placed on upland soil. The failure to install a silt fence in accordance with the SWPPP violates this provision.
- 8. NPDES Permit No. 22-00-1-05 Part II C. 2. C. c(3) states that the plan "shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations." The failure to address the controls for waste disposal pertaining to the portable toilets in the SWPPP violates this provision.
- 9. NPDES Permit No. 22-00-1-05 Part II. C.4 requires that "[q]ualified personnel ... shall inspect disturbed areas of the construction site that have not been stabilized[.]" Qualified personnel is defined in Part V of the NPDES permit as "those individuals capable enough and knowledgeable enough to perform the required functions adequately well to ensure compliance with the relevant permit conditions and requirements of the Iowa Administrative Code." The failure to stabilize all the areas with disturbed soils in accordance with the SWPPP and the

failure to document this in the inspection records demonstrates that the personnel conducting the inspections was not qualified and therefore shows non-compliance with this provision.

- 10. NPDES Permit No. 22-00-1-05 Part IV 2 states "[t]he permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act." The above stated facts demonstrate numerous instances of permit non-compliance. Therefore, Walz Energy is in non-compliance with this provision.
- 11. NPDES Permit No. 22-00-1-05 Part IV 5 states "[t]he permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment." Discharging sediment into an OIW has the potential to adversely affect the environment. Therefore, the above stated facts demonstrate non-compliance with this provision.

Wastewater Construction Permit

12. Wastewater Construction Permit No. 2018-0109S required that a storm water NPDES permit be obtained prior to construction. The above stated facts demonstrate non-compliance with this provision of law.

V. DNR Witnesses

The following Department personnel will be potential witnesses for the wastewater violations: Tom McCarthy, Senior Environmental Specialist, Clark Ott, Senior Environmental Specialist, Rick Martens, Retired Environmental Specialist, Brent Meyers, Environmental Specialist, Brian Jergenson, Senior Environmental Specialist, and Joe Sanfilippo Environmental Program Supervisor. Mr. McCarthy and Mr. Sanfilippo will be available during the July EPC meeting to answer additional questions.

IOWA DEPARTMENT OF



Administrative Hearings Division

Wallace State Office Building, Third Floor 502 East 9th Street Des Moines, IA 50319-0083 (515) 281-6468

KIM REYNOLDS **GOVERNOR** RODNEY A. ROBERTS, DIRECTOR

ADAM GREGG LT. GOVERNOR

MEMORANDUM

TO:

David Scott

FROM: Brittany Spooner

DATE: March 30, 2018

RE:

Return of File - Case No. 18DNR0008 Clark Farms Ltd.

The Administrative Hearings Division has closed the above-referenced case(s).

Because your agency is the custodian of any records relating to the case(s), we are returning our paper file(s) containing any documents or other items in our possession. The Administrative Hearings Division will not be retaining copies of these items.

Please do not hesitate to contact me at (515) 281-6350 or brittany.spooner@dia.iowa.gov if you have any questions.

Iowa Department of Inspections and Appeals Division of Administrative Hearings Wallace State Office Building Des Moines, Iowa 50319

Clark Farms, Ltd. P.O. Box 283 New Hampton, IA 50659,

Case No. 18DNR0008

Appellant,

v.

Iowa Department of Natural Resources,

ORDER GRANTING MOTION TO DIMISS

Respondent.

Statement of the case

Clark Farms, Ltd., Appellant, appeals from an Order of the Department of Natural Resources, Respondent. The Department filed a Motion to Dismiss. Clark Farms filed a Resistance, and the Department filed a Reply. Hearing was held on the Department's motion on March 27, 2018. Attorney David Scott represented the Department. Colleen Conroy appeared and testified on the Department's behalf. Attorney Noah Poppelreiter with the Department also attended the hearing. Clark Farms was represented by attorney Eldon McAfee. Kevin Clark appeared and testified for Clark Farms.

The Department submitted Exhibits 1 through 5 with its Motion. These exhibits were reviewed and considered. Additional information was sought from the Department and submitted during the hearing, without objection from Clark Farms. These documents have been designated:

Exhibit 6	03/27/18 USPS Response to Request for Information
Exhibit 7	USPS Tracking for Order sent to New Hampton, IA
Exhibit 8	USPS Tracking for Order sent to Fredericksburg, IA
Exhibit 9	USPS Tracking for Order sent to Ben Wheeler, TX
Exhibit 10	Copy of Fredericksburg Order returned undeliverable/unable to forward
Exhibit 11	Copy of Ben Wheeler Order returned unclaimed/unable to forward

Findings of fact

The Department issued Administrative Order 2017-SW-17/2017-WW-14 against Clark Farms, Ltd. ("the Order"). The Order was dated October 4, 2017. It found Clark Farms had violated Iowa's solid waste disposal and water quality laws. The Order stated in a section titled "Appeal Rights":

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order.

(Order.) The Department sent three copies of the Order to Kevin Clark, one to each of the following addresses:

Clark Farms, Ltd. P.O. Box 283 New Hampton, IA 50659

2799 220th St. Fredericksburg, IA 50630

P.O. Box 130 Ben Wheeler, TX 75754

(Order; Conroy testimony.) Mr. Clark is the registered agent for Clark Farms, as well as its President, Secretary, and Treasurer. (Exhs. 1-2.) The address listed on the Iowa Secretary of State's website for Mr. Clark, as the registered agent of Clark Farms, was the Fredericksburg address. The company's home office address listed with the Secretary of State was the New Hampton address. (Exh. 2.) The Department had started to use the Ben Wheeler address for Clark Farms beginning in 2016 because it had been having trouble reaching the company at the other addresses. The Department had no other addresses on file for Clark Farms. (Scott professional statement.)

The Order was sent by certified mail to each address, meaning it needed to be signed for. (Exhs. 3, 7-9.) The United States Postal Service ("USPS") has 20 to 30 days to deliver certified mail, and it does sometimes take that long. (Conroy testimony.)

The Order sent to New Hampton was sent on October 6, 2017. On October 10, 2017, it was forwarded. It was forwarded again on October 18, 2017. On October 26, 2017, it became available for pickup in Ben Wheeler, Texas. (Exh. 7.) Mr. Clark had had his mail forwarded to Ben Wheeler from New Hampton through the USPS. (Clark testimony.) Mr. Clark received the green card notifying him he had a certified letter available for

pickup, but did not remember when he got the card. (Clark testimony.) He picked up the letter and signed for it on November 10, 2017. (Exhs. 3, 6-7.)

The Order sent to Fredericksburg was also sent on October 6, 2017. The USPS Tracking record shows a notation on October 10, 2017, of "Forward Expired." The letter was returned to the Department on October 13, 2017. (Exh. 8.) It had a sticker on it from the USPS stating "return to sender; not deliverable as addressed; unable to forward." (Exh. 10.) Mr. Clark had also had his mail forwarded from Fredericksburg to Ben Wheeler, but was unaware the Fredericksburg forwarding had expired. (Clark testimony.)

The Order sent to Ben Wheeler was also sent on October 6, 2017. On October 10, 2017, it arrived in Ben Wheeler and became available for pickup. By October 25, 2017, it still had not been picked up, so it was returned to the Department, where it arrived on November 13, 2017. (Exh. 9.) It had been marked "return to sender; unclaimed; unable to forward." (Exh. 11.) Mr. Clark did not recall receiving a green card or any other indication that he had a certified letter available for pickup with respect to the Order sent directly to Ben Wheeler. (Clark testimony.)

On December 4, 2017, Clark Farms filed a Notice of Appeal of Administrative Order. (Notice.)

Conclusions of law

The Department has moved to dismiss Clark Farms's appeal as untimely. The administrative rules of the Department of Natural Resources state that "[a]ny person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question."

The Order here was issued under Iowa's water-quality and solid-waste-disposal laws. Appeals of orders issued by the Department under Iowa's water-quality laws are governed by Iowa Code section 455B.175, which states:

The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter

¹ 561 IAC 7.4(1).

17A, by filing with the director within thirty days a notice of appeal to the commission.²

Appeals of orders issued by the Department under Iowa's solid-waste-disposal laws are governed by Iowa Code section 455B.308, which states:

Any person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director within thirty days of the issuance of the order. The director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal.³

Both of these statutes specify a shorter timeline for filing a notice of appeal than the Department's rule. The solid-waste statute—455B.308—is absolutely clear: the notice of appeal must be filed "within thirty days of the issuance of the order." The water-quality statute—455B.175—is not quite as clear. It sets the deadline at 30 days, but does not state in that particular clause that the 30 days begins to run at the time of issuance. However, when reading the statute as a whole, the only event it refers to from which the appeal deadline could possibly run is issuance: it states the director "may issue an order" and the person "to whom such order is issued" may appeal "by filing with the director within thirty days a notice of appeal." The logical conclusion is that the appeal must be filed within 30 days of the issuance of the order.

Any argument that the water-quality statute is vague or ambiguous is unavailing because there is no ambiguity—i.e., susceptibility to multiple interpretations—within the statute itself. One must look *outside* the statute—for example, to the Department's rule—to find any authority that the deadline should run from receipt of the order or any other event besides issuance of the order. Thus, I find both statutes set the deadline for filing an appeal at thirty days from issuance of the order. Accordingly, they control, rather than the Department's rule.

The Department also could not lengthen the time to file an appeal in contravention of the statutes. On the Order itself, the Department stated Clark Farms had 30 days to appeal after receiving the Order. This was wrong, and also unfortunate, as it likely gave Clark Farms the impression it was filing a timely appeal when it filed its notice of appeal on December 4, 2017. Regardless, the Department's statement on the Order cannot change the law. The statutes require filing an appeal within 30 days of issuance of the order.⁴

² Iowa Code § 455B.175(1)(a).

³ Iowa Code § 455B.308.

⁴ See, e.g., Dunlap Care Ctr. v. Iowa Dept. of Social Servs., 353 N.W.2d 389, 397 (Iowa 1984) (holding that agency action which contravenes statutory provisions is invalid).

The time requirements set forth in the statutes are jurisdictional; the appeal/contested case proceeding is only triggered if the appeal is filed within thirty days of the issuance of the order.⁵ Thus, if Clark Farms filed its notice of appeal of the order more than thirty days after it was issued, the appeal must be dismissed.

The only remaining question, then, is what constitutes "issuance" of the order. The statute does not state how orders are to be issued, and the Department has not promulgated any rules governing issuance of such orders either.

The Iowa Supreme Court has weighed in on what "issuance" means in the context of an administrative order. In Purethane v. Iowa State Bd. of Tax Review, an entity appealing a notice of tax due petitioned for judicial review of a final agency decision.6 The applicable statute stated such petitions must be filed "within thirty days after the issuance of the agency's final decision."7 The board's decision had been dated November 28, 1990, but the decision was not mailed to Purethane until December 11, 1990.8 Purethane filed its petition for judicial review on January 10, 1991 – within 30 days of December 11, but not November 28.9 The court determined the board's final decision had been "issued" the day it had been sent by certified mail, not the day it was dated; thus the petition was timely.10 The court looked to the dictionary definition of "issue," which was "to cause to appear or become available by officially putting forth or distributing or granting or proclaiming or promulgating" or "to send forth; to emit; to promulgate; as, an officer issues order, process issues from a court."11 The court explained that when there are no rules or statutes about how orders are to be issued and orders are not published to the general public, then issuance occurs on the date when the order is sent by certified mail, and that "[b]eginning the appeal period on the date of certified mailing does not violate due process."12

⁵ See Iowa Civil Rights Comm'n v. Massey-Ferguson, Inc., 207 N.W.2d 5, 9-10 (Iowa 1973) ("The time in which an administrative proceeding may be brought is often regulated by the statute providing for such proceeding, and a failure to comply with such statute may bar the administrative proceeding and any judicial proceeding which depends thereon. . . . An administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite to the action taken.") (internal citations omitted).

⁶ Purethane v. Iowa State Bd. of Tax Review, 498 N.W.2d 706, 707-08 (Iowa 1993).

⁷ *Id*. at 708.

⁸ Id.

⁹ Id.

¹⁰ Id. at 710.

¹¹ Id. at 710 (quoting Webster's Third New International Dictionary 1201 (1969) and Black's Law Dictionary 745 (5th ed. 1979)).

¹² Id. at 710 (citing Seamisch v. Ley Motor Co., 387 N.W.2d 357, 359 (Iowa 1986)); see also Doe v. Iowa Bd. of Med. Examiners, 2009 WL 249972, *4 (Iowa Ct. App. 2009) (unpublished opinion) (citing Purethane and rejecting the appellant's contention that the appeal period runs from receipt rather than "issuance" which occurred by certified mailing).

In terms of where certified mail would need to have been sent in this case, Iowa has statutory requirements for corporations to maintain addresses on file with the Secretary of State. Any corporation must continuously maintain: (1) a registered office, and (2) a registered agent.¹³ A corporation must submit and update addresses for both the office and the agent.¹⁴

On October 6, 2017, the Department sent the Order by certified mail to the address on file with the Secretary of State for Clark Farms's registered agent, to the address on file with the Secretary of State for Clark Farms's home office, and to the address in Texas which the Department had recently taken to using for Clark Farms, having had difficulty with the other two addresses. These were the best addresses the Department had for Clark Farms, and in fact the first two are addresses Clark Farms was legally obligated to provide to and maintain with the State. These certified mailings thus constituted "issuance" of the Order and set the clock running on the appeal deadline. As a result, Clark Farms had until Friday November 3, 2017, to file an appeal (November 5, 2017, would have been 30 days, but it was a Sunday). Because Clark Farms did not file its notice of appeal until December 4, 2017, the appeal was untimely and cannot commence a contested case proceeding. The appeal must be dismissed.

The running of the appeal deadline from issuance via certified mailing may seem to work a harsh result, as it does in this case, especially given the Department's testimony that certified mail can and sometimes does take 20 to 30 days to be delivered. However, the statutory appeal deadlines of 30 days from issuance of the order, in combination with the Iowa Supreme Court's holding that issuance is effected by certified mail and that such rule does not violate due process, require dismissal.

It is also worth noting that this holding will not typically work harshly against corporations which keep their registered-agent and home-office addresses updated with the Secretary of State's office. And here, even the forwarded letter which Mr. Clark ultimately signed for and picked up had been available for pickup as of October 26, 2017—more than a week before the appeal deadline ran.

The Department argued that the statute governing service on corporations—Iowa Code section 490.504—applies to determine when Clark Farms received the Order. Because the appeal deadline here runs from issuance, not receipt or notice, I need not address that argument. However, I will do so for the sake of thoroughness.

Iowa Code section 490.504 states:

¹³ Iowa Code § 490.501.

¹⁴ Iowa Code § 490.502.

¹⁵ See 561 IAC 7.3 (Saturdays and Sundays are not included if they are the last day of the appeal period).

- 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.
- 2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:
 - a. The date the corporation receives the mail.
 - b. The date shown on the return receipt, if signed on behalf of the corporation.
 - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- 3. A corporation may be served pursuant to this section, as provided in other provisions of this chapter, or as provided in sections 617.3 through 617.6, unless the manner of service is otherwise specifically provided for by statute.

The Department argues that, because it sent the Order to the secretary of Clark Farms at the corporation's principal office, Clark Farms received notice of the Order five days after the mailing under subsection (2)(c). This argument contains multiple flaws.

First, 490.504 does not appear to apply to providing notice of administrative action at all. It refers specifically to "service" – service of process, service of notice, or service of demand. Rather than notice by an administrative agency, the statute seems to apply primarily to service of a notice of a civil action as described in Iowa Court Rule 1.302.

Regardless, even if the statute did apply to notice of administrative action, the last-ditch alternative service method set forth in subsection (2) can only be used if the corporation either has no registered agent or the agent could not with reasonable diligence be served. Here, Clark Farms has a registered agent — Mr. Clark. (Exh. 2.) And the Department did not ever try to "serve" Mr. Clark. It had only tried to certified-mail the Order to the three addresses. Moreover, one of these letters — part of the Department's first attempt to reach Clark Farms — actually did reach Mr. Clark, the registered agent. Thus, the Department cannot fall back on the alternative-service method set forth in subsection (2). The statute is clearly intended to provide a backup method when the

effort to actually perfect service otherwise fails. When other attempts to provide service have not been made, or do not fail, it is not available.

Furthermore, section 490.504 does not state that *notice* is received five days after mailing if the alternative service method in subsection (2) is used. It only states that service is perfected at that time. These are not the same thing, it is not clear that service can stand in for receipt of notice to trigger the running of the appeal deadline under the Department's rule.

For these reasons, even if issuance did not control here *and* it was found that section 490.504 applied to providing corporations notice of agency action, I would still find that Clark Farms did not receive notice of the Order five days after it was mailed. Clark Farms received notice of the Order on November 10, 2018, when Mr. Clark—the corporation's registered agent, president, secretary, and treasurer—picked it up. But, as discussed earlier, issuance ultimately controls here, not receipt of notice.

The Department did not argue, and in fact took no position on whether, sections 455B.175 and 455B.308 specify a shorter time period to appeal than the within-30-days-of-receipt rule in 561 IAC 7.4(1). The Department instead relied on its assertion that the letter was "received" five days after being sent, pursuant to section 490.504(2). It claimed, therefore, that the appeal was not filed within 30 days of issuance *or* receipt. However, the statutory issue is determinative. Sections 455B.175(1)(a) and 455B.308 both state that the notice of appeal must be filed within 30 days of *issuance*. I have addressed the issue *sua sponte* because it is jurisdictional.¹⁶

Order

The Department's Motion to Dismiss is **GRANTED** and the appeal is **DISMISSED**.

Dated March 29, 2018.

Amanda M. Atherton

Administrative Law Judge

amanda M. atherton

cc: Casey Clark, Clark Farms, Ltd. (By Certified Mail)
Eldon McAfee, Attorney for Appellant (By Certified Mail and Email)
David Scott, Attorney for DNR (By Email)

16 See State ex re. Vega v. Medina, 549 N.W.2d 507, 508 (Iowa 1996) (holding that subject matter jurisdiction may not be waived and an appellate court may raise the issue sua sponte); see also Massey-Ferguson, 207 N.W.2d at 10 (an agency cannot waive a jurisdictional time requirement).

