IN THE IOWA DISTRICT COURT FOR HANCOCK COUNTY

STATE OF IOWA, ex rel., IOWA DEPARTMENT OF NATURAL RESOURCES (99AG23542),	)	LAW NO. CVCV019034
Plaintiff,	)	
vs.	)	**PETITION AT LAW**
MONROE BRANSTAD,	)	
Defendant.	)	

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (DNR), and for its claim against Defendant Monroe Branstad (Branstad), states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Defendant Monroe Branstad for the illegal discharge of approximately 900,000 gallons of cattle manure to a tributary of the Winnebago River with resulting water quality violations. In addition to the illegal discharge, Branstad violated the terms of his NPDES permit by failing to maintain application records, and by failing to submit quarterly reports to the DNR.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.

3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Monroe Branstad resides at 3018 Highway 69, Forest City, Iowa 50436.

JURISDICTION

Water Pollution Control Regulations

5. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). Rulemaking authority for establishing water quality and effluent standards is contained in Iowa Code section 455B.173(2). Rulemaking authority relating to disposal systems is contained in Iowa Code section 455B.173(3).

6. The department may issue a permit related to the administration of the national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124 including but not limited to storm water discharge permits issued pursuant to section 455B.103A. Iowa Code § 455B.197. The DNR director shall issue, revoke, suspend, modify, or deny permits for the discharge of any pollutant, or for the use or disposal of sewage sludge. Iowa Code § 455B.174(4)(a).

7. The dumping, depositing, or discharging of pollutants into any water of the state except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR is prohibited. Iowa Code § 455B.186(1).

8. A "water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof. Iowa Code § 455B.171(37). The Winnebago River and its tributary streams, watercourses, waterways and drainage systems are each a "water of the state" as defined in Iowa Code section 455B.171(37).

9. A "pollutant" means sewage, industrial waste, or other waste. Iowa Code § 455B.171(18). Cattle manure is a "pollutant" as defined in Iowa Code section 455B.171(18).

10. "Water pollution" means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare to domestic commercial, industrial, agricultural or recreational use as to livestock, wild animals, birds, fish or other aquatic life. Iowa Code § 455B.171(38).

11. Surface waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. 567 Iowa Admin. Code 61.3(2)"b".

12. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life. 567 Iowa Admin. Code 61.3(2)"d".

13. 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. 567 Iowa Admin. Code 64.3(1).

14. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

15. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit, issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(5).

Animal Feeding Operation Regulations

16. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(12) and 459A.104. 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

17. An "open feedlot operation" means an unroofed or partially roofed animal feeding operation if crops, vegetation, or forage growth or residue is not maintained as part of this animal feeding operation during the period that animals are confined in the animal feeding operation. An "open feedlot operation structure" means an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an alternative technology (AT) system, but does not include a manure storage structure as defined in Iowa Code section 459.102. 567 Iowa Admin. Code 65.100.

18. A "production area" means that part of an animal feeding operation that includes the area in which animals are confined, the manure storage area, the raw materials storage area, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds,

stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities. 567 Iowa Admin. Code 65.100.

19. A "nutrient management plan" or "NMP" means a plan which provides for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, open feedlot effluent, including the application of effluent, as provided in 65.112(459A). 567 Iowa Admin. Code 65.100. The owner of an open feedlot operation which has an animal unit capacity of 1,000 animal units or more or which is required to be issued an NPDES permit shall develop and implement a nutrient management plan meeting the requirements of this rule. 567 Iowa Admin. Code 65.112. The owner of an open feedlot operation shall maintain records to demonstrate compliance with the nutrient management plan, including information relating to the application of manure from the operation. 567 Iowa Admin. Code 65.112(10)(b).

20. An "NPDES permit" means a written permit of the department pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO. A "concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO, a medium CAFO, or a designated CAFO. 567 Iowa Admin. Code 65.100.