Appeal Rights

561 IAC 7.17(5):

Appeal and review. Any adversely affected party may appeal a proposed decision. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. The agency having jurisdiction shall review the proposed decision.

a. Time allowed.

- (1) Appeal by party. An appeal by a party shall be made to the agency having jurisdiction of the proceeding and shall be taken within 30 days after receipt of the proposed decision or order.
- (2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of the proposed decision or at the next regular meeting of the relevant commission, whichever date last occurs. The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.
- b. Notice. Appeal is taken and perfected by filing with the director a timely notice of appeal signed by the appellant or the appellant's attorney. It shall specify the parties taking the appeal and the final decision or order or part thereof appealed. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed. It shall be the appellant's responsibility to immediately serve the notice of appeal upon all parties of record other than the appellant.

Ship Request Form

Ship Request #: 0

050078



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Name:

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Account #:

Phone:

5152815143

Email:

203*No@noemail.com

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Floor:

Department:

Recipient

Attn To:

Casey Clark

Company:

Clark Farms Ltd

Address:

PO Box 283

City:

New Hampton IA

State: Zip:

50659

Country:

US

Shipping Instructions

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Department:

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Attn To:

Eldon McAfee

Company:

Brick Gentry PC

Address:

6701 Westown Parkway Suite 100

City:

- -

West Des Moines

State:

IΑ

Zip: 50266

Country:

US

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Iowa Department of Inspections and Appeals Division of Administrative Hearings Wallace State Office Building Des Moines, Iowa 50319

Clark Farms, Ltd. P.O. Box 283 New Hampton, IA 50659,

Case No. 18DNR0008

Appellant,

v.

Iowa Department of Natural Resources,

Respondent.

AMENDED ORDER SETTING HEARING ON MOTION TO DISMISS

Statement of the case

Clark Farms, Ltd., Appellant, appeals from an Order of the Department of Natural Resources, Respondent. Hearing is set for April 17, 2018, at 9:00 a.m. Respondent has filed a Motion to Dismiss. Appellant filed a Resistance, and Respondent filed a Reply.

Hearing shall be held on Respondent's Motion on Tuesday, March 27, 2018, at 9:30 a.m. via telephone conference call. The parties shall be prepared to make legal arguments and to present evidence on the delivery and receipt of Respondent's Order.

Order

Hearing on Respondent's Motion to Dismiss shall take place on <u>March 27, 2018, at 9:30 a.m.</u> All parties wishing to participate in the hearing shall appear by following the instructions on the following page.

Dated March 22, 2018.

Amanda M. Atherton

Administrative Law Judge

cc: Casey Clark, Clark Farms, Ltd. (By Certified Mail)

amanda M. atherton

> Eldon McAfee, Attorney for Appellant (By Certified Mail and Email) David Scott, Attorney for DNR (By Email)

INSTRUCTIONS TO PARTICIPATE IN THE TELEPHONE HEARING

We use a telephone conference calling system for hearings. You can participate from any location where you have a telephone.

At the date and time scheduled for hearing, you must do the following:

- Call the following toll-free telephone number: (866) 489-4217
- The system will ask if you are the organizer. You are not the organizer Do not press 2.
- You will be put on hold until the judge enters the conference call; stay on the line until the judge enters the call.
- It is your responsibility to call in for the hearing. The judge will not call you. If you do not call using the above instructions, you will not be able to participate in the hearing. If you have technical difficulties connecting at the time of hearing, please call (515) 281-6468.
- The judge will wait five minutes after the time the hearing is scheduled to start to allow all parties to call in. If you have not called in by five minutes after the hearing is scheduled to start, the judge may enter a default judgment against you.

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Ship Request #: 049687



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Recipient

Attn To:

CASEY CLARK

CLARK FARMS, LTD.

Company:

Address:

P.O. BOX 283

City:

NEW HAMPTON

State:

IΑ

Zip:

50659

Country: UŞ

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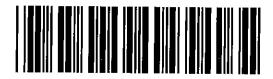
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Ship Request Form

Ship Request #: 049686



Sender

Name:

Inspections & Appeals

Account #:

Phone:

5152815143

Email:

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Building

Floor:

Department:

Recipient

Attn To:

ELDON MCAFEE

Сотралу:

BRICK GENTRY, P.C.

Address:

6701 WESTOWN PKWY, SUITE 100

City:

WEST DES MOINES

State: Zip: IA

50266

Country:

US

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Iowa Department of Inspections and Appeals Division of Administrative Hearings Wallace State Office Building Des Moines, Iowa 50319

Clark Farms, Ltd. P.O. Box 283 New Hampton, IA 50659,

Case No. 18DNR0008

Appellant,

 \mathbf{v} .

Iowa Department of Natural Resources,

ORDER SETTING HEARING ON MOTION TO CONTINUE

Respondent.

Statement of the case

Clark Farms, Ltd., Appellant, appeals from an Order of the Department of Natural Resources, Respondent. Hearing is set for April 17, 2018, at 9:00 a.m. Respondent has filed a Motion to Dismiss. Appellant filed a Resistance, and Respondent filed a Reply.

Hearing shall be held on Respondent's Motion on Tuesday, March 27, 2018, at 9:30 a.m. via telephone conference call. The parties shall be prepared to make legal arguments and to present evidence on the delivery and receipt of Respondent's Order.

Order

Hearing on Respondent's Motion to Dismiss shall take place on <u>March 27, 2018</u>, at 9:30 <u>a.m.</u> All parties wishing to participate in the hearing shall appear by following the instructions on the following page.

Dated March 21, 2018.

Amanda M. Atherton

Administrative Law Judge

cc: Casey Clark, Clark Farms, Ltd. (By Certified Mail)

amanda M. atherton

> Eldon McAfee, Attorney for Appellant (By Certified Mail and Email) David Scott, Attorney for DNR (By Email)

INSTRUCTIONS TO PARTICIPATE IN THE TELEPHONE HEARING

We use a telephone conference calling system for hearings. You can participate from any location where you have a telephone.

At the date and time scheduled for hearing, you must do the following:

- Call the following toll-free telephone number: (866) 489-4217
- The system will ask if you are the organizer. You are not the organizer Do not press 2.
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- The judge will wait five minutes after the time the hearing is scheduled to start to allow all parties to call in. If you have not called in by five minutes after the hearing is scheduled to start, the judge may enter a default judgment against you.

Ship Request Form

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Building

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Recipient

Attn To:

ELDON MCAFÉE

Company:

BRICK GENTRY, P.C.

Address:

6701 WESTOWN PKWY, SUITE 100

City:

Zip:

WEST DES MOINES

State:

50266

Country:

US

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049613



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Phone:

5152815**1**43

Email:

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Mail Stop:

Building Floor:

Department:

Recipient

Attn To:

CASEYCLARK

Company:

CLARK FARMS, LTD.

Address:

P.O. BOX 283

City:

NEW HAMPTON

State: Zip:

50659

Country:

US

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Origin Unit Value Total Value

BEFORE THE IOWA DEPARTMENT OF INSPECTIONS AND APPEALS DIVISION OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

Clark Farms, Ltd.

ANSWER OF THE IOWA DEPARTMENT OF NATURAL

RESOURCES

DIA NO. 18DNR0008

Comes now the Iowa Department of Natural Resources (DNR) through its attorney David Scott, and for its Answer states;

I. ANSWER

- 1. DNR admits that Administrative Orders No. 2017-SW-17 and 2017-WW-14 (collectively, the Order) were issued to the Petitioner. DNR denies that the Order was received by Clark Farms, Ltd. on November 20, 2017.
- 2. DNR admits that it has statutory and regulatory authority over the matters presented in the Order. DNR denies any assertions by Petitioner whether stated or implied that are inconsistent with the Order or Iowa law.
- 3. The DNR admits that the Order includes allegations of permit violations and numerous violations of Iowa law. DNR denies any assertions by Petitioner whether stated or implied that are inconsistent the Order or Iowa law.
 - 4. DNR denies all allegations in Paragraph 4.
- 5. DNR denies that the penalty assessment in the Order was arbitrary, capricious, unreasonable, excessive, or in any way inconsistent with the DNR's authority under Iowa law.
- 6. DNR denies the statements in Paragraph 6 of the Petition. DNR notes that Paragraph 6 challenges only the findings in the Order, not the requirements of the Order.

II. DEFENSES

1. The Division lacks jurisdiction to hear this matter because Petitioner filed its appeal after the deadline for such an appeal had run.

The facts and law applicable to this defense are provided in the DNR's Motion to Dismiss filed on February 28, 2018, and additional facts and law applicable to arguments contained in Petitioner's Resistance will be included in DNR's Reply to Petitioner's Resistance (due on March 20, 2018). A hearing on the Motion to Dismiss has been scheduled for March 27, 2018.

WHEREFORE the DNR respectfully requests that, if the appeal is not dismissed as requested by the DNR, all requirements of the Order issued to Clark Farms Ltd. be upheld and that the Administrative Law Judge issue such further orders as are deemed appropriate.

Date: March 19, 2018

IOWA/DEPARMENT OF NATURAL RESOURCES

By:

David Scott, Attorney

Iowa Department of Natural Resources

1023 W. Madison Street

Washington, IA 52353

515-725-8239 | david.scott@dnr.iowa.gov

Copy via US Mail and email to:

Eldon McAfee
Brick Gentry, P.C.
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Eldon.mcafee@brickgentrylaw.com

Iowa Department of Inspections and Appeals Division of Administrative Hearings

IN THE MATTER OF:

DNR REPLY

Clark Farms Ltd.

DIA NO. 18DNR0008

THE IOWA DEPARTMENT OF NATURAL RESOURCES' REPLY TO PETITIONER'S RESISTANCE

Pursuant to the Division's March 15, 2018, Order, the Iowa Department of Natural Resources (DNR) files the following Reply to the Petitioner's Resistance to the DNR's Motion to Dismiss.

I. Petitioner's reference to 561 IAC 7.4(1) is consistent with DNR's argument.

Petitioner argues that the 561 IAC 7.4(1) requires that a written notice of appeal be filed within 30 days of the corporation's receipt of notice of the DNR's action. The DNR does not challenge the rule's general applicability. In fact, one of the primary questions for the Division to answer in this matter is when DNR Orders 2017-SW-17 and 2017-WW-14 (collectively, the Order) were received by the corporation. While the DNR's Motion to Dismiss was focused on the statutory language that established and authorized this 30 day appeal deadline in rule, the DNR's reference to the statutory sections was intended to clarify that, based on Supreme Court and Division precedent, this deadline cannot be extended by the Division.

Additionally, the DNR clarifies that the Order was issued to Clark Farms, Ltd. As such, the thirty-day deadline commenced when the *corporation* received the Order, not when Mr.

¹ Although, to the extent the rule promulgated by the Environmental Protection Commission is inconsistent with its statutory authorization, the DNR would argue that the statute controls. This would likely go to whether there is a difference between "issuance" of an order and 'receipt" of an order.

Clark received the Order. As explained in DNR's Motion to Dismiss, and further below, the corporation is deemed under Iowa law to have received the Order on October 11, 2017.

II. DNR complied with the notice requirements established by the Legislature.

DNR outlines the law applicable to providing notice to a corporation in the state of Iowa in its Motion to Dismiss. Of particular interest is the language in IC 490.501(2) which states that "each corporation [in the state of Iowa] <u>must continuously</u> maintain in the state ... a registered agent" (emphasis added). Additionally, IC 490.504(2) explains how to provide notice to a corporation in the state of Iowa.

On its face, IC 490,504(2) allows the DNR to provide notice by certified mail in two situations; namely, if no registered agent exists or if the agent cannot with "reasonable diligence" be provided such notice.² Petitioner spends a great deal of time arguing that the DNR did not comply with the "reasonable diligence" requirement, but this argument misses a couple relevant points.

First, as provided in the DNR's Motion to Dismiss Exhibit 3, the certified letter sent to the corporation's registered agent at the registered agent's official address (2799 220th St., Fredericksburg, Iowa, 50630) was returned as undeliverable because the forwarding request the corporation had submitted to the United States Postal Service (USPS) had expired (*see* notation "Forward Expired"). As anyone who has moved will attest, the USPS will forward mail for a fixed period, after which time the mail forwarding ends.

As such, the registered agent for the corporation was not available to receive any documentation from any party, let alone notice of the Order's issuance. For the purposes of IC

² DNR notes that IC 490.504(1) distinguishes "service of process" as required in a civil proceeding from the "notice" required in an administrative proceeding. This point will be addressed in section III, below.

490.504(2), once there was no way for the registered agent to receive documents at the registered agent's address, the corporation had no registered agent in the state of Iowa. Thus, sending the corporation the Order by certified mail at its principal office was appropriate. A corporation should not benefit by violating Iowa law requiring that a corporation's registered agent be continuously maintained.

Second, the DNR used "reasonable diligence" to provide the corporation's registered agent with notice of the Order being issued. Petitioner argues that the DNR failed to use "reasonable diligence" to find the corporation's registered agent, and that it should have waited until it was unable to personally serve Mr. Clark before sending notice to the corporation's principle office. Petitioner cites no case law to support the argument, nor is the argument supported by the plain language of the statute.

"Reasonable diligence" is defined generally as "a fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue." Black's Law Dictionary, 7th ed., West Group, 1999. Under the circumstances, given the DNR's long history with the company, the DNR determined that it was reasonable to send the Order to all addresses it had on file for Clark Farms Ltd., including the personal address of Mr. Clark in Ben Wheeler, Texas, in order to ensure the company was aware that the Order had been issued.

Providing notice to the corporation's principal office was authorized by IC 490.504 because the corporation had no registered agent. In the alternative, DNR's decision to send notification to both the registered agent and the principal office was reasonable and diligent to ensure notice was received. Corporations cannot avoid compliance with DNR regulations simply by ignoring requirements to maintain a registered agent.

Ultimately, DNR provided notice of the Order's issuance to Clark Farms, Ltd. as required by Iowa law. The notice was deemed received pursuant to IC 490.504(2)"c".

III. Petitioner's reliance on the Iowa Rules of Civil Procedure's personal service requirement is misguided.

The legislature authorized agencies to hear contested cases administratively, and provided state agencies with the authority to develop rules of procedure for contested cases before the agency. IC 17A.12, 17A.22. This matter is an administrative proceeding governed by the Rules of Practice in Contested Cases located at 561 IAC 7. The Iowa Rules of Civil Procedure (IRCP) apply to actions in civil court. IRCP 1.101.

To the extent an IRCP rule is referenced in the Contested Case rules, it would be applicable, and if not referenced, an IRCP rule may be instructive if no other law or rules applied. However, in this matter, there is a separate statute controlling notice to a business in Iowa in administrative cases which is controlling. The DNR complied with the provisions of that section.

Further, case law cited by Petitioner is inapposite to the questions raised in this matter. The Iowa Supreme Court's holding in *Appeal of Elliot*, 319 N.W.2d 244, 247 (Iowa 1982) generally upholds the common law requirement that when a statute requires that a "notice of appeal" be "served," it requires personal service. First, *Elliot* involves a court's jurisdiction. It is an appeal of an administrative action to a district court, not an appeal of an administrative order to an agency for a contested case hearing. The procedural posture holds little relevance, if any, to this matter.

Additionally, in *Elliot*, the applicable statutory section required that notice of appeal be "served" on the "secretary of the civil service commission." *Id.* at 244. In fact, neither of the statutory sections that are applicable in this matter (455B.175 and 455B.308) require that an

Order to be "served." If the Petitioner's logic were applied to this matter, the Petitioner would have been required to "serve" its appeal on the DNR rather than to send its Notice of Appeal by mail. Presumably that is not actually the Petitioners position.

Finally, while the DNR recognizes its due process obligations in such matters,³ sending the Order by certified mail to the corporation's registered agent and principle office satisfies those obligations in this administrative proceeding. In fact, one need only review the requirements of 561 IAC 7 to understand that in administrative contested cases involving the DNR, certified mail provides adequate notice to the recipient. For instance:

- 561 IAC 7.5(4) Delivery of the notice of a hearing is authorized by certified mail.
- 561 IAC 7.17(3)"c" Delivery of a proposed decision is authorized by certified mail.
- 561 IAC 7.18(3) Delivery of an emergency order is authorized by certified mail.
- 561 IAC 7.19(3) Delivery of a notice of license revocation is authorized by certified mail.

While most of these deliveries could also be accomplished by personal service per the language of the rule, personal service is not the only means by which notice can be provided in this administrative proceeding and it was not required when the DNR provided notice of the Order's issuance to Clark Farms, Ltd.

IV. Conclusion.

Clark Farms, Ltd. was provided notice of the Order being issued via certified mail to the company's registered agent and principle office. The DNR was not required to provide personal service of notice of the Order being issued to the corporation, nor was the DNR required to wait

³ See, generally, Mathews v. Eldridge, 424 US 319, 348 (1976).

on the failure of notice to the corporation's registered agent before sending the notice to the corporation's principle office.

As stated in the DNR's Motion to Dismiss, the notice of the Order's issuance was received by Clark Farms, Ltd. on October 11, 2017. The corporation's appeal was received beyond the thirty-day deadline for such an appeal. As such, the Division lacks jurisdiction to hear this case and it should be dismissed.

Date: March 20, 2018

IOWA DEPARMENT OF NATURAL RESOURCES

David Scott, Attorney

Iowa Department of Natural Resources

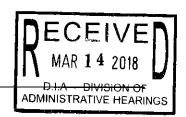
1023 W. Madison Street Washington, IA 52353

515-725-8239 | david.scott@dnr.iowa.gov

Copy via US Mail and email to:

Eldon McAfee
Brick Gentry, P.C.
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Eldon.mcafee@brickgentrylaw.com

Iowa Department of Inspections and Appeals Division of Administrative Hearings



IN THE MATTER OF:

CLARK FARMS, LTD

RESISTANCE TO MOTION TO DISMISS

DIA NO. 18DNR0008

RESISTANCE TO IOWA DEPARTMENT OF NATURAL RESOURCES' MOTION TO DISMISS

COMES NOW Clark Farms, Ltd., P.O. Box 283, New Hampton, Iowa 50659 (Clark), and pursuant to Iowa Administrative Code § 567—7.12(1), and in support of its Resistance to Iowa Department of Natural Resources' (Department) Motion to Dismiss, states as follows:

A. INTRODUCTION

On February 28, 2018, Department filed a Motion to Dismiss Clark's appeal of Administrative Orders 2017-SW-17 and 2017-WW-14 (Administrative Order), which was filed on December 4, 2017, alleging that Clark's appeal should be dismissed because the appeal was filed after the thirty-day deadline under both Iowa Code 455B.175 and 455B.308. Clark disputes the Department's allegations in that Clark's appeal was filed within 30 days of receipt of the Administrative Order in compliance with IAC 561-7.4(1). Further, Clarks' appeal must not be dismissed because the Department's initial service of process was insufficient pursuant to Iowa Code Section 490.504.

B. ARGUMENT

The Department's Motion is based on the argument that Clark's Notice of Appeal, filed on December 4, 2017, was untimely and therefore should be dismissed because he received

notice of the Administrative Order on October 11, 2017, which is beyond the 30 day period to file an appeal. Clark disputes the Department's argument for the following two reasons.

First, the Department's rule for filing a response to a motion is set out in IAC 561-7.4(1), by reference in IAC 567-7.1, as follows:

"7.4(1) Time. Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question. The written notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319." (underlined added for emphasis)

As set out in Clark's Notice of Appeal, Clark received the Department's Administrative Order on Nov. 20, 2017. Clark's Notice of Appeal, paragraph 1 and Department's Mot. to Dismiss, Exhibit 5, paragraph 1. Pursuant to IAC 561-7.4(1), which is a rule of the Department, because Clark received the Department's Administrative Order on November 20, 2017, Clark had until December 20, 2017 to file the Notice of Appeal of the Orders. Clark properly and timely filed the Notice of Appeal on December 4, 2017.

In addition to compliance with the Department's rule IAC 561-7.4(1), as set out below the Department's initial procedure for service of process was insufficient under the Iowa Code and as a result Clark did not receive notice of the Administrative Order until November 20, 2017. As such, Clark's December 4, 2017 Notice of Appeal was well within the thirty-day statutory appeal period.

Under Iowa R. Civ. P. 1.305, "[o]riginal notices are 'served' by delivering a copy to the proper person . . ." Personal service upon a corporation is made by serving an agent or person "authorized by appointment or by law to receive service of original notice." Iowa R. Civ. P. 1.305(6). Iowa courts have recognized the common-law rule that when a statute provides a notice

of appeal shall be "served" there is requirement an actual delivery to the person to be served, not a delivery by mail. *Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). In the case of corporations, Iowa Code Chapter 490 provides that a "corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation." Iowa Code § 490.504(1) (2018). If a corporation's registered agent "cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office." Iowa Code § 490.504(2) (2018).

In this case, Clark's registered agent is Kevin Clark. Department's Mot. to Dismiss, at 2. Under Iowa Code Section 490.504(1), Kevin Clark should have been personally served a copy of the Administrative Order. Service would therefore have been perfected by serving Kevin Clark, the registered agent. *See* Iowa R. Civ. P. 1.305(6). Instead of following the statutorily-prescribed procedure, the Department sent the Administrative Order to Clark's registered agent via certified mail. Department's Mot. to Dismiss, at 3. The Department's reading of Iowa Code Section 490.504(1) is incorrect because it overlooks the necessity of personal service upon Clark's registered agent. Iowa R. Civ. P. 1.305(6). Because Clark's registered agent was not personally served, service of the Administrative Order was insufficient.

In addition, the Department failed to exercise "reasonable diligence" by simultaneously serving the corporation's principal office and its registered agent. Iowa Code Section 490.504(2) allows for service by certified mail when a corporation's registered agent "cannot with reasonable diligence be served." Iowa Code § 490.504(2) (2018). In other words, once an attempt to personally serve a registered agent has failed, an original notice may be served upon the principal office of the corporation via certified mail.

Here, the Department did not attempt to serve Clark's registered agent prior to mailing service to its principal office, as required by Iowa Code Section 490.504(1). Instead, the Department simultaneously sent notices to Clark's registered agent and its principal office on October 5, 2017. Department's Mot. to Dismiss, at 3. The Department argues that the return of the documents sent to the registered agent satisfied its "reasonable diligence" burden and allowed service to the principal office via certified mail. Department's Mot. to Dismiss, at 3. This process would be allowed, if the Department had waited before sending the notice via certified mail. However, the concurrent mailing of both notices amounts to a shortcut around Iowa Code Section 490.504(1)'s "reasonable diligence" requirement. Thus, the premature service via certified mail runs afoul of Iowa Code Section 490.504(2) and Clark's time to file should run from the time of actual receipt.

C. CONCLUSION

Clark complied with the IAC 561-7.4(1) in filing the Notice of Appeal and therefore the appeal is timely and the Department's Motion to Dismiss must be denied. In addition, since the Department failed to attempt personal service upon Clark's registered agent and its initial service via certified mail was premature, the thirty-day statutory deadline runs from the time Clark actually received notice of the Administrative Order, which is November 20, 2017. As such, Clark had thirty days from November 20, 2017 to file the Notice of Appeal. Clark's Notice of Appeal filed on December 4, 2017 was therefore within the thirty-day deadline and the Department's Motion to Dismiss must be denied.

WHEREFORE, Clark respectfully requests that this Court deny the Department's Motion to Dismiss and grant such other and further relief deemed just and equitable under the circumstances.

Dated: March 12, 2018

Eldon L. McAfee

AT0004987

Stephen Viet

AT0013497

Brick Gentry, PC

6701 Westown Parkway, Suite 100

West Des Moines, IA 50266

515.271.5916

eldon.mcafee@brickgentrylaw.com

ATTORNEY FOR CLARK FARMS, LTD.

Original filed.

Copy to:
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515.725.8239
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6701 Westown Parkway, Suite 100 West Des Moines, Iowa 50266

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ADMINISTRATIVE HEARINGS DIVISION
WALLACE STATE OFFICE BLDG THIRD FLOOR
502 EAST NINTH ST
DES MOINES IA 50319

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D.LA - DIVISION OF ADMINISTRATIVE HEARINGS

Iowa Department of Inspections and Appeals Division of Administrative Hearings

IN THE MATTER OF:

Clark Farms Ltd.

MOTION TO DISMISS

DIA NO. 18DNR0008

THE IOWA DEPARTMENT OF NATURAL RESOURCES' MOTION TO DISMISS

Pursuant to Iowa R. of Civil P. 1.421(1)"a" and 561 IAC 7.14(2), the Iowa Department of Natural Resources (Department) moves to dismiss Clark Farms Ltd.'s (Clark) appeal of Administrative Orders 2017-SW-17 and 2017-WW-14 because the appeal was filed after the appeal deadline established by statute. As such, this tribunal lacks the jurisdiction to consider the appeal.

I. Summary.

The Department issued Administrative Orders 2017-SW-17 and 2017-WW-14 to Clark on October 4, 2017. Clark is a company established pursuant to Chapter 490 of the Iowa Code and is registered with the Iowa Secretary of State. The Orders were sent via certified mail on October 6, 2017 to Clark's registered agent and Clark's principle office. The Orders sent to Clark's registered agent were returned as undeliverable. As such, pursuant to Iowa law as summarized below, the Orders sent to Clark's principle office are deemed received by the company on October 11, 2017 (five days after being mailed).

Clark was afforded thirty days to file an appeal of the Orders pursuant to IC 455B.175 and 455B.308. This tribunal and the Iowa Supreme Court have determined that statutory deadlines of this nature are jurisdictional and cannot be extended by a court. Clark filed its appeal of the Orders on December 4, 2017. As such, Clark failed to comply with the statutory

time limit for filing its appeal of the Orders. The Department asks that the matter be dismissed, and that Clark be instructed to comply with the terms of the Orders.

II. Pursuant to Iowa statutes governing Iowa corporations, Clark is deemed to have received the Orders on October 11, 2017.

Clark is a corporation established pursuant to, and subject to, Iowa Code Chapter 490. See Articles of Incorporation, at 1 and 2016 corporate biennial report (Ex. 1). Iowa Code section 490.501 requires each Iowa corporation to "continuously maintain in the state ... a registered agent." The corporation's registered agent is "the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation." IC 490.504(1).

Corporations in Iowa are required to file and maintain current and accurate records with the Iowa Secretary of State. IC 490.120. According to the Iowa Secretary of State's database of registered Iowa corporations, Clark's registered agent is Kevin Clark, 2799 220th Street, Fredericksburg, Iowa, 50630, and the corporation's principal office is located at PO Box 283, New Hampton, Iowa, 50659. *See* Clark Farms Ltd. 2016 Biennial Report (Ex. 1) and printout from Iowa Secretary of State's database website (Ex. 2). Kevin Clark is, among other titles, the Secretary of the corporation. *Id*.

IC 490.504 also addresses how service is to be completed if a corporation's registered agent "cannot be served with reasonable diligence" such as if the registered agent does not exist or documents sent to the registered agent are returned as undeliverable. Specifically, the section allows the corporation to be served by sending the document via certified mail to the corporation's Secretary at its principal office. 490.504(2). The document is considered received, in this case, "five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed." 490.504(2)"c".

The Department sent the above-referenced Orders in this matter, via certified mail, to both the corporation's registered agent and the corporation's home office on October 6, 2017. See official DNR mail logs and certified mail postmark (Ex. 3). The documents sent to the registered agent were returned as undeliverable. *Id.* As such, the documents sent to the corporation's principal office are considered received five days after mailing, or October 11, 2017.

III. Clark was afforded thirty days to appeal the Orders.

The violations at issue in the Orders are violations of IC 455B, Division III (water quality) and 455B, Division IV (solid waste), respectively, and the regulations promulgated pursuant to the authority granted by the legislature in those Divisions. IC 455B.175 provides the recipient of an Order issued by the Department to address violations of 455B, Division III (water quality) thirty days to appeal the Order. Similarly, IC 455B.308 provides a recipient of an Order issued by the Department to address violations of 455B Division IV (solid waste) thirty days to appeal an Order. Both of these deadlines are statutory.

IV. The statutory appeal deadlines applicable in this matter are jurisdictional.

The appeal deadlines at issue in this case are established in statute, they are jurisdictional, and they cannot be extended by this tribunal. Franklin v. Iowa Dep't of Job Serv., 277 N.W.2d 877, 881 (Iowa 1979) (holding that where a statutory deadline for appeal is applicable, failure to file within the statutory time period finalizes the decision and deprives the agency of the authority to consider an appeal.); Iowa Civil Rights Com'n v. Massey Ferguson, Inc., 207 N.W.2d 5, 9-10 (Iowa 1979) ("The time in which an administrative proceeding may be brought

¹ Of note, the statutory language of 455B.308 states "[a]ny person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director within thirty days of the <u>issuance</u> of the order." (Emphasis added.)

is often regulated by the statue providing for such proceeding, and a failure to comply with such statute may bar the administrative proceeding and any judicial proceeding which depends thereon. An administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite for the action taken" (internal citations omitted). "The power to rewrite the time limitation is in the legislature, not this court."); *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979) ("compliance with the [statutory] appeal notice provisions is jurisdictional."); *Kash v. Iowa Dep't of Employment Services*, *et al*, 476 N.W.2d 82, 83 (Iowa 1991) (stating that when an appeal is filed outside of a statutory time limit, there is not statutory authorization for subsequent agency review. "Administrative agencies do not possess common law or inherent powers, but only the powers which are conferred by statute.") (citing *Franklin*, 277 N.W.2d at 881).

Further, this tribunal has recognized and applied these principals to one of the two statutory deadlines at issue in this matter, holding that the statutory deadline established in IC 455B.175 is jurisdictional and failure to file an appeal within the thirty-day statutory appeal period requires the appeal to be dismissed for lack of jurisdiction. *In the Matter of Amoco Oil Co., et al.*, DIA No. 88DNR34, 1992 WL 12574412, at *5 (Iowa Dept. Insp. App., August 28, 1992) (citing, among others, *Zick v. Haugh*, 165 N.W.2d 836, 837 (Iowa 1969) (holding that a statutory deadline is jurisdictional and even filing one day late robs the court of jurisdiction.)) (Ex. 4). Presumably, this tribunal will apply the same analysis to the statutory deadline established by 455B.308 which was also missed by Clark.

Iowa case law establishes unequivocally that the appeal deadlines in this matter are jurisdictional, and that this tribunal lacks jurisdiction to consider an appeal that was filed late.

V. Clark's appeal was filed with the Department after the statutory deadline had run.

The thirty-day appeal period for the Orders ended on, at the latest, November 10, 2017. Clark's appeal was received by the Department on December 4, 2017 (Ex. 5).

VI. Conclusion and requested action.

Clark's appeal was filed more than thirty days from the date it was deemed received pursuant to the Iowa Code. The appeal was filed after the statutory deadlines enumerated for an appeal in IC 455B.308 and IC 455B.175.² These deadlines cannot be extended by this tribunal and are jurisdictional. As such, the Department requests that the appeal of the Department's Orders be dismissed and that Clark Farms Ltd. be instructed to comply with the terms of the Orders which are considered final agency action.

Respectfully submitted via hand-delivery: February 28, 2018

David G. Scott

Iowa Department of Natural Resources

Ph: 515-725-8239

Email: david.scott@dnr.iowa.gov

ATTORNEY FOR DEPARTMENT OF

NATURAL RESOURCES

Electronic copy to:

Eldon McAfee
Brick Gentry PC
6701 Westown Parkway, Suite 100
West Des Moines, IA 50266-7703
eldon.mcafee@brickgentrylaw.com

Counsel for Clark Farms Ltd.

² As previously noted, the time period for appeal enumerated in 455B.308 commences upon issuance of the Order, not upon its receipt. The Department takes no position at this time on what the date of issuance was for the Order issued pursuant to that section since the appeal was late regardless of whether the trigger was "issuance" or "receipt" of the Order.

IOWA DEPARTMENT OF NATURAL RESOURCES

MOTION TO DISMISS DIA NO. 18DNR0008

EXHIBIT <u></u>

254775

RECEIVED

ARTICLES OF INCORPORATION OF CLARK FARMS, LTD.

AUG 2 7 2001 SECRETARY OF STATE

I, Kevin W. Clark a/k/a K. W. "Casey" Clark, do hereby establish a corporation under Chapter 490 of the 2001 Code of Iowa, known as the Iowa Business Corporation Act, and we do hereby assume all of the powers, rights, privileges, responsibilities and duties granted corporations, pursuant to Chapter 490 of the 2001 Code of Iowa, and we do hereby adopt the following Articles of Incorporation, to-wit:

ARTICLE I NAME OF CORPORATION

The name of the corporation is CLARK FARMS, LTD. The principal place of business of the corporation is New Hampton, Chickasaw County, Iowa. The post office address of the corporation is P.O. Box 283, New Hampton, Iowa 50659.

ARTICLE II NUMBER OF SHARES CORPORATION IS AUTHORIZED TO ISSUE

The corporation is authorized to issue One Hundred Thousand (100,000) shares of common stock.

ARTICLE III CORPORATION'S INITIAL REGISTERED OFFICE AND NAME OF ITS INITIAL REGISTERED AGENT AT SAID OFFICE

The name of the corporation's initial registered agent is Kevin W. Clark a/k/a K. W. "Casey" Clark, and the physical address of the registered agent is 2799 220th St., Fredericksburg, Iowa 50630.



ARTICLE IV THE NAME AND ADDRESS OF EACH INCORPORATOR

The name and address of the incorporator is:

Kevin W. Clark, a/k/a K. W. "Casey" Clark Physical address is: 2799 220th St. Fredericksburg, IA 50630 Corporation's mailing address: P.O. Box 283 New Hampton, Iowa 50659

ARTICLE V NAMES AND ADDRESSES OF INDIVIDUALS WHO ARE TO SERVE AS THE INITIAL DIRECTORS

The name and address of the individual who is to serve as the initial director is:

K. W. "Casey" Clark, President, Secretary, and Treasurer Physical address is: 2799 220th St.
Fredericksburg, IA 50630
Corporation's mailing address:
P.O. Box 283
New Hampton, Iowa 50659

ARTICLE VI PURPOSE FOR WHICH THE CORPORATION IS ORGANIZED

The corporation is organized for the purpose of engaging in any lawful business.

ARTICLE VII MANAGING THE BUSINESS AND REGULATING THE AFFAIRS OF THE CORPORATION

The corporation shall have a Board of Directors responsible for managing the business and regulating the affairs of the corporation. The Board of Directors shall consist of one or more persons but no more than five. All legal documents executed on behalf of the corporation

consisting of, but not limited to, contracts, leases, deeds, bills of sale, notes and mortgages, security agreements and financing statements shall be signed by either the President only or two (2) other officers of the Board of Directors consisting of two or more persons. The corporation shall not have a seal.

ARTICLE VIII GENERAL POWERS

The corporation shall have all general powers granted corporations, pursuant to Chapter 490 of the 2001 Code of Iowa and as amended.

ARTICLE IX PAR VALUE FOR AUTHORIZED SHARES OR CLASSES OF SHARES

The corporation is authorized to issue one or more classes of stock, including common stock and preferred stock. The initial stock issued by the corporation shall be common stock having voting rights by the shareholders, and the shareholders shall be entitled to one (1) vote for each share of common stock owned by each shareholder. The par value for each initial share of common stock is Ten Dollars (\$10.00) per share.

ARTICLE X LIMITATION OF PERSONAL LIABILITY ON DIRECTORS, STOCKHOLDERS AND OFFICERS OF THE CORPORATION

The directors, stockholders and officers of this corporation shall not be personally obligated or liable, nor shall the property of the directors, stockholders and officers of the corporation be obligated or liable for the payment of corporate debts. A director shall not have any personal liability to the corporation or to the shareholders of the corporation for monetary damages for breach

of fiduciary duty as a director pursuant to Section 490.832 of the Code of Iowa. A shareholder of the corporation is not personally liable for the acts or debts of the corporation.