21. A "large CAFO" is an animal feeding operation which stables or confines as many as or more than the number of animals specified in any of the following categories:

(1) 700 mature dairy cows, whether milked or dry;
(2) 1,000 cattle, including but not limited to heifers, steers, bulls, veal calves, and cow/calf pairs;
(3) 2,500 swine each weighing 55 pounds or more;
(4) 10,000 swine each weighing less than 55 pounds;
(5) 500 horses;
(6) 10,000 sheep or lambs;
(7) 55,000 turkeys;
(8) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
(9) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
(10) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; and
(11) 1,000 animal units, where more than one category of animals is maintained using the same type of operation.

567 Iowa Admin. Code 65.100.

22. A "medium CAFO" is an animal feeding operation with the type and number of animals that fall within any of the ranges listed in paragraph "a" and which has been defined or designated as a CAFO. An animal feeding operation is defined as a medium CAFO if:

a. The type and number of animals that it stables or confines fall within any of the following ranges:

(1) 200 to 699 mature dairy cows, whether milked or dry;
(2) 300 to 999 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
(3) 750 to 2,499 swine each weighing 55 pounds or more;
(4) 3,000 to 9,999 swine each weighing less than 55 pounds;
(5) 150 to 499 horses;
(6) 3,000 to 9,999 sheep or lambs;

(7) 61,500 to 54,999 turkeys;

(8) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 300 to 999 animal units, where more than one category of animals is maintained using the same type of operation; and

b. Either one of the following conditions is met:

(1) Manure or process wastewater is discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(2) Manure or process wastewater is discharged directly into waters of the United States which originate outside of a pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.

567 Iowa Admin. Code 65.100.

23. A "designated CAFO" means an AFO that has been designated as a CAFO pursuant to rule 65.103. 567 Iowa Admin. Code 65.100.

24. A "settled open feedlot effluent basin" or "runoff control basin" means a covered or uncovered impoundment which is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent. 567 Iowa Admin. Code 65.100. "Settled open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed. 567 Iowa Admin. Code 65.100.

25. An open feedlot operation which has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation which is a large CAFO, or a medium CAFO as defined in rule 65.103

(sections 455B and 459A) shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into waters of the United States, unless the discharge is pursuant to an NPDES permit. 567 Iowa Admin. Code 65.101(3).

26. Records to demonstrate compliance with the nutrient management plan shall be maintained by the owner of an open feedlot operation who is required to submit a nutrient management plan. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the open feedlot operation and shall be made available to the department upon request. 567 Iowa Admin. Code 65.112(10)(b).

27. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, and October 10, and January 10, following the respective calendar quarters, documenting daily precipitation, weekly impoundment liquid levels, volume of liquid removed from the impoundments, and the date, time, duration, and estimated volume of any overflow. All permittees must submit an annual report to the department by January 10 of the following year. 567 Iowa Admin. Code 65.104(9)(e) and (f).

28. The DNR and the Attorney General shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I and section 455B.175, unless otherwise provided in this chapter. Iowa Code § 459A.501. A person who violates this chapter shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Iowa Code § 459A.502.

FACTS

29. Defendant Monroe Branstad owns and operates a cattle feeding operation in the SW 1/4 of Section 24, Madison Township in Hancock County, Iowa. The facility has approximately 999 head of cattle in open feed lots and 500 head of cattle in confinement buildings. Manure from the confinement buildings is stored in below building pits.

30. In the fall of 2009, the defendant completed construction of a settled open feedlot effluent basin (basin). The basin was constructed to store sweet corn silage bunker runoff, and open lot manure runoff. The basin is 396 feet wide and 750 feet long, with a design effluent storage volume of 6,033,771 gallons. In conjunction with construction of the basin, the defendant had submitted a National Discharge Elimination System (NPDES) permit application and proposed Nutrient Management Plan to the DNR. The defendant was required to obtain an NPDES permit because his facility exceeded 1,000 combined animal units. The defendant's facility is a large CAFO.