ARTICLE XI BYLAWS

The incorporators or Board of Directors shall adopt initial bylaws for the corporation.

ARTICLE XII CORPORATE EXISTENCE

The corporation known as Clark Farms, LTD. was originally incorporated under Chapter 490 of the Code of Iowa on January 21, 1997 and due to a mistake in communication between the Office of the Secretary of State of the State of Iowa and Clark Farms, LTD., the State administratively dissolved Clark Farms, LTD. Clark Farms, LTD. desires to reinstate the corporation as a Corporation in good standing in the State of Iowa through the Office of the Secretary of State of the State of Iowa.

Signed and dated this 24th day of August, 2001.

NAME _

MAILING ADDRESS

SIGNATURE

Kevin W. Clark

P.O. Box 283

a/k/a K. W. "Casey" Clark

New Hampton, Iowa 50659

STATE OF IOWA, HOWARD COUNTY, ss:

On this 24th day of August, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kevin W. Clark, a/k/a K. W. "Casey" Clark, to me known to be the identical person named in and who executed the foregoing Articles of Incorporation

and whose name is affixed thereto and acknowledged that he executed the same as his voluntary act and deed.

in and for said County and State
My commission expires 1-2004

F:\CLIENT\C\Clark Farms\ARTICLES.INC1



00717



PAUL D. PATE Secretary of State State of Iowa

1. Name of the Corporation, its registered agent and registered office.

IOWA 2016 BIENNIAL REPORT for an IOWA CORPORATION

Required by Iowa Code Chapter 490



FILED lowa Secretary of State

4:30 p.m.

JUN 2 2 2016

RAVE \$45.00

490 DP-256775 CLARK FARMS, LTD. **KEVIN W CLARK** 2799 220TH ST FREDERICKSBURG, IA 50630

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2. The corporation has no officers. [] The corporation has no dir	rectors. [] SEE INSTRUCTIONS ON BACK
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4. Address of the <u>Principal Office</u> of the Corporation. PO BOX 283 NEW HAMPTON, IA 50659	Change the Principal Office to:
5. Does the corporation hold an interest in agricultural land in Iowa? YES [] NO [X]	6. Is the corporation a "family farm corporation?" YES [] NO [X]
7. Email address (Registered Agent):	
8. SIGNED: Signature and Capacity/Title Report must be signed by an officer or a person author	4-1-16 641 394 5144 Date Phone
9. FILING FEE	\$45.00

IOWA DEPARTMENT OF NATURAL RESOURCES

MOTION TO DISMISS DIA NO. 18DNR0008

EXHIBIT $\underline{2}$

Business Entity Summary

- Summary
- Address
- Agent
- Filings
- Names
- Officers
- Stock
- Search Again

Print Certificate of Existence

Searched: Clark Farms

Business No. Legal Name Status
256775 CLARK FARMS, LTD. Active
Type State of Inc. Modified

Legal IA No

Expiration Date Effective Date Filing Date PERPETUAL 8/27/2001 8/27/2001

Chapter

CODE 490 DOMESTIC PROFIT

Names (Viewing 1 of 1)

Type Status Modified Name

Legal Active No

CLARK FARMS, LTD.

Registered Agent or Reserving Party

Full Name

KEVIN W CLARK

Address

Address 2

2799 220TH ST

City, State, Zip

FREDERICKSBURG, IA, 50630

Home Office

Full Name

Address Address 2

PO BOX 283

City, State, Zip

NEW HAMPTON, IA, 50659

Business Entity Agent

- <u>Summary</u>
- Address
- Agent
- Filings
- Names
- Officers
- Stock
- Search Again

CLARK FARMS, LTD. (256775)

Name

KEVIN W CLARK

Address1

Address2

2799 220TH ST

City

State Zip

50630

FREDERICKSBURG IA

Business Entity Address

- <u>Summary</u>
- Address
- Agent
- Filings
- Names
- Officers
- Stock
- Search Again

CLARK FARMS, LTD. (256775)

Type

Name

Home Office

Address1

Address2

PO BOX 283

City

State Zip

NEW HAMPTON IA

50659

IOWA DEPARTMENT OF NATURAL RESOURCES

MOTION TO DISMISS DIA NO. 18DNR0008

EXHIBIT <u></u>

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IOWA DEPARTMENT OF NATURAL RESOURCES

MOTION TO DISMISS DIA NO. 18DNR0008

EXHIBIT 🚈

1992 WL 12574412 (Iowa Dept.Insp.App.)

Division of Appeals and Fair Hearings

Department of Inspections and Appeals

State of Iowa

IN THE MATTER OF: AMOCO OIL COMPANY SUN RAY DX OIL COMPANY WORTH COUNTY CO-OP OIL NORTHWOOD CO-OP ELEVATOR

DIA No. 88DNR-34 August 28, 1992

RULING

Summary of Ruling

- *1 1. The Motions to Extend Time to File Appeal are DENIED.
- 2. The Department's Motion to Dismiss is GRANTED.
- 3. The Petitions for Leave to Intervene are GRANTED.

BACKGROUND AND PROCEDURAL HISTORY

On September 8, 1988, Administrative Order 88-HC-03 was issued by the Director of the Department of Natural Resources (Department) to the above named parties (hereinafter, "Amoco", "Sun Ray", "Worth", and "Northwood"). The order required the parties to submit to the Department within 60 days of receipt a Soil and Groundwater Investigation Plan and Soil and Groundwater Remediation Plan and to implement those plans within 30 days of the approval of the Department, and to conduct remedial actions upon completion of the investigation.

On the last page, under the heading "Appeal Rights", the Administrative Order stated:

Pursuant to Iowa Code sections 455B.175(1), a Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the Department of Natural Resources. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A.

In the following paragraph, entitled "Noncompliance", the order stated, "If this order is timely appealed this matter will be handled administratively."

On October 20, 1988, the Department transmitted this case to the Iowa Department of Inspections and Appeals (DIA) to initiate contested case procedures. The Notices of Appeal of Sun Ray, Worth and Northwood were included in the transmittal. On October 27, 1988, a Notice of Hearing was issued to Sun Ray, Worth and Northwood. Petitions were filed by Sun Ray, Worth and Northwood in November 1988.

On November 18, 1988, the Department transmitted the appeal of Amoco to DIA and an Order for Consolidation and Continuance was issued on November 30, 1988. In early December 1988, the Department filed Answers to the Petitions

of Sun Ray, Worth and North-wood. Amoco filed its Petition on December 29, 1988. The Department filed its Answer to Amoco's Petition on January 19, 1989. On January 22, 1989, the hearing was indefinitely continued.

On April 20, 1992, the Department requested that a hearing date be set, and a hearing was scheduled for the week of August 10, 1992.

On July 6, 1992, the Department, through its attorney, Michael P. Murphy, notified Amoco, Worth, and Northwood that in reviewing the file (Mr. Murphy was newly assigned to this case as prior counsel has left state government) he discovered facts which indicated that their appeals had not been timely filed. The Department stated that as this was a jurisdictional matter, they intended to file a Motion to Dismiss.

*2 On July 17, 1992, Worth filed a Motion for Extension of Time to File Notice of Appeal, with attached Exhibits, and a Motion for Leave to Intervene.

On July 20, 1992, Northwood filed a Motion to Extend Time for Filing of Notice of Appeal, with attached Exhibits, a Petition of Intervention, and a Brief in Support of the Motions.

On July 27, 1992, Sun Ray filed a Motion for Continuance, which was granted.

On July 29, 1992, Amoco filed a Motion for Extension of Time to File Notice of Appeal and in the Alternative for Leave to Intervene.

On August 4, 1992, Sun Ray filed a Resistance to the Motions.of Worth, Northwood and Amoco. Also on August 4, 1992, the Department filed a Response to the Motions and a Motion to Dismiss.

On August 10, 1992, an oral hearing on the above motions was held. Amoco, Worth and Northwood were granted until August 24, 1992, to respond to the Department's Motion to Dismiss.

On August 24, 1992, Amoco and Northwood filed Resistances to the Department's Motion to Dismiss, in which Worth joined. Sun Ray filed a Resistance to Interrogatories and a Request for Production of Documents propounded by Amoco.

Key Dates

The Department served Administrative Order No. 88-HC-03 on the parties by certified mail. The return receipt cards were retained by the Department and were not sent to the Department of Inspections and Appeals. The undersigned did not know the dates of service of the administrative order (AO) until July 20, 1992.

	Date of Receipt of AO	Date Notice of Appeal Filed
Amoco	9/10/88	11/7/88
Worth	9/10/88	10/14/88
Northwood	9/12/88	10/13/88
Sun Ray	9/10/88	10/5/88

The parties concede that the notices of appeals of Amoco, Worth and Northwood were filed more than 30 days after they received the Administrative Order.

MOTION TO DISMISS AND MOTIONS TO EXTEND TIME TO FILE NOTICES OF APPEAL

The Department and Sun Ray assert that the statutory 30-day appeal period contained in Iowa Code section 455B.175(1) is jurisdictional, that the agency and presiding officer have no discretion to enlarge the time for appeal, and the agency cannot waive it.

Amoco, Northwood and Worth argue that the administrative law judge has the authority to extend the time for filing the notice of appeal, pursuant to 561 IAC 7.11(2)(b), for excusable neglect. They further argue that 455.175(1) is directory, not mandatory, and that the Department has effectively waived the issue of timeliness of the appeal by not raising it earlier.

Iowa Code section 455B.175(1) provides:

- 1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act by filing with the director within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the director.
- *3 There is some ambiguity in the statute in that the trigger for the 30-day period is not specified. The courts have tended to resolve such ambiguity in favor of an interpretation that receipt of notice triggers such deadlines. See e.g. <u>Bevel v. Civil Service Com'n</u>, 426 NW2d 380 (lowa 1988). The Department has promulgated a rule, 561 IAC 7.5(1), which provides that absent a more specific time period in the particular statute, receipt of notice triggers a 30-day appeal deadline. 561 IAC 7.11(1) and (3) provide in relevant part:
- 7.11(1) Computation. In computing any period of time prescribed or allowed by this chapter or by an applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday shall be included in computing the period.

7.11(3) Mail. Any documents which may be filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.

Applying 561 IAC 7.5(1) and 7.11(1) and (3) to this case, I conclude that Northwood filed its appeal on the 31st day, Worth filed on the 34th day, and Amoco filed on the 58th day. The appeal of Sun Ray was squarely within the 30-day appeal period.

Northwood, Worth and Amoco all point to 561 IAC 7.11(2)(b) in support of their request to extend the time for filing Notice of Appeal. 561 IAC 7.11(2)(b) provides:

7.11(2) Extension. When by this chapter, or by notice given under it, an act is required or allowed to be done within a specified time, the presiding officer may, at any time, exercise discretion and;

b. Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

Northwood and Worth contend that they are guilty of no neglect because they immediately sent the Administrative Order to their liability insurance carrier, MSI Insurance Company of St. Paul, Minnesota, upon whom they relied to file a timely notice of appeal. MSI failed to retain counsel in a timely manner, and the 30-day appeal time had already run before the. file was sent to the attorneys retained to represent Northwood and Worth.

Amoco contends that its neglect to file a timely notice of appeal was excusable because their counsel mistakenly believed that he had 60 days to file his appeal.

The Department cites a long line of cases, starting with <u>Iowa Civil Rights Com'n v. Massey Ferguson, Inc.</u>, 207 NW2d 5, 9-10 (Iowa 1973), and including <u>Franklin v. Iowa Dept. of Job Service</u>, 277 NW2d 877 (Iowa 1979), in support of its assertion that failure to timely appeal an administrative action is jurisdictional and cannot be waived by the agency.

In both the <u>Massey Ferguson</u> and the <u>Franklin</u> cases the Iowa Supreme Court construed the deadline statutes using a mandatory-directory analysis and concluded in both cases that the statutes imposed a mandatory duty to timely file a complaint (<u>Massey-Ferguson</u>) or a notice of appeal (<u>Franklin</u>) in compliance with the statutory terms.

*4 In <u>Massey-Ferguson</u>, supra at 6, the statute in question provided in relevant part: "Any complaint filed under this chapter shall be so filed within ninety days after the alleged discriminatory or unfair practice occurred." In addition, a corresponding rule of practice promulgated by the Civil Rights Commission was entitled: "Ninety-day limitation".

In <u>Franklin</u>, supra at 880-881, the statutes in question provided generally that unless appeal was filed within a certain time period, the decision would be final.

The Iowa Supreme Court determined in both cases that the statutes impose mandatory duties, and failure to timely file deprived the agency of authority to validly proceed.

It has been argued that the use of the word "may" rather than "shall" in Iowa Code section 455B.175(1) renders the statute directory, rather than mandatory, but this argument is rejected. As suggested by the Department, the use of "may" in this context only indicates that it is at the option of the person receiving the administrative order whether to pursue an appeal. The only reasonable purpose for the 30-day time limit is to specify a time within which the agency's order becomes final, absent an appeal. This purpose is functionally equivalent to the purposes behind statutes construed by the Iowa Supreme Court in the Massey Ferguson and Franklin cases. The time limit contained in Iowa Code section 455B.175(1) is jurisdictional.

561 IAC 7.11(2)(b) does not specifically provide that the administrative law judge can enlarge the statutory time in which a party can file notice of appeal. Absent such a specific provision, it is reasonable to conclude that 7.11(2)(b) refers only to the filing of pleadings, motions, etc., after contested case procedures have been properly commenced and jurisdiction has been obtained.

Petitioners cite dicta in Miller v. Civil Constructors, 373 NW2d 115 (Iowa 1985), in support of their contention that an agency may extend the time for filing an appeal. The actual holding in that case was to dismiss on jurisdictional grounds for failure to file a timely appeal, when the appeal was filed one day late. In dicta the court denied the petitioner's request for an extension to file his appeal because he had not made such a request to the commissioner when the case was before the agency. The agency had a rule which allowed the industrial commissioner to modify the time to comply with any rule "for good cause." Worth argues that if the petitioner had requested the extension before the industrial commissioner, the court would have given the agency jurisdiction. However, the court did not go this far, they merely state that it was not raised before the industrial commissioner, and it was too late to request a remand. In any event, the time limit in Miller was set by rule, not statute, which distinguishes it from this case, as well as the cases cited by the Department.

*5 Finally, even if the administrative law judge had authority to extend the time to file notice of appeal in this case, the neglect was excusable. Worth and Northwood argue that they are not liable for the negligence of their insurer, but that argument is rejected. They are bound by the actions of their insurers, who they chose as their agents, just as these parties would have been bound if their lawyers had been negligent in filing the notices. Amoco, too, is bound by the actions of its lawyer, who was mistaken in his assumptions about the appeal period.

Northwood separately argues that its appeal, which was hand delivered on the 31st day, should be considered timely, since the Department had at least as much notice as it would have had if Northwood had mailed the notice of appeal on the 30th day. See 561 IAC 7.11(3). While this may be true, the provision is jurisdictional, and even a one day delay is fatal. Zick v. Haugh, 165 NW2d 836, 837 (Iowa 1969). The Iowa Supreme Court has consistently ruled that even where dismissal on this basis may have harsh or unfair results, such equitable concerns do not overcome this strict principle. See e.g. Waterloo Civ. Ctr. Hotel v. Bd. of Review, 451 NW2d 489, 490-91 (Iowa 1990); Ford Motor Co. v. Iowa Dept. of Transportation, 282 NW2d 701, 703 (Iowa 1979).

The Department's Motion to Dismiss the Appeals of Amoco, Northwood and Worth is GRANTED. The Motions of Amoco, Northwood and Worth to extend the time in which to file their appeals are DENIED.

THE MOTIONS TO INTERVENE

Amoco, Northwood and Worth have all filed alternative Motions to Intervene, in the event that the Motion to Dismiss is granted.

561 IAC 7.10(5) allows persons who may be aggrieved or adversely affected by the disposition of a case to file a petition for leave to intervene, no later than 20 days prior to the date for which the contested case hearing is scheduled. Any petition filed after this time shall include a statement of good cause for failure to file in a timely manner. An untimely petition for leave to intervene shall be granted only upon finding that circumstances justified the untimely filing. Leave to intervene shall be granted only if the petitioner demonstrates both that common questions of law or fact exist and that intervention would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. In evaluating the merits of the petition for leave to intervene, the presiding officer shall consider the extent to which the interests of the petitioner will be adversely affected by the final order and the extent to which the interests of the petitioner are not being adequately represented by the original parties.

There are circumstances which justify the untimely filing of the petitions for intervention. Until July 1992, these parties thought that they were parties to this action. The Department transmitted their appeals to DIA, requested that a hearing date be set, and filed Answers to their Petitions. Both the Department and Sun Ray assumed, until recently, that Amoco, Northwood, and Worth were parties.

*6 The facts alleged in the petitions to intervene are sufficient to establish that there are common questions of law or fact and that the intervention will not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. Although Amoco, Worth, and Northwood will not be allowed to litigate their ultimate liability, they do have legitimate interests to protect in. this proceeding. They apparently have relevant factual information to present which may not be available to Sun Ray or the Department, or which Sun Ray or the Department would not be motivated to present. In addition, as a result of this hearing, Sun Ray could be dismissed as a liable party. If this occurs, the interests of Worth, Northwood and Amoco would be adversely affected because the responsibility for cleanup would be shared three ways rather than four ways. Finally, though liability for cleanup may be joint and several, the Department may have some discretion in how it pursues enforcement of any resulting order, since each could be liable for the entire cleanup. For this reason, the parties clearly have an interest that the findings of fact are accurate and fairly represent

their contribution to contamination at the site. Finally, Northwood Co-Op Elevator, as the owner and possessor of the real estate in question, has ownership interests to protect.

For all of these reasons, it is concluded that common questions of law or fact exist and intervention will not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. The evidence offered by Amoco, Worth, and Northwood will be limited to evidence that is relevant to the issue of allocating responsibility for cleanup among the parties.

Dated this 28th day of August, 1992

Margaret LaMarche Administrative Law Judge

1992 WL 12574412 (Iowa Dept.Insp.App.)

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IOWA DEPARTMENT OF NATURAL RESOURCES

MOTION TO DISMISS DIA NO. 18DNR0008

EXHIBIT $\overline{\mathcal{S}}$

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES
DES MOINES, IOWA

IN THE MATTER OF

CLARK FARMS, LTD.

NOTICE OF APPEAL OF ADMINISTRATIVE ORDER NO. 2017-SW-17 NO. 2017-WW-14

COMES NOW Clark Farms, Ltd., PO Box 283, New Hampton, Iowa 50659, and pursuant to 567 Iowa Administrative Code Chapter 7 and 561 IAC 7.4, files a written notice of appeal as follows:

- 1. The Iowa Department of Natural Resources (Department) issued an Administrative Order numbered No. 2017-SW-17 No. 2017-WW-14 to the Appellant and received by the Appellant on November 20, 2017.
- 2. The Appellant appeals the factual findings, conclusions of law, order, and the penalties ordered in the Administrative Order.
- 3. The Administrative Order is being appealed because the Appellant disputes all material and relevant factual findings and conclusions of law. Without limitation of the foregoing, Appellant affirmatively states that he did not substantively violate provisions of the Iowa Code, the Iowa Administrative Code, or any DNR permit regarding the land application of sludge or the discharge of pollutants to a water of the state. Appellant also disputes the assessment of a \$10,000 administrative penalty as being arbitrary, capricious, unreasonable, and excessive under these circumstances.
- 4. Pursuant to 561 7.6(2), Appellant requests an opportunity to pursue informal settlement of this matter with the Department.

Dated: December 4, 2017

Eldon L. McAfee

Brick Gentry, P.C.

6701 Westown Parkway, Suite 100

West Des Moines, Iowa 50266

(515) 271-5916

eldon,mcafee@brickgentrylaw.com

ATTORNEY FOR CLARK FARMS, LTD.

Original filed with:
Director
Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319

Copy to:
Bureau Chief
Legal Services Bureau
Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319



Date: March 27, 2018

State of Iowa:

The following is in response to your March 27, 2018 request for delivery information on your Certified Mail™/RRE item number 9414814926183001347436. The delivery record shows that this item was delivered on November 10, 2017 at 10:23 am in BEN WHEELER, TX 75754. The scanned image of the recipient information is provided below.

Signature of Recipient:

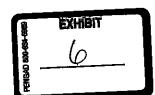
Address of Recipient:

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Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely, United States Postal Service



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Track Another Package +

Tracking Number: 9414814926183001347436

Remove X

Your item was delivered at 10:23 am on November 10, 2017 in BEN WHEELER, TX 75754.

⊘ Delivered

November 10, 2017 at 10:23 am Delivered BEN WHEELER, TX 75754

Return Receipt Email Confirmation Your Proof of Delivery record is complete and will be processed shortly. Your confirmation will be sent to the following: Colleen.Conroy@dnr.iowa.gov Tracking History November 10, 2017, 10:23 am Delivered BEN WHEELER, TX 75754 Your item was delivered at 10:23 am on November 10, 2017 in BEN WHEELER, TX 75754.

October 26, 2017, 8:52 am

Available for Pickup BEN WHEELER, TX 75754

October 26, 2017, 8:23 am

Arrived at Unit BEN WHEELER, TX 75754

October 25, 2017, 10:04 pm

Departed USPS Regional Facility
COPPELL TX DISTRIBUTION CENTER

October 25, 2017, 12:46 pm

Arrived at USPS Regional Facility
COPPELL TX DISTRIBUTION CENTER

October 25, 2017

In Transit to Next Facility

October 24, 2017

In Transit to Next Facility

October 23, 2017

In Transit to Next Facility

October 22, 2017, 12:06 pm

Arrived at USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

October 18, 2017, 7:45 am

Forwarded NEW HAMPTON, IA

October 18, 2017, 4:15 am

Departed USPS Regional Facility
WATERLOO IA DISTRIBUTION CENTER

October 17, 2017, 11:05 pm

Arrived at USPS Regional Facility
WATERLOO IA DISTRIBUTION CENTER

October 17, 2017

In Transit to Next Facility

October 16, 2017, 10:27 am

Arrived at USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

October 16, 2017

In Transit to Next Facility

October 15, 2017

In Transit to Next Facility

October 14, 2017, 3:49 am

Departed USPS Regional Facility
WATERLOO IA DISTRIBUTION CENTER

October 13, 2017, 10:02 pm

Arrived at USPS Regional Facility
WATERLOO IA DISTRIBUTION CENTER

October 13, 2017

In Transit to Next Facility

October 12, 2017, 9:54 am

Arrived at USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

October 10, 2017, 8:24 am

Forwarded NEW HAMPTON, IA

October 10, 2017, 2:53 am

Departed USPS Regional Facility

WATERLOO IA DISTRIBUTION CENTER	
October 9, 2017 In Transit to Next Facility	
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October 6, 2017, 3:46 pm Accepted at USPS Regional Origin Facility DES MOINES IA DISTRIBUTION CENTER	
October 6, 2017 Pre-Shipment Info Sent to USPS, USPS Awaiting Item	
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Tracking Number: 9414814926183001347443

Remove X

Your item has been delivered to the original sender at 8:19 am on October 13, 2017 in ZIP Code 11111.



October 13, 2017 at 8:19 am Delivered, To Original Sender 11111

Return Receipt Email

/

Tracking History



October 13, 2017, 8:19 am

Delivered, To Original Sender 11111

Your item has been delivered to the original sender at 8:19 am on October 13, 2017 in ZIP Code 11111.

October 13, 2017, 5:58 am

Arrived at Unit DES MOINES, IA 50318

October 13, 2017, 4:11 am

Departed USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

EXHIBIT

October 12, 2017, 8:49 am

Arrived at USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

October 10, 2017, 9:22 am

Forward Expired FREDERICKSBURG, IA 50630

October 10, 2017, 8:04 am

Out for Delivery FREDERICKSBURG, IA 50630

October 10, 2017, 7:54 am

Sorting Complete FREDERICKSBURG, IA 50630

October 10, 2017, 7:45 am

Arrived at Unit FREDERICKSBURG, IA 50630

October 9, 2017, 11:08 pm

Departed USPS Regional Facility
WATERLOO IA DISTRIBUTION CENTER

October 9, 2017

In Transit to Next Facility

October 8, 2017

In Transit to Next Facility

October 7, 2017, 1:54 pm

Arrived at USPS Regional Facility
WATERLOO IA DISTRIBUTION CENTER

October 7, 2017

In Transit to Next Facility

October 7, 2017, 8:27 am

Departed USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

October 6, 2017, 5:01 pm

Arrived at USPS Regional Facility
DES MOINES IA DISTRIBUTION CENTER

October 6, 2017, 3:46 pm

Accepted at USPS Regional Origin Facility DES MOINES IA DISTRIBUTION CENTER

October 6, 2017

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Product Information

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Track Another Package +

Tracking Number: 9414814926183001347450

Remove X

Expected Delivery on

MONDAY

13 NOVEMBER 2017 ①

by **8:00pm (**

Oblivered

November 13, 2017 at 10:54 am Delivered, To Original Sender DES MOINES, IA 50319

Return Receipt Email

Tracking History



November 13, 2017, 10:54 am

Delivered, To Original Sender DES MOINES, IA 50319

Your item has been delivered to the original sender at 10:54 am on November 13, 2017 in DES MOINES, IA 50319.

November 13, 2017, 6:16 am

Arrived at Unit DES MOINES, IA 50318

November 12, 2017, 12:48 am Departed USPS Regional Origin Facility DES MOINES IA DISTRIBUTION CENTER November 11, 2017 In Transit to Next Facility

November 10, 2017, 2:47 pm

Arrived at USPS Regional Origin Facility
DES MOINES IA DISTRIBUTION CENTER

November 10, 2017

In Transit to Next Facility

November 9, 2017

In Transit to Next Facility

November 8, 2017, 10:34 am

Departed USPS Regional Destination Facility COPPELL TX DISTRIBUTION CENTER

October 25, 2017, 9:46 am

Unclaimed/Being Returned to Sender BEN WHEELER, TX 75754

Reminder to Schedule Redelivery of your item

October 10, 2017, 9:16 am

Available for Pickup BEN WHEELER, TX 75754

October 10, 2017, 8:52 am

Arrived at Unit BEN WHEELER, TX 75754

October 9, 2017, 1:41 am

Arrived at USPS Regional Destination Facility

Product Information

COPPELL TX DISTRIBUTION CENTER October 8, 2017, 6:11 pm Arrived at USPS Regional Destination Facility DALLAS TX DISTRIBUTION CENTER October 8, 2017 In Transit to Next Facility October 7, 2017, 8:27 am Departed USPS Regional Facility **DES MOINES IA DISTRIBUTION CENTER** October 6, 2017, 5:01 pm Arrived at USPS Regional Origin Facility DES MOINES IA DISTRIBUTION CENTER October 6, 2017, 3:46 pm Accepted at USPS Regional Origin Facility DES MOINES IA DISTRIBUTION CENTER October 6, 2017 Pre-Shipment Info Sent to USPS, USPS Awaiting Item

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EXHIBIT

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here signed.

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contact your local Post Office or postal

for your mailing needs.

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WALLACE STATE OFFICE BUILDIN IOWA DEPARTMENT OF NATURAL RESC DES MOINES, IOWA 50319-0034

Confirmation Required

Electronic Signature

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音楽の 当工大工事 PREDERICKSBU

2799 220TH ST

CLARK FARMS KEVIN CLARK

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IOWA DEPARTMENT OF NATURAL RES WALLACE STATE OFFICE BUILDIN DES MOINES, IOWA 50319-0034 502 E 9TH STREET

Confirmation Required Electronic Signature



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CLARK FARMS BEN WHEELEF PO BOX 130

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MIN AFFIR

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES BEFORE THE IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Division of Appeals and Fair Hearings

CLARK FARMS, LTD

Appellant,

V.

Department of Natural Resources

Respondent

PETITION DIA NO. 18DNR0008



COMES NOW Clark Farms, Ltd., P.O. Box 283, New Hampton, Iowa 50659, and pursuant to Iowa Administrative Code § 567—7.12(1), states as follows:

- 1. The Iowa Department of Natural Resources (Department) issued an Administrative Order No. 2017-SW-17 No. 2017-WW-14 to the Petitioner and received by the Petitioner on November 20, 2017.
- 2. As set out in the Administrative Order, the Department has jurisdiction over this matter pursuant to Iowa Code §455B.307(2), 455B, Division IV, Part 1, Iowa Code §455B.175, Division III, Iowa Code §455B.109 and 567 Iowa Administrative Code Chapter 10.
- 3. The basis of the Administrative Order is a finding by the Department that the Petitioner land applied sludge inconsistent with the requirements of the Petitioner's permit and applicable law, including but not limited to failing to incorporate the sludge into the soil, applying the sludge on frozen ground, applying the sludge within 200 feet of a water of the state, failing to file timely reports, and failing to maintain records. Finally, the Department alleges that the Petitioner land applied sludge in a manner that resulted in the discharge of pollutants to a water of the state.
 - 4. The Department erred in finding the Petitioner failed to comply with Iowa law

requirements and permit requirements as set out in paragraph 3 of this Petition because contrary to the Department's allegations Petitioner did not substantively violate the alleged provisions of Iowa law.

- 5. Petitioner also disputes the assessment of a \$10,000 administrative penalty as being arbitrary, capricious, unreasonable, and excessive under these circumstances.
- 6. The Department's findings are in violation of statute, agency rule, are unsupported by substantial evidence in the record, are unreasonable, arbitrary, capricious, and are characterized by an abuse of discretion.

WHEREFORE, Petitioner respectfully requests the Department's findings of fact, conclusions of law, orders, and penalties in Administrative Order No. 2017-SW-17 No. 2017-WW-14 be overruled.

Dated: February 26, 2018

Eldon L. McAfee

´AT0004**∮**87

Brick Gentry, PC

6701 Westown Parkway, Suite 100

West Des Moines, IA 50266

515.271.5916

eldon.mcafee@brickgentrylaw.com

ATTORNEY FOR CLARK FARMS, LTD.

Original filed.

Copy to:
David Scott, Attorney for DNR
Iowa Department of Natural Resources
Field Office 6
1023 W. Madison St.
Washington, IA 52353
319.653.2135



6701 Westown Parkway, Suite 100 West Des Moines, Iowa 50266

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IOWA DEPT OF INSPECTIONS & APPEALS ADMINISTRATIVE HEARINGS DIVISION WALLACE STATE OFFICE BLDG 3RD FL DES MOINES IA 50319 BRITTANY SPOONER 502 E NINTH ST

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Iowa Department of Inspections and Appeals Administrative Hearings Division Wallace State Office Building, Third Floor Des Moines, Iowa 50319

Clark Farms Ltd. P.O. Box 283 New Hampton, Iowa 50659,)) Case No. 18DNR0008
Appellant, v.)) AMENDED) NOTICE OF HEARING
Department of Natural Resources,)))
Respondent.))

Pursuant to section 17A.12 of the Iowa Code, a hearing shall be conducted in this proceeding before the administrative law judge (ALJ) and at the date, time, and place designated below:

DATE:

April 17, 2018

TIME:

9:00 a.m. Central Time

PLACE:

Administrative Hearings Division, Wallace State Office Building, Third Floor

502 E. 9th Street, Des Moines, IA 50319

ALJ:

Amanda Atherton

(Email: amanda.atherton@dia.iowa.gov; Phone: 515-281-7165)

Important additional instructions for participating in this hearing are on the next page of this Notice. Failure to appear and participate in the hearing may result in the entry of a default judgment.

The hearing shall be conducted under the authority of and pursuant to the following statutes and administrative rules involved in the proceeding:

IOWA CODE SECTION(S): 455B.109; 455B.186; 455B.304; 455B.307 **IOWA ADMINISTRATIVE RULE(S):** 561-7; 567-10; 567-121; 567-61

The following matters have been asserted and will be decided in the proceeding:

- Whether Clark Farms Ltd. filed a timely appeal.
- Whether the Iowa Department of Natural Resources properly issued Administrative Order No. 2017-SW-17 / No. 2017-WW-14 imposing a \$10,000 civil penalty and other requirements because the Department determined that Clark Farms Ltd. illegally land applied sludge and disposed of sludge into Iowa waters.

Within 20 days of receiving this notice Clark Farms Ltd. must file a petition which complies with Rule 561-7.12(1). The petition must be submitted to the Administrative Hearings Division at the address above and the Department of Natural Resources, Legal Services Bureau, 502 East 9th Street, Des Moines, IA 50319. Within 20 days of receiving the petition, the Department of Natural Resources must file an answer that complies with Rule 561-7.12(2). Failure to file a petition or an answer may result in the dismissal of the appeal.

Either party may request the scheduling of a prehearing conference. The Appellant may pursue informal settlement pursuant to Rule 561-7.6 by contacting the Department's Attorney, prior to the hearing.

Issued this February 6, 2018.

cc: Casey Clark, Clark Farms Ltd. (By Certified Mail)
Eldon McAfee, Attorney for Respondent (By Certified Mail and Email)
David Scott, Attorney for DNR (By Email)

INSTRUCTIONS TO PARTICIPATE IN THE HEARING:

<u>Exhibits</u>: If you wish to have documents or other exhibits considered by the administrative law judge in the hearing, you must do the following unless otherwise ordered by the administrative law judge:

• Deliver, mail, fax or email the documents or other exhibits to the administrative law judge at the following location at least 3 days before the hearing:

Division of Administrative Hearings Wallace State Office Building, Third Floor Des Moines, IA 50319 Fax: (515) 281-4477 E-Mail: adminhearings@dia.iowa.gov

- Deliver, mail, fax or email the documents or other exhibits to all other parties to the case.
- Please mark any materials you submit with your full name and case number of your case. The case number is found on the first page of this notice on the top right-hand corner of the document.

<u>Witnesses</u>: If you wish to have any witnesses (other than yourself) present testimony at the hearing, you must do the following unless otherwise ordered by the administrative law judge:

- Mail, fax, or email a list of the names of each witness to the administrative law judge and the other
 parties at least 3 days before the hearing.
- Make sure that your witnesses understand that they must be available at the date and time of the
 hearing. You may request that the administrative law judge permit a witness to testify by telephone.
 If your witnesses are not available at the time of the hearing, they will not be able to testify.

More Information: Additional information about this proceeding, including directions to the Division Offices and parking, a directory of administrative law judge phone numbers and links to the applicable statutes and administrative rules, is available online at http://dia.iowa.gov/ahd. Parties with questions may also contact the Division at (515) 281-6468 or by email at adminhearings@dia.iowa.gov.

Ship Request Form

Ship Request #: 047423



Sender

Name:

Inspections & Appeals

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Phone:

5152815143

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203*No@noemail.com

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Building

Floor:

Department:

Recipient

Attn To:

Casey Clark

Company:

Clark Farms Ltd.

Address:

P.O. Box 283

City:

Zip:

New Hampton lΑ

State:

50659

Country:

US

Shipping Instructions

E-Return Recipt: true PostageID 427A3452

Restricted Delivery: false Delivery Conformation No Signature Required

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Units

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Code

Origin Unit Value Total Value

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Sender

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Department:

Recipient

Attn To:

Eldon McAfee

Company:

Brick Gentry PC

Address:

6701 Westown Parkway Suite 100

City:

IA

West Des Moines

State:

Zip: 50266

Country:

US

Shipping Instructions

E-Return Recipt: true PostageID 427A3452

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Iowa Department of Inspections and Appeals Administrative Hearings Division Wallace State Office Building, Third Floor Des Moines, Iowa 50319

Clark Farms Ltd. P.O. Box 283 New Hampton, Iowa 50659,)) Case No. 18DNR0008
Appellant,)
v .) NOTICE OF HEARING
Department of Natural Resources,)
Respondent.)))