31. DNR officials approved the nutrient management plan on March 31, 2010. On September 2, 2009, the DNR issued NPDES Permit No. IA0082465 to the defendant, a copy of which is attached, marked as Exhibit A, and incorporated by reference. NPDES Permit No. IA0082465 states in part that there shall be no discharge from defendant's facility except when precipitation events greater than the 25-year, 24-hour rainfall event (5.2 inches) cause an overflow of the production area that is designed, constructed and operated to comply with the requirements of 567 Iowa Administrative Code 65, Appendix A, Open Feedlot Control System 1 to contain manure, open feedlot effluent, settled open feedlot effluent, settleable solids or process wastewater. The permit requires compliance with the effluent limitations, monitoring requirements, and other adequate control measures and terms set forth in

the permit to ensure that water quality standards are met. Violations of water quality standards resulting from a discharge, whether the discharge comes from the production area or land application area are violations of the permit. The permit states that all monitoring results required by the permit shall be reported to the DNR on a quarterly basis. NPDES Permit No. IA0082465, Section VI, A. In addition, the permit requires submission of an annual report due by January 10 of the following year, including *inter alia*, a summary of all discharges. NPDES Permit No. IA0082465, Section VI, B.

32. On April 16, 2010, DNR officials received a complaint about a manure application at the defendant's facility. The complainant indicated that a hose was being used to apply manure from the basin to a nearby field. The complainant stated that manure had been pumped from the basin all day on April 16, and that the hills east of the basin were covered with white foam. DNR officials arrived at the defendant's facility that day and located the defendant. The defendant told a DNR official that his son had been pumping water out of the basin, and that the basin only contained clean water consisting of rainwater and snow melt. He also stated that the contents of the basin had been tested one month earlier. He did not state that precipitation was involved in the discharge, and it was not raining when DNR officials arrived.

33. DNR officials then inspected the basin, and observed a tractor, hose and PTO pump in the northeast corner of the basin. The hose stretched out to the southeast and extended up a slope to the east. It appeared that the level of the basin had dropped approximately one and a half feet, and a wetted area around the interior rim of basin could be observed. DNR officials noted what appeared to be manure in the basin, and dropped Nessler's reagent in the basin which turned orange, indicating that ammonia nitrogen was in excess of 3 mg/l. DNR officials collected a laboratory sample from the basin

indicating extremely high levels of COD (chemical oxygen demand) (5,800 mg/l) and NH3-N (ammonia-nitrogen) (180 mg/l).

34. DNR officials observed manure flowing to the north in a low area between the basin and the hill to the east. A field tile intake was approximately 375 feet northeast of the basin in that low area. After observing manure flowing into the intake, DNR officials dropped Nessler's reagent on the manure. The reagent again turned orange. DNR officials collected a laboratory sample from the manure runoff at the tile intake indicating extremely high levels of COD (4,500 mg/l) and NH3-N (120 mg/l). DNR officials informed the defendant's son that manure was being discharged to the tile intake, and instructed him to construct a dike around the tile intake. When the dike was in place, DNR officials began to determine the extent of contamination downstream.

35. DNR officials moved north to the point where 310th Avenue crosses a drainage ditch flowing north. The water was clear. No fish alive or dead were observed.

36. DNR officials then proceeded further downstream to a tile outlet approximately 150 feet north of 310th Avenue. The tile outlet discharged to Drainage Ditch Lateral 28. The water at the tile outfall was discolored and had a manure odor. Laboratory samples of the discharge demonstrated extremely high levels of COD (1,400 mg/l), and NH3-N (20 mg/l). No fish alive or dead were observed. The tile outfall is the same discharge location from which sweet corn silage leachate discharged from the defendant's facility in August, 2008, as referenced in paragraph forty-one (41).

37. Moving downstream, DNR officials moved to the point where Highway 69 crosses a drainage ditch. The water in the ditch was cloudy. Field tests of the stream indicated elevated levels of ammonia nitrogen. No fish alive or dead were observed. Further downstream, 320th Avenue crosses

the drainage ditch. At this location, DNR officials again observed cloudy water. Laboratory samples collected at this location showed elevated levels of COD (280 mg/l) and NH3-N (46 mg/l). No fish alive or dead were observed.