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PLACE:

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502 E. 9th Street, Des Moines, IA 50319

ALJ:

Amanda Atherton

(Email: amanda.atherton@dia.iowa.gov; Phone: 515-281-7165)

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- Whether the Iowa Department of Natural Resources properly issued Administrative Order No. 2017-SW-17 / No. 2017-WW-14 imposing a \$10,000 civil penalty and other requirements because the Department determined that Clark Farms Ltd. illegally land applied sludge and disposed of sludge into Iowa waters.

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Either party may request the scheduling of a prehearing conference. The Appellant may pursue informal settlement pursuant to Rule 561-7.6 by contacting the Department's Attorney, prior to the hearing.

Issued this February 5, 2018.

cc: Casey Clark, Clark Farms Ltd. (By Certified Mail)
Eldon McAfee, Attorney for Respondent (By Certified Mail and Email)
David Scott, Attorney for DNR (By Email)

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Ship Request Form

Ship Request #: 047338



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Name:

Inspections & Appeals

Account #:

Phone:

5152815143

Email:

203*No@noemail.com

Mail Stop:

Building

Floor:

Department:

Recipient

Attn To:

Casey Clark

Company:

Clark Farms Ltd

Address:

P.O. Box 283

City:

New Hampton IA

State:

Zip:

Country:

50659 US

Shipping Instructions

E-Return Recipt: true PostageID 427A3452

Restricted Delivery: false Delivery Conformation No Signature Required

Items

Units

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Ship Request Form

Ship Request #: 047340



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Department:

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Attn To:

Eldon McAfee

Company:

Brick Gentry PC

Address:

6701 Westown Parkway Suite 100

City:

Zip:

West Des Moines

State:

50266

Country:

US

Shipping Instructions

E-Return Recipt: true Restricted Delivery: false Delivery Conformation No Signature Required PostageID 427A3452

Items

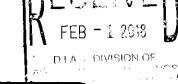
Units

Description

Code

Origin Unit Value Total Value





ADMINISTRATIVE HEARINGS DIVISION

Wallace State Office Building, Third Floor 502 East 9th Street Des Moines, IA 50319-0083 (515) 281-6468

KIM REYNOLDS GOVERNOR RODNEY A. ROBERTS, DIRECTOR

ADAM GREGG LT. GOVERNOR

TRANSMITTAL FORM

Transmitting Agency

Agency Name Department of Natural Resources	Phone Number 515-725-8239	Emall Address david.scott@dnr.ic	owa.gov
Address Wallace State Office Building, Legal Services Bureau	City, State, Zip Des Moines, IA	City, State, Zip Des Moines, IA 50319	
Transmitting Officer, Title David Scott, Attorney	Agency File/Docket/Reference Numbers(s) AO 2017-SW-17; AO-2017-WW-14 Date Received by Agency File/Docket/Reference Numbers(s)		Date Received by Agency 10/4/17

Appellant

Name Casey Clark	Phone Number 319-360-0838	Email Address (if known)
Address Clark Farms Ltd., PO Box 283	City, State, Zip New Hampton, IA	50659

Jurisdictional and Other Authority Involved in Case

ISPECTIONS APPEALS

Iowa Code Section(s)	Iowa Administrative Rule(s) or Federal Regulation(s)
IC 455B.109, 455B.186, 455B.304, 455B.307	561 IAC 7, 567 IAC 10, 567 IAC 121, 567 IAC 61

Statement of the Issues Involved and Reference to Particular Sections of Statues and Rules Involved

Whether sludge was land applied in a manner consistent with Iowa regulations and an applicable permit; whether sludge was disposed of in a water of the state of Iowa; whether DNR's proposed administrative penalty was authorized by law; and, whether the appellant's letter of appeal was timely.

Special Requests (Include any special features or requirements such as a required petition or answer, specialized expertise needed by administrative law judge, mandatory time limits or notice requirements that apply to case, requests regarding preferred potential hearing dates or dates to avoid, and requests for in-person or telephone-conference-call hearings. Attach additional pages if necessary.)

DNR intends to challenge the timely nature of the appeal and requests that a prehearing conference be scheduled if necessary to address filing of a motion to dismiss.

Attorney for Appellant (If any)

Name Eldon McAfee	Phone Number 515-271-1706	Email Address (if known) eldon.mcafee@brickgentrylaw.com
Address 6701 Westown Parkway, Suite 100	City, State, Zip West Des Moines, IA 50266	

Send Copies to (Other Agency Contacts, Attorney General's Office, Other Parties, etc. Attach additional pages if necessary)

List Name, Title, and Mailing or Email Address for each Contact

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE ORDER

IN THE MATTER OF:

ADMINISTRATIVE ORDER

Clark Farms LTD.

NO. 2017-SW- 17 NO. 2017-WW- 14

To: Mr. Kevin W. Clark, President Clark Farms Ltd. PO Box 283 New Hampton, IA 50659

CC: 2799 220th St.

Fredericksburg, IA 50630

CC: PO Box 130

Ben Wheeler, TX 75754

Re: Permit No. 19-SDP-03-03P-LAN

I. SUMMARY

This administrative order (Order) is issued to Clark Farms Ltd. (Clark) due to the illegal storage and land application of waste sludge, among other violations enumerated herein. The Department of Natural Resources (DNR) is requiring that Clark: (1) cease all land application or disposal activities of any kind at the property located at 3036 240th Street in Fredericksburg, Iowa; and, (2) pay an administrative penalty of \$10,000.00. Questions about this Order should be directed to:

Relating to technical requirements:

Sue Miller, Env. Specialist DNR Field Office #1 Iowa Department of Natural Resources 909 W. Main St., Suite 4 Manchester, IA 52057 Ph: 563-927-2640

Relating to the legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
Field Office 6
1023 W. Madison Street
Washington, IA 52353
Ph: 319-653-2135

Send payment of the administrative

penalty to: [Note order # on payment]
Director of the Iowa DNR
Wallace State Office Building
502 E. Ninth St.
Des Moines, Iowa 50319

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; Iowa Code section 455B.175 which authorizes the Director to issue orders directing parties to cease practices that violate Iowa Code Chapter 455B, Division III (water quality) and the rules adopted pursuant to that part; 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

The following relevant facts are presented in chronological order:

- 1. Permit No. 19-SDP-03-03P-LAN authorized Sparboe Foods, LLC (Sparboe), to land-apply up to 2.0 dry tons of sludge per acre at the property owned by Kevin W. Clark in Chicasaw County, Iowa, located at 3036 240th Street, Fredericksburg, Iowa (Clark property). Sparboe had a contract with Clark to haul waste from its New Hampton facility and land-apply the waste pursuant to the terms of its permit on the Clark property. Both Sparboe and Clark were responsible for ensuring proper land application of the sludge.
- 2. On February 22, 2016, DNR Field Office (FO) 1 received a call from Ken Rasing, Chickasaw County Sanitarian, regarding apparent improper land application of waste on the Clark property. Mr. Rasing reported that he received a complaint on Friday, February 19, 2016, but he was out of the office and could not respond at the time.
- 3. Mr. Rasing stated he had been to the neighboring farm to the east of the Clark property and observed that a red material had been deposited on the banks of the creek that flows east to west on the south side of the Clark property.
- 4. On February 22, 2016 DNR FO1 staff met with Ken Rasing at his office in New Hampton, Iowa, to review his photographs and listen to his observations. Following this meeting, DNR staff drove to Sparboe's facility in New Hampton to meet with Jason Dugan, Sparboe's Quality Assurance Manager. Also present at this meeting was Jim Biedermann, Sparboe Plant Manager at that time. DNR staff reported the complaint to Dugan and Biedermann and requested that someone from Sparboe accompany DNR staff to observe the situation. Jason Dugan agreed to accompany DNR staff to the Clark property land application site. Mr. Dugan provided no comments on the disposal during the ensuing site investigation.
- 5. During the February 22nd meeting Sparboe reported to DNR that Clark had hauled two loads of sludge from Sparboe's facility on Thursday, February 18, 2016 and Friday,

February 19, 2016. Sparboe also reported that it had cancelled its contract with Clark on February 22, 2016.

- 6. At approximately 12:30 pm on February 22, 2016, DNR staff arrived at the adjacent property accompanied by Jason Dugan to investigate the complaint. The parties met Mr. Rasing at Wurzer Farm. Mr. Rasing, using the county's ATV, drove the group down to the creek on the Wurzer Farm located to the east of the Clark property. A grassed waterway that passes through the Wurzer Farm property daylights near the north-south fence line with the Clark property. At that point, it becomes an open stream--a tributary to the East Fork Wapsipinicon River.
- 7. During this inspection, the group observed from the Wurzer Farm property that snow banks on the north and south sides of the creek contained red solid deposits that appeared to be windblown from land application and spillage several hundred feet or more to the north and west. At that point, the group entered the Clark property on foot to determine the extent of the deposits and observed red particles in the stream and floating ice coated with red particles in the stream. Photographs were taken and samples were collected upstream and midstream. Later in the day a downstream sample was collected where the creek leaves the Clark property.
- 8. Following the investigation at the creek, the group proceeded to a cornfield on the northwest portion of the Clark property. The cornfield had a reddish-orange material land-applied on it, but the material was not mixed into the soil (incorporated) as required by the applicable DNR land-application permit. A concentrated deposit of the material was also observed on the southeast corner of the property, also not incorporated.
- 9. Based on DNR's inspection, it is apparent that an old hog building pit was being used to store the Sparboe sludge material at the Clark property and an impoundment (approximately 100' x 50') to the south of the hog pit contained the overflow from the pit. On February 22, 2016, the pit and impoundment were full of a reddish-orange material.
- 10. This material, based on DNR staff's past experience, was sludge generated from the dissolved air flotation (DAF) wastewater pretreatment unit at Sparboe's facility in New Hampton, Iowa. The red color comes from the ferric chloride flocculent used to settle out solids. The material observed in the Clark property cornfield, hog pit and impoundment matched the appearance of the material observed on the banks of the creek. DNR staff, assisted by Mr. Rasing, finished the inspection by collecting a downstream sample from the creek and left the site at approximately 4:00 pm.
- 11. Winds had been reported the previous week to have been gusting from the north and west. Mr. Rasing reported that the area had experienced high winds the previous week. A weather report from Friday, February 19, 2016 at the nearest weather station in Charles City showed maximum sustained winds of 38 mph with gusts up to 46 mph from the west.

- 12. On February 23, 2016, DNR FO1 staff called Jim Biedermann at Sparboe to discuss observations from the previous day. DNR staff reported to Mr. Biedermann that the material on the Clark property near the creek was Sparboe sludge solids that had been blown from the land application and/or from the impoundment near the old hog pit. DNR staff instructed Mr. Biedermann to remove the material from the stream banks and he agreed to contact Mr. Clark.
- 13. On February 25, 2016, DNR staff again contacted Jim Biedermann to ask about the progress at the Clark property. Mr. Biedermann reported that Clark had a person working to clean up the creek banks.
- 14. After the phone call, DNR staff returned to Sparboe's facility in New Hampton to check on the progress of the cleanup. Jason Dugan met DNR staff at the Clark property at 11:30 am. No progress on removing the heavy deposits on the snow banks had taken place and there was no evidence that anyone had been down to the creek at all since DNR's February 22, 2016 visit. The material on the land application site was not incorporated. The hog pit was full and the impoundment still contained solids.
- 15. DNR staff returned to the Sparboe facility at approximately 1:00 pm February 25 and met with Jim Biedermann and David Deal, Sparboe's VP of Operations in Mr. Biedermann's office. Mr. Biedermann placed a call to Kasey Clark, owner and President of Clark Farms Ltd. Mr. Clark reported that an employee had been working on the cleanup but had equipment problems. Messrs. Biedermann and Deal instructed Mr. Clark to make arrangements to get the work done that day. Mr. Clark agreed to contact Karen Halverson, Secretary for Clark, to see what progress had been made and then call back with a report. In the meantime, DNR staff instructed Sparboe to arrange for a back-up contractor to complete the cleanup, if necessary.
- 16. At 2:15 on February 25, 2016, Jim Biedermann called Karen Halverson at Clark who reported that an individual conducting cleanup would be on site in 1.5 hours. Jason Dugan from Sparboe joined DNR staff to meet this person at the Clark property at 3:45 pm.
- 17. At 3:55 pm on February 25, 2016, this individual, Don Warnke, arrived at the Clark property. He reported that he was not prepared to work since the skid loader needed repair. He reported that he had done some work previously but was unsure of where he worked and the day he did it. DNR staff indicated the area at the southeast end of the property was where the heaviest concentration was and requested that he begin there when he returned in the morning. Mr. Dugan gave Mr. Warnke his cell phone number and requested a call if he had any problems.
- 18. At 8:10 am on Friday, February 26, DNR FO1 staff contacted Mr. Dugan. He reported that if Clark did not begin the cleanup at the land application site by 10:30 am that day, another contractor was prepared to move onto the site and begin the cleanup.

- 19. At 9:00 am on February 26, DNR FO1 staff received a telephone call from Karen Halverson. Ms. Halverson reported that she had spoken with Mr. Clark who said that Clark would do the cleanup and would not allow any other contractors on site.
- 20. DNR staff returned to the site at 1:30 pm on February 26. Mr. Warnke was just returning from a lunch break. He reported that he had been on site since 11:00 am and had pulled back the snow from approximately 30' of the creek bank on the north. DNR staff observed that Mr. Warnke was missing the most impacted areas that were closest to the stream. When DNR pointed these spots out to Mr. Warnke, he agreed to concentrate on those areas first. DNR staff also emphasized the need to land apply the material in the impoundment after the stream banks were finished.
- 21. DNR FO1 staff returned to the Clark property on Monday, February 29, 2016 to check the adequacy of the cleanup. On that day, DNR FO1 staff observed that the majority of the contaminated snow had either melted or was pulled back from the stream by about 50' on the north side of the stream but some spots still remained on the south side. Mr. Warnke reported he could not access the south side of the creek without going on to the neighbor's (Wurzer Farm) property. Solids were still seen deposited on the grass. The impoundment area remained to be cleaned out and the pit was still full. The land application area remained largely unincorporated; however, it appeared that some sludge had been disked in on the north portion of the west farm field. DNR collected samples of the creek and creek sediment during this visit.
- 22. On March 7, 2016, Mr. Warnke reported to DNR FO1 staff that he had taken the Clark semi-tanker previously located at Sparboe's facility in New Hampton containing Sparboe sludge to the Clark property on 240th street and land-applied it. He did not say when he had done this. Land applying involves using the pit to transfer the material from the tanker to the land application equipment. Mr. Warnke reported that he had pumped the pit partway down and land applied using the "terragator" and emptied some of the tanker into the pit. Mr. Warnke reported that he bad to stop because both the pit and the tanker liquid were partially frozen. Mr. Warnke reported that he tried to incorporate the material that he land-applied that day.
- 23. DNR did not authorize this tanker to be taken to the Clark property.
- 24. DNR requested that Sparboe investigate and ensure that the load was properly land-applied. Jason Dugan drove to the site and took pictures. Mr. Dugan did not report whether the load was incorporated.
- 25. On March 8, 2016, in a telephone conversation with Jim Biedermann and Jason Dugan, DNR FO1 staff requested that by Friday March 11, 2016, Sparboe, in consultation with Clark, submit a plan and schedule for land-applying and incorporating the remaining material at the Clark property, including the material in the impoundment

area, the hog building pit, the tanker and any material remaining in the terragator or in any other structures at the Clark property.

- 26. Records received from Clark via email on March 16, 2016 indicated that nothing was hauled from Sparboe to the Clark property (identified as Farm 5) on Thursday, February 18, 2016, but Clark hauled 4,206 gallons of sludge on Friday, February 19, 2016, 4,492 gallons of sludge was hauled on Saturday, February 20, 2016, and 22,456 gallons of sludge was hauled on Sunday, February 21, 2016.
- 27. On March 22, 2016, a Notice of Violation (NOV) was issued by DNR FO1 to Sparboe and Clark and sent via certified mail.
- 28. On April 14, 2016, DNR received a call from Karen Halverson asking if DNR was willing to allow Clark to land apply all of the material in the pit and impoundment. DNR authorized this action. Halverson stated her husband would do the work over the following weekend.
- 29. On April 18, Halverson left a voicemail for DNR reporting that the cleanup work did not occur.
- 30. Following consultation with the DNR, Sparboe removed liquid and dried sludge from the Clark property for proper disposal. This removal action occurred between April 19 and 21, 2016.
- 31. On May 20, 2016, DNR issued an Administrative Order to Sparboe for violations of Permit No. 19-SDP-03-03P-LAN. To the best of DNR's knowledge, Sparboe has complied with the terms of the Order.
- 32. DNR notes for the record that staff have received numerous complaints in recent years concerning improper disposal of liquids at the Clark property located at 240th Street in Fredericksburg, Iowa. DNR staff have been forced to respond to complaints and inspect the Clark property more than a dozen times over the past dozen years.

IV. CONCLUSIONS OF LAW

- 1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.
- 2. 567 IAC 121 provides the DNR with regulatory authority over the land application of certain wastes—including certain types of sludge—and requires parties seeking to land-apply certain sludges to obtain a permit from the DNR and to land-apply sludge in a manner consistent with the permit and the applicable regulations. The facts outlined above establish violations of this regulatory requirement as the land application was inconsistent with both the requirements of 121 and the applicable permit.

- 3. DNR issued Permit No. 19-SDP-03-03P-LAN to Sparboe for land application of Sparboe sludge at the Clark property. Such land application must be in compliance with the provisions in 567 IAC 121 and the terms of the permit. The facts outlined above establish multiple violations by Clark of 567 IAC 121, including but not limited to failure to incorporate land-applied sludge into the soil, land application on frozen ground, land-applying sludge within 200 feet of water of the state, failure to file timely reports, and failure to maintain records.
- 4. DNR has jurisdiction over certain water bodies in the state of Iowa. 567 IAC 61.3(2) establishes general water quality standards that must be complied with, including that "such waters shall be free from floating debris ... attributable to ... agricultural practices in amounts sufficient to create a nuisance." The facts outlined above establish a violation of this section of the IAC due to sludge wastes reaching and entering a water of the state.
- 5. Iowa Code 455B.186 prohibits the depositing or discharging of any pollutant into any water of the state of Iowa. The facts outlined above establish a violation of this section of the Iowa Code.

V. ORDER

THEREFORE, the Director of the DNR orders:

- 1. Clark shall pay an administrative penalty of \$10,000.00 within 60 days of this Order being signed by the Director.
- 2. Clark, or any other company affiliated with Clark, shall cease all land application or disposal of solid waste, septage, sludge or any other material at the property located in Section 33, T95N, R11W, Chickasaw County; 3036 240th St., Fredericksburg, Iowa.

VI. ADMINISTRATIVE PENALTY

- 1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.
- 2. Additionally, Iowa Code §§ 455B.191 and 455B.307 provide for civil penalties of up to \$5,000.00 per day for the violations cited herein. The DNR retains its right to pursue civil penalties if Clark does not comply with the requirements of this Order, or if Clark violates the term of an applicable permit in the future.
- 3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE ORDER ISSUED TO: CLARK FARMS LTD.

be. The general categories of consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. These categories are addressed below and the administrative penalty is determined as follows:

- a. <u>Economic Benefit</u>. The economic benefit element of a penalty is intended to recoup the economic benefit a party enjoyed as a result of non-compliance. The economic benefit is derived from Clark's storing and improperly land applying Sparboe's waste. Clark's property was the closest land application site to the Sparboe facility. A penalty of \$4,000.00 is included for this factor.
- b. Gravity of the Violation. Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety, and whether the violation threatens the integrity of the regulatory program. Improper land application of sludge results in significant threats to human health and the environment, especially when the sludge enters a water of the state. Failure to penalize a party for improper application may result in other parties doing the same thing. A penalty of \$3,000.00 is included for this factor.
- c. <u>Culpability</u>. The factors to be considered in determining the "culpability" of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. Clark was responsible for ensuring the proper disposal of waste sludge. Mr. Clark was well aware of DNR's regulatory requirements. Clark failed to remediate the site despite multiple assurances that the sludge would be cleaned up. A penalty of \$3,000.00 is included for this factor.
- 4. As such, an administrative penalty of \$10,000.00 is imposed by this Order. Failure to assess a penalty for the violations listed above would threaten the integrity of the regulatory program by not providing a financial incentive for responsible parties to comply with applicable regulations.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order.

VIII. NONCOMPLIANCE

Failure to comply with any requirement of this Order may result in the imposition of additional penalties and/or referral to the Iowa Attorney General to obtain injunctive

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE ORDER ISSUED TO: CLARK FARMS LTD.

relief and civil penalties pursuant to Iowa Code §§ 455B.191 and 455B.307. Compliance with Section V (Order) of this Order constitutes full satisfaction of any requirements pertaining to any specific violations described in Section IV (Conclusions of Law) of this Order.

Chuck Gipp, Director

Iowa Department of Natural Resources

CC: DNR Field Office #1; Dave Scott; VI.B.2.e; VI.C; III.C.



Kevin W. Clark, President Clark Farms LTD. PO Box 283 New Hampton, IA 50659

David Scott, Attorney lowa Department of Natural Resources Field office 6 1023 W. Madison St. Washington, IA 52353

Dear, Mr. Scott,

This letter shall serve as a formal appeal of your administrative orders:

2017-SW-17

2017-WW-14

Please regard this as a formal notice and legal council will be in contact with you.

Regards,

Kevin W. Clark

President

Clark Frams LTD.

319,360,0838

RECEIVED

DEC 04 2017

DNR FO6

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES DES MOINES, IOWA

IN THE MATTER OF

CLARK FARMS, LTD.

NOTICE OF APPEAL OF ADMINISTRATIVE ORDER NO. 2017-SW-17 NO. 2017-WW-14

COMES NOW Clark Farms, Ltd., PO Box 283, New Hampton, Iowa 50659, and pursuant to 567 Iowa Administrative Code Chapter 7 and 561 IAC 7.4, files a written notice of appeal as follows:

- 1. The Iowa Department of Natural Resources (Department) issued an Administrative Order numbered No. 2017-SW-17 No. 2017-WW-14 to the Appellant and received by the Appellant on November 20, 2017.
- 2. The Appellant appeals the factual findings, conclusions of law, order, and the penalties ordered in the Administrative Order.
- 3. The Administrative Order is being appealed because the Appellant disputes all material and relevant factual findings and conclusions of law. Without limitation of the foregoing, Appellant affirmatively states that he did not substantively violate provisions of the Iowa Code, the Iowa Administrative Code, or any DNR permit regarding the land application of sludge or the discharge of pollutants to a water of the state. Appellant also disputes the assessment of a \$10,000 administrative penalty as being arbitrary, capricious, unreasonable, and excessive under these circumstances.
- 4. Pursuant to 561 7.6(2), Appellant requests an opportunity to pursue informal settlement of this matter with the Department.

Dated: December 4, 2017

Eldon L. McAfee

Brick Gentry, P.C.

6701 Westown Parkway, Suite 100 West Des Moines, Iowa 50266

(515) 271-5916

eldon.mcafee@brickgentrylaw.com

ATTORNEY FOR CLARK FARMS, LTD.

Original filed with:
Director
Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319

Copy to:

"Bureau Chief
Legal Services Bureau
Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319

BEFORE THE IOWA ENVIRONMENTAL PROTECTION COMMISSION

CLARK FARMS, LTD,	DIA NO. 18DNR0008
Appellant,))
vs.	SCHEDULE FOR CONSIDERATION OF APPEAL
IOWA DEPARTMENT OF NATURAL RESOURCES,)))
Respondent.))

The Iowa Environmental Protection Commission (EPC) has received Appellant's timely appeal of the March 29, 2018 Order Granting Motion to Dismiss issued by Administrative Law Judge (ALJ) Amanda M. Atherton. The appeal is scheduled for consideration at the EPC's regularly scheduled meeting on July 17, 2018, at 11:30 AM at the Iowa State Capitol, Room 116. The parties shall file briefs as follows:

- May 24, 2018: Appellant's brief deadline
- June 13, 2018: Respondent's brief deadline
- June 25, 2018: Appellant's reply brief deadline

Written requests to present oral argument shall be filed with the briefs. Briefs shall be filed by email with the undersigned counsel for the EPC. The issues and evidence on appeal shall be limited to the issues and evidence preserved in the record before the ALJ on Respondent's Motion to Dismiss.

Dated May 4, 2018.

DAVID S. STEWARD Assistant Attorney General Hoover State Office Building 1305 E. Walnut St., 2nd Floor Des Moines, Iowa 50319

Phone: (515) 281-7242

E-mail: david.steward@ag.iowa.gov

cc: Eldon McAfee (email)
David Scott (email)

BEFORE THE IOWA ENVIRONMENTAL PROTECTION COMMISSION IOWA DEPARTMENT OF NATURAL RESOURCES DES MOINES, IOWA

CLARK FARMS, LTD. Appellant	
v,	CLARK FARMS, LTD's APPELLANT'S BRIEF
IOWA DEPARTMENT OF NATURAL RESOURCES	
Respondent	

Appellant Clark Farms, Ltd. pursuant to 567 Iowa Administrative Code Chapter 7, 561 Iowa Administrative Code 7.17(5)"e", files this Appellant's Brief before the Environmental Protection Commission.

Background.

On February 28, 2018, the Department filed a Motion to Dismiss Clark's appeal of Administrative Order 2017-SW-17 and 2017-WW-14. The Department alleged that Clark's appeal should have been dismissed because the appeal was filed after the thirty-day deadline under both Iowa Code §455B.175 and §455B.308.

The Administrative Law Judge rejected the Department's alleged basis for its Motion to Dismiss, but, unfortunately for Clark, on its own dismissed Clark's appeal by ruling that Iowa Code §455B.308 (solid-waste) and §455B.175 (water-quality) both require a notice of appeal to be filed within thirty days after issuance of an administrative order. The Administrative Law Judge went on to rule, based on an unrelated Iowa Supreme Court decision, "issuance occurs on the date when the order is sent by certified mail."

Clark disputes the Administrative Law Judge's decision and maintains that his appeal was filed within 30 days of receipt of the Administrative Order as required by the Oct. 4, 2017 Administrative Order and in full compliance with Department's rule, IAC 561-7.4(1).

Analysis and Argument.

The Administrative Law Judge's ruled that Clark's Notice of Appeal was untimely and therefore must be dismissed because notice of the Administrative Order was placed in the mail on Oct. 6, 2017 and his notice of appeal was therefore due on November 5, 2017. Clark filed his Notice of Appeal on December 4, 2017, well after the deadline established in the Administrative Law Judge's Proposed Decision. Clark disputes the Proposed Decision primarily because the Department's Administrative Order stated:

"The written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code §17A and 561 IAC 7. Please note the failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order." (underlined added for emphasis)

The basis for this notice to Clark in the Administrative Order is the Department's rule for filing a notice of appeal of an administrative order set out in IAC 561-7.4(1), by reference in IAC 567-7.1, as follows:

"7.4(1) Time. Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question. The written notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319." (underlined added for emphasis).

Clark received the Department's Administrative Order on Nov. 10, 2017 when he signed for and picked up the certified letter which contained the Administrative Order. The only notice Clark had of his appeal rights was from the Department in the Administrative Order and it expressly notified him that he had 30 days from the date he received the Administrative Order, which was December 10, 2017. Clark contacted the undersigned legal counsel and a Notice of Appeal was filed, as directed in the Administrative Order, on December 4, 2017.

The Administrative Law Judge's Order Granting Motion to Dismiss is being appealed as a Proposed Decision because the conclusions of law are erroneous as a matter of law. In particular, Clark affirmatively states that the conclusion of law in the Order Granting Motion to Dismiss finding that Clark's time period to appeal the Department's Administrative Order began on Oct. 6 when the Administrative Order was placed in the mail is erroneous as a matter of law, as well as a violation of principles of fundamental equity and fairness. The Iowa Supreme Court has ruled that when the legislature has clearly vested an agency with interpretive authority, it will reverse the agency's ruling only when the agency's interpretation of a statutory provision is "irrational, illogical, or wholly unjustifiable." *Abbas v. Iowa Insurance Division*, 893 N.W.2d 879 (Iowa 2017) (quoting Coffey v. Mid Seven Transport Co., 831 N.W.2d 81, 88 (Iowa 2013).) In this case, the Department's statement in the Administrative Order that Clark had 30 days from receipt to appeal, and the underlying rule, is not an "irrational, illogical, or wholly unjustifiable" interpretation of the provisions in the Iowa Code.

The Department's Administrative Order received by Clark on Nov. 10, 2017, directly and expressly notified the Clark that a "written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order." To follow the Administrative Law Judge's Proposed Decision dismissing the appeal would make Clark bear the brunt of the Department's error – at least an error as the Administrative Law Judge sees it – in determining the proper time period for appeal under the law.

Request for Oral Argument.

As required by 561 IAC 7.17(5)"e", and as currently scheduled, Clark Farms, Ltd. requests an oral argument at the July 17, 2018 Environmental Protection Commission meeting.

Request for Relief.

Clark respectfully requests that the Environmental Protection Commission overturn the Proposed Decision, "Order Granting Motion to Dismiss", and for further relief as deemed equitable and just, including but not limited to dismissal of the Department's Administrative Order 2017-SW-17 and 2017-WW-14.

Dated: May 29, 2018

Eldon L. McAfee

Brick Gentry, P.C.

6701 Westown Parkway, Suite 100 West Des Moines, Iowa 50266

(515) 271-5916

eldon.mcafee@brickgentrylaw.com

ATTORNEY FOR CLARK FARMS, LTD.

Original filed with: Director Department of Natural Resources 502 East 9th Street Des Moines, Iowa 50319

Copy to:

David Scott, Attorney for DNR Iowa Department of Natural Resources 515.725.8239, david.scott@dnr.iowa.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by email on the 29th day of May, 2018.

BEFORE THE IOWA ENVIRONMENTAL PROTECTION COMMISSION IOWA DEPARTMENT OF NATURAL RESOURCES DES MOINES, IOWA

CLARK FARMS, LTD. Appellant	
v.	CLARK FARMS, LTD's APPELLANT'S REPLY BRIEF
IOWA DEPARTMENT OF NATURAL RESOURCES	
Respondent	

Appellant Clark Farms, Ltd. pursuant to 567 Iowa Administrative Code Chapter 7, 561 Iowa Administrative Code 7.17(5)"e", files this Appellant's Reply Brief before the Environmental Protection Commission.

Argument

In its Brief, the Department first maintains that the Commission must follow the Administrative Law Judge's ruling that Clark Farms' appeal period began when the Administrative Order was placed in the mail, and that the appeal period did not begin within 30 days of receipt of the Administrative Order as expressly stated in the Order itself.

Clark Farms agrees with the Department that it is a fundamental principle of law that statutory provisions supersede agency rules. The Department also notes, at page 11 of its Brief, that the statutory deadlines for appeals are not consistent as to when an appeal period begins. And, in this case the ALJ's ruling that the statutory appeal period for water violations, Iowa Code §455B.175(1)(a), begins upon issuance of the Order is not supported by the plain language of the statute. Because of the inconsistency in the statutory appeal periods, DNR orders citing violations of different statutes, which is the case in the Order to Clark Farms, would have to provide notice of different appeal periods for each violation with a different statutory appeal period. As the Department notes on page 11 of its Brief, the Department's orders have for many years giving the recipient 30 days from receipt to file an appeal. This was done, as the Department notes, to make all orders consistent, as well as to give the recipient the broadest time period to file an appeal. This interpretation of the proper appeal period by the Department is not "irrational, illogical, or wholly unjustifiable" and should be continued by reversing the ALJ's decision in this case.

In its Brief, the Department also argues that the ALJ should have upheld the Department's position that Clark Farms missed the appeal period because Clark Farms did not have a registered office or agent in Iowa resulting in the Order sent by certified mail to be initially returned as undeliverable. The ALJ rejected this argument and the Department did not appeal the ALJ's ruling on that issue. Further, ultimately the certified mailing of the Order was delivered to Clark Farms and Clark Farms appealed within 30 days of receipt of the certified mail.

Request for Oral Argument.

As required by 561 IAC 7.17(5)"e", and as currently scheduled, Clark Farms, Ltd. requests an oral argument at the July 17, 2018 Environmental Protection Commission meeting.

Request for Relief.

Clark respectfully requests that the Environmental Protection Commission overturn the Proposed Decision, "Order Granting Motion to Dismiss", and for further relief as deemed equitable and just, including but not limited to dismissal of the Department's Administrative Order 2017-SW-17 and 2017-WW-14.

Dated: June 29, 2018

Eldon L. McAfee

Brick Gentry, P.C.

6701 Westown Parkway, Suite 100 West Des Moines, Iowa 50266

(515) 271-5916

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ATTORNEY FOR CLARK FARMS, LTD.

Original filed with:
Director
Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319

Copy to:

David Scott, Attorney for DNR Iowa Department of Natural Resources 515.725.8239, david.scott@dnr.iowa.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by email on the 29th day of June, 2018.

BEFORE THE IOWA ENVIRONMENTAL PROTECTION COMMISSION

CLARK FARMS, LTD.
Appellant,

VS.

IOWA DEPARTMENT OF NATURAL RESOURCES,

Respondent.

DIA NO. 18DNR0008

BRIEF OF THE IOWA
DEPARTMENT OF NATURAL
RESOURCES

BRIEF OF THE IOWA DEPARTMENT OF NATURAL RESOURCES

Clark Farms, Ltd. (Clark Farms) has appealed the March 29, 2018 Order Granting Motion to Dismiss (Proposed Decision) issued by Administrative Law Judge (ALJ) Amanda Atherton in the above-captioned matter. The Department of Natural Resources (DNR) submits this brief in response to Clark Farms' opening brief filed on May 29, 2018.

The questions before the Commission are limited. The Commission must determine, as a matter of law, when the appeal period for an administrative order authorized by Iowa Code (IC) §§ 455B.308 and 455B.175 commences and whether Clark Farms submitted its appeal during the appeal period.¹ The order in question is DNR's Administrative Order 2017-SW-17/2017-WW-14 (Order) against Clark Farms, dated October 4, 2017.

The DNR argued in support of its Motion to Dismiss that the appeal period commenced when the Order was received by the company, and that the company failed to appeal within thirty-days of receipt of the Order. The DNR's position is explained fully below. Judge Atherton disagreed with the DNR's argument and, instead, granted the Motion to Dismiss based on her own

¹ The merits of the underlying Order are not at issue in this proceeding. Regardless, the DNR will provide photos showing the alleged violations that resulted in the underlying Order in the event members of the Commission wish to review them.

analysis of the facts and law. The Proposed Decision, if adopted by the Commission, establishes that the appeal period for administrative orders pursuant to these statutory provisions commences when the order is "issued," not when the order is "received," and that Clark Farms did not file its appeal before the appeal period ended.²

If the Commission finds that Clark Farms submitted its appeal after the appeal period ended, the Commission does not have jurisdiction to review the merits of the Order and the matter must be dismissed.

I. BACKGROUND.

A. The Order and DNR's Efforts to Deliver Notice of the Order to Clark Farms.

The Director of the DNR signed the Order on October 4, 2017. The Order addressed certain alleged violations of Iowa law by Clark Farms. Clark Farms was afforded thirty days to file an appeal of the Order pursuant to IC §§ 455B.175 and 455B.308.

The Order was sent via certified mail on October 6, 2017 to Clark Farms' registered agent at the company's registered office and to Clark Farms' principle office. These addresses were obtained from the official filings submitted by the company to the Iowa Secretary of State. Clark Farms is a company established pursuant to Chapter 490 of the Iowa Code and is registered with the Iowa Secretary of State. As explained below, businesses registered to do business in the state of Iowa are obligated by law to both continuously maintain a registered agent in the state of Iowa and a registered office in the state Iowa, as well as to keep all records (including contact addresses) current with the Iowa Secretary of State.

² Based on Iowa Supreme Court precedent, an administrative order is considered "issued" when it is sent via certified mail to the recipient, and that issuance satisfies due process. *See Purethane v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 707-08 (Iowa 1993).

The Order sent to Clark Farms' registered agent at its official registered office was returned to the DNR as undeliverable. Based on official records from the United States Postal Service (USPS), delivery was attempted to the official registered agent address on October 10, 2017, but failed because the registered agent was no longer located at the registered office address and a forwarding order had expired.

The copy of the Order sent to Clark Farms' principal office also could not be delivered because the company was no longer accepting mail at that address. However, the President of the company (Mr. Clark) eventually received the copy of the Order sent to the principle office address after it was forwarded to an address in Texas pursuant to a mail forwarding request.

The company submitted its appeal of the Order on December 4, 2017, nearly two months after the attempted delivery of the Order to the company's registered agent at its registered office address.³

B. The Basis for DNR's Motion to Dismiss the Original Appeal.

The DNR's position was, and remains, that by failing to maintain a valid registered agent and registered office in the state of Iowa "at all times" as required by Iowa law, the DNR was justified in seeking dismissal of the appeal. The Order should have been delivered to the registered agent on October 10, 2017. Due to the company's failure to comply with Iowa corporate law, the appeal was received by the company more than sixty days later, in Texas. While the DNR generally does not pursue motions to dismiss appeals of administrative orders, the DNR pursued dismissal in this matter for multiple reasons.

³ A detailed chronology of the multiple attempts to deliver this Order to the company is provided in section IV.A, below.

First and foremost, to ignore Clark Farms' behavior would set a dangerous precedent for all state agencies that are involved in enforcement, tax collection, or any other activity in which it is necessary to have reliable contact information for a business. These corporate regulations are in place, at least in part, to provide state agencies a legal point of contact for companies that do business in the state. The legal requirement that an Iowa corporation maintain accurate contact information for its registered agent and registered office with the Iowa Secretary of State provides assurance to the sending party that legal notices will be received in a timely manner by the company. If Iowa corporations can simply ignore these requirements, the impacts could be very far reaching.

Additionally, if a deadline for appeal is missed, the Order is final and neither the agency nor the Commission have jurisdiction as a matter of law to hear the appeal.

II. AN ADMINISTRATIVE APPEAL DEADLINE ESTABLISHED BY THE LEGISLATURE IS JURISDICTIONAL.

While the question before the Commission is when the appeal period starts to run under the applicable statutory sections, it is also important to note that the statutory appeal deadlines at issue in this case are jurisdictional, and they cannot be extended by this Commission. Franklin v. Iowa Dep't of Job Serv., 277 N.W.2d 877, 881 (Iowa 1979) (holding that where a statutory deadline for appeal is applicable, failure to file within the statutory time period finalizes the decision and deprives the agency of the authority to consider an appeal.); Iowa Civil Rights Com'n v. Massey Ferguson, Inc., 207 N.W.2d 5, 9-10 (Iowa 1979) ("[a]n administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional"). Beardslee v. Iowa Dep't of Job Servs., 276 N.W.2d 373, 377 (Iowa 1979) ("compliance with the [statutory] appeal notice provisions is jurisdictional."); see also Kash v. Iowa Dep't of Employment Services, et al, 476 N.W.2d 82, 83 (Iowa 1991) (stating that when an appeal is filed outside of a statutory time

limit, there is not statutory authorization for subsequent agency review (citing *Franklin*, 277 N.W.2d at 881)). As such, if the appeal was filed late, the Commission lacks jurisdiction to consider the merits of the Order.

The Department of Inspections and Appeals (DIA) has recognized and applied this principal, as well. *See In the Matter of Amoco Oil Co., et al.*, DIA No. 88DNR34, 1992 WL 12574412, at *5 (Iowa Dept. Insp. App., August 28, 1992) (citing, among others, *Zick v. Haugh*, 165 N.W.2d 836, 837 (Iowa 1969) (holding that a statutory deadline is jurisdictional and even filing one day late robs the court of jurisdiction).

If the appeal was late, then the matter must be dismissed.

III. THE ALJ'S HOLDING IN THE PROPOSED DECISION IS THAT THE APPEAL PERIOD COMMENCED WHEN THE ORDER WAS ISSUED AND THAT CLARK FARMS' APPEAL WAS LATE.

Again, DNR argued that Clark Farm's appeal should be dismissed because Clark Farms had filed its appeal late. DNR based this argument on the belief that the appeal period began to run on the date the Order was received by the company.

Neither the DNR nor Clark Farms argued that the appeal period began to run upon issuance of the Order. Regardless, the ALJ determined that since the appeal deadline is jurisdictional, it was appropriate for her to impose her own analysis and decision regardless of what was argued by either party.

The ALJ's holding is based on her review of the controlling statutory language in IC § 455B.175(1)"a" and IC § 455B.308. In relevant part, the controlling statute governing certain water violations states:

The person to whom such <u>order is issued</u> may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter 17A, <u>by filing with the director within thirty days</u> a notice of appeal to the commission.

IC 455B.175(1)"a" (emphasis added). Further, the controlling statute governing solid waste violations states, in relevant part:

Any person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director within thirty days of the issuance of the order....

IC 455B.308 (emphasis added).

Despite the inconsistency of the applicable language between the two statutory sections, the ALJ determined that the appeal period for both statutory sections begins upon "issuance" of an administrative order, not upon receipt. Based on Iowa Supreme Court precedent, the ALJ also determined that the Order was issued when it was sent to Clark Farms by certified mail on October 6, 2017. Therefore, the thirty-day appeal period ended on November 6, 2017. Since the ALJ determined that Clark Farms had filed its appeal after the appeal period had concluded, she determined that the matter must be dismissed.

IV. THE DNR'S MOTION TO DISMISS WAS BASED ON CLARK FARMS' FAILURE TO FILE ITS APPEAL WITHIN THE STATUTORY APPEAL PERIOD BASED ON THE DATE OF RECEIPT OF THE ORDER.

The DNR's Motion to Dismiss and Reply are included in the record. In summary, the DNR argued that Clark Farms' appeal should be dismissed because the appeal had been filed more than thirty days after the appeal had been *received* by Clark Farms. The DNR's argument focused on the failure of the company to maintain a registered agent and registered office in the state of Iowa resulting in the Order being returned to DNR as undeliverable. All of the facts and law referenced below are supported by documentation in the record.

A. <u>Administrative Order Delivery Timeline.</u>

• Clark Farms, Ltd. is a corporation established pursuant to, and subject to, Iowa Code Chapter 490.

⁴ See Proposed Order at 5 (citing Purethane, 498 N.W.2d at 707-08).

- The Iowa Code requires, in relevant part, each Iowa corporation to "continuously maintain in this state both of the following: (1) a registered office ... [and] (2) a registered agent, who ... resides in the state...." IC § 490.501(emphasis added.)
- The corporation's registered agent is "the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation." IC § 490.504(1) (emphasis added).
- Corporations in Iowa are required to file and maintain current and accurate records with the Iowa Secretary of State. IC § 490.120.
- Pursuant to the Iowa Secretary of State, Clark Farms' registered agent and registered office address was (at the time the order was issued):

Kevin W. Clark 2799 220th St. Fredericksburg, IA 50630

• Also pursuant to the Iowa Secretary of State, Clark Farms' principle office address was (at the time the Order was issued):

PO Box 283 New Hampton, Iowa 50659

- The DNR Director signed the Order on October 4, 2017.
- Pursuant to the official USPS tracking documentation, the Order was sent by certified mail on October 6, 2017 to both addresses (Fredericksburg and New Hampton).
- On October 10, 2017 the USPS attempted delivery of the Order to the Fredericksburg address. The registered agent was not located at that address. A mail forwarding authorization had expired. The Order was returned to DNR as undeliverable.
- Concurrently, a copy of the Order sent to Clark Farms' principle office reached New Hampton, Iowa on October 18, 2017, but was also subject to a mail forwarding order. The Order eventually reached Ben Wheeler, Texas (apparently the location of the personal residence of the President and registered agent of Clark Farms (Mr. Clark)) and was "available for pickup" by Mr. Clark on October 26, 2017. The Order was not picked up until November 10, 2017.
- Finally, on October 6, 2017, DNR also sent a copy of the Order via certified mail to what the DNR Field Office staff believed was the personal address of Mr. Clark

in Ben Wheeler, Texas.⁵ The Order reached Ben Wheeler, Texas on October 10, 2017, but it was never picked up by Mr. Clark. That copy of the Order was returned to DNR as undeliverable despite having been delivered to the same address where a copy of the Order originally sent to the principal office was eventually picked up on November 10, 2017.

B. <u>DNR's Argument Supporting the Motion to Dismiss.</u>

DNR's position in the matter is straightforward. A company doing business in Iowa should not be able to avoid receipt of an administrative order simply by failing to maintain a registered agent and registered office in the state. No party—whether it be a state agency, a private individual, or a court—should be required to "track down" a company that is registered to do business in the state of Iowa. The repercussions of allowing such a strategy by companies in the state of Iowa would make the job of providing notice virtually impossible if a company wished to avoid receipt. This, presumably, is the point of the statutory requirement that companies maintain a registered agent and registered office in the state and maintain accurate contact information with the Iowa Secretary of State for receipt of notice.

DNR suggested to the ALJ during the hearing on this matter that the legislature had anticipated this situation by enacting IC § 490.504. That section addresses how service is to be completed if a corporation's registered agent "cannot be served with reasonable diligence" such as if the registered agent does not exist or documents sent to the registered agent are returned as undeliverable. Specifically, the section allows the corporation to be served by sending the document via certified mail to the corporation's principal office. IC § 490.504(2). The document is considered received, in this case, "five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed." IC § 490.504(2)"c".

⁵ DNR's Field Office had experienced difficulty contacting the company over the years and believed this step might help to ensure the Order was received.

The ALJ rejected the DNR's argument as to whether IC § 490.504 applied in this matter, suggesting that it somehow only applied to service of process rather than providing notice of an administrative action. However, the ALJ's position appears to be directly at odds with the clear legislative directive that "a corporation's registered agent is the corporation's agent for service of process, notice, or demand" IC § 490.504(1) (emphasis added). The ALJ failed to differentiate between "service of process," as required in a judicial setting, and "notice" as required in an administrative setting.

The ALJ also seemed to take the position that since the individual who was listed as the company's registered agent (Mr. Clark) eventually received the notice in Texas, this was sufficient to establish the date of receipt.⁶ But, the opinion fails to address the facts that: 1) the registered agent did not reside in the state of Iowa; 2) there was no registered office located in the state of Iowa; and, 3) the company had failed to maintain current records with the Secretary of State—all of which represent violations of Iowa law referenced above.

If the ALJ's analysis of IC § 490.504 is accurate, then—at least for those statutory appeal deadlines that commence upon receipt of an order or at a time other than "issuance"—companies could intentionally avoid receipt of legal notices by failing to maintain a registered agent in the state and agencies would not have legal certainty that notice of administrative enforcement was received by the company. This cannot be what the legislature intended when it set up a process for providing notice or service to a recalcitrant company by using the alternative provisions provided in IC § 490.504.

⁶ See Proposed Decision, at 7, 8, stating that one of the copies of the Order eventually did reach the registered agent, Mr. Clark, on Nov. 10, 2017 (in Texas), so that would be when the ALJ considered the Order "received" by the company.

If the Commission decides to reject the ALJ's holding in the Proposed Decision, the DNR would encourage the Commission to adopt the position presented in this Section to establish a clear precedent that companies cannot ignore Iowa corporate law or actively avoid receipt of administrative notice.

V. ARGUMENTS IN CLARK FARMS' BRIEF ARE MISGUIDED.

In its brief, Clark Farms appears to argue that administrative rules or administrative order language can trump duly-enacted legislative language. In fact, it cannot. *See, e.g., Dunlap Care Ctr. v. Iowa Dept. of Social Services*, 353 N.W.2d 389, 397 (Iowa, 1984) (holding that an agency action that contravenes a statutory provision is invalid.) This is a settled matter of law and is a principal that applies to both rules enacted that are inconsistent with a legislative authorization and agency statements that are inconsistent with legislative enactments. Additionally, neither the DNR nor any other agency is afforded the "interpretive authority" to impose policies that are inconsistent with legislative directives.

Clark Farms cites Iowa Administrative Code 561 IAC 7.4 in support of its argument that the appeal period commences upon "receipt of notice." Yet, in fact, Clark Farms ignores the language in that rule that actually controls if the Proposed Decision is adopted by this Commission.

Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question

561 IAC 7.4(1) (emphasis added).

If the Commission adopts the Proposed Decision, then the ALJ has determined that, for this Order, a "shorter time period" applies.

Clark Farms also cites *Abbas v, Iowa Insurance Division*, 893 N.W.2d 879 (Iowa 2017) for the proposition that the DNR has interpretive authority to base the commencement of the appeal

period on the receipt, rather than the issuance, of an Order. If, however, the Commission agrees with the ALJ's holding, this case is not applicable.

VI. DNR'S ORDER LANGUAGE.

As this Commission is aware, the Iowa legislature established the DNR and provides the DNR with the authority to implement policies governing various legislatively-authorized programs, including air quality, water quality, solid waste management, and the operation of underground storage tanks, among other programs. The legislature also grants the DNR authority to take administrative enforcement action, when necessary. One option for enforcement is the issuance of administrative orders to a non-compliant party. Administrative orders are generally appealable within a fixed period to allow the recipient a chance to argue their case before an uninterested third party.

The deadlines for appeals are, for the most part, established by statute. Examples of some of the statutory provisions applicable to the DNR are included in Exhibit 1. Given that the legislative language authorizing appeals is not entirely consistent as to when the appeal period commences, DNR's orders have—for decades—referenced the date the Order is received as the date the appeal period begins. Presumably, the intent was to make all orders consistent across the various programs. Further, basing the commencement on the date of receipt seemed to provide the recipient with the broadest time period in which to respond.

This is the first time that language has been challenged. It has never been challenged by a recipient, by an administrative law judge, by this Commission, or by a judge as part of judicial review in court. However, if the Commission adopts the Proposed Decision, this language has been incorrect for decades as applied to solid waste and certain water matters.

Ultimately, in light of the Proposed Decision, the DNR intends to work with the Iowa Bar Association and interested parties to revise applicable legislative language so that it is consistent across all programs when the appeal period commences.

Regardless, if the Commission adopts the Proposed Decision, the appeal period for the Order in this matter commenced when the Order was issued and the matter must be dismissed.

VII. DNR'S REQUEST FOR RELIEF.

DNR requests that the case be dismissed as a matter of law because Clark Farms' appeal was submitted after the appeal period for the Order had concluded.

To achieve this end, the Commission may adopt the Proposed Decision's analysis of the applicable statutory sections which would result in certain appeal periods commencing when an order is issued. In the alternative, if the Commission disagrees with the ALJ's analysis as applied to either statutory section, the Commission could reject the ALJ's holding in the Proposed Decision and instead adopt the DNR's position that Clark Farms filed its appeal after the appeal period had run based on the date the company received the Order.

VIII. ORAL ARGUMENT.

This case is to be decided on matters of law. The Commission, in consultation with legal counsel from the Attorney General's office, can determine the applicable law based on submitted briefs and by review of the applicable law and the record. As such, DNR believes the matter can be settled without oral argument.

Dated: June 18, 2018

IOWA, DEPARMENT, OF NATURAL RESOURCES

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EXHIBIT 1

SAMPLE LEGISLATIVE APPEAL LANGUAGE [RELEVANT PORTIONS]

455B.476 Violations — orders. [Underground Storage Tanks]

1. If there is substantial evidence that a person has violated or is violating a provision of this part or a rule adopted under this part the director may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 455B.109. The person to whom the order is issued may appeal the order to the commission as provided in chapter 17A. On appeal, the commission may affirm, modify or vacate the order of the director.

455B.138 Resolution of violations — appeal. [Air Quality]

1. When the director has evidence that a violation of any provision of division II of this chapter or chapter 459, subchapter II, or rule, standard or permit established or issued under division II or chapter 459, subchapter II, has occurred, the director shall notify the alleged violator and, by informal negotiation, attempt to resolve the problem. If the negotiations fail to resolve the problem within a reasonable period of time, the director shall issue an order directing the violator to prevent, abate or control the emissions or air pollution involved. The order shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action to prevent, abate or control the emissions of air pollution. The order may be appealed to the commission

455B.279 Violation. [Water Allocation/Flood Plains]

1. The director may issue any order necessary to secure compliance with or prevent a violation of this part or the rules adopted pursuant to this part. Within thirty days of issuance, the order may be appealed to the commission by filing a notice of appeal with the director. The appeal shall be conducted as a contested case pursuant to chapter 17A and the commission may affirm, modify, or revoke the order. The department may request legal services as required from the attorney general, including any legal proceeding necessary to obtain compliance with this part and rules and orders issued under this part.

455B.308 Appeal from order. [Solid Waste]

Any person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director within thirty days of the issuance of the order. The director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The hearing may be held before the commission or its designee. A complete record shall be made of the proceedings. The director shall issue the findings in writing to the aggrieved person within thirty days of the conclusion of the hearing. Judicial review may be sought of actions of the commission in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Act, petitions for

judicial review may be filed in the district court of the county where the acts in issue occurred.

458A.11 Rules covering practice before department. [Oil, gas, mineral exploration]

4. Any notice required by this chapter shall be given at the election of the department either by personal service or by letter to the last recorded address and one publication in a newspaper of general circulation in the state capital city and in a newspaper of general circulation in the county where the land affected or some part of the land is situated. The notice shall issue in the name of the state, shall be signed by the director, shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the department elect to give notice by personal service, the service may be made by any officer authorized to serve process, or by any agent of the department, in the same manner as is provided by law for the service of original notices in civil actions in the district court of the state. Proof of the service by such agent shall be by the affidavit of the person making personal service.

455B.175 Violations. [Water Quality]

1. ... a. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter 17A, by filing with the director within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the director....

EXHIBIT 2 SITE PHOTOS FROM UNDERLYING ORDER

[Photos will be provided at the Commission meeting]