38. DNR officials then returned to the defendant's facility, and observed a large concrete structure in the ground along the basin's berm. The structure appeared to be a drain for the open lot runoff. DNR officials noted open lot runoff running into the concrete drain. Subsequently, the engineer who designed the basin stated to DNR officials that the basin had been receiving open lot manure runoff and silage runoff drainage since the fall of 2009.

39. On April 17, 2010, DNR officials returned to the defendant's facility. The manure level in the basin appeared the same. The berm in front of the tile intake was in place, and there was some ponding in front of the berm. At the tile outfall, DNR officials noted that the outfall was running much clearer than the previous day, and no manure odor could be detected. DNR officials visited the Winnebago River to assess the impact of the manure on the river. At the point where Taylor Avenue crosses the Winnebago River, DNR officials collected samples indicating elevated levels of COD (250 mg/l). This point is approximately two (2) miles downstream of the point at which the drainage ditch drains into the Winnebago River. No fish alive or dead could be observed.

40. After visiting the Winnebago River, DNR officials went back to the defendant's facility. The defendant's son indicated that there were no application records for the basin. Quarterly reports have not been submitted to the DNR. No annual report has been submitted to the DNR. The defendant told DNR officials that the manure may have come from a previous land application of confined cattle manure a week before, and that the applicator had stated that there had been a manure

spill. The applicator subsequently told DNR officials that only 20-30 gallons had spilled when pumping out the confined cattle pits. Based on the size of the basin and the 18 inches of wetted area on the entirety berm slope, DNR officials estimated that approximately 900,000 gallons of manure were removed from the basin.

41. On May 11, 2010, the State of Iowa and Monroe Branstad entered into a Consent Order, Judgment and Decree in settlement of a lawsuit filed by the State against Branstad. The lawsuit alleged that an illegal discharge of sweet corn silage leachate had originated from his cattle feeding operation in Hancock County in August, 2008, with resulting water quality violations and a massive fish kill in the Winnebago River. In the Consent Decree, Branstad admitted that sweet corn silage leachate discharged from his facility into the Winnebago River, and paid a civil penalty of $10,205.00, and an administrative penalty and accrued interest of $6,795.00. Also, Branstad was enjoined from further violations of the law.

VIOLATIONS

42. On April 16, 2010, manure discharged from Monroe Branstad's operation into a tributary of the Winnebago River in violation of Iowa Code section 455B.186(1), NPDES Permit No. IA0082465, and 567 Iowa Admin. Code 64.3(1) and 65.101(3).

43. On April 16, 2010, manure discharged from Monroe Branstad's operation into a tributary of the Winnebago River causing exceedance of applicable water quality standards in violation of 567 Iowa Administrative Code 61.3(2)"b" and "d".

44. On and after September 2, 2009, Monroe Branstad failed to maintain manure application records at his facility in violation of 567 Iowa Admin. Code 65.112(10)(b), NPDES Permit No. IA0082465 Section III, A, and 567 Iowa Admin. Code 64.3(1).

45. On and after April 10, 2010, defendant has failed to submit quarterly reports to the DNR in violation of 567 Iowa Admin. 104(9)(e), NPDES Permit No. IA0082465, Section VI, A, and 567 Iowa Admin. Code 64.3(1).

46. On January 10, 2011, defendant failed to submit an annual report to the DNR in violation of 567 Iowa Admin. 104(9)(f), NPDES Permit No. IA0082465, Section VI, B, and 567 Iowa Admin. Code 64.3(1).

PRAYER FOR RELIEF

WHEREFORE, State of Iowa, ex rel., Iowa Department of Natural Resources, requests that the Court:

a. assess a civil penalty against Defendant Monroe Branstad pursuant to Iowa Code sections 455B.191(2), 459A.501 and 459A.502 for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)"b" and "d," 64.3(1), 65.101(3), 65.104(9)(e) and (f), 65.112(10)(b), and NPDES Permit No. IA0082465, not to exceed Five Thousand Dollars for each day of such violation; and

b. issue a permanent injunction enjoining Defendant Monroe Branstad from any violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)"b" and "d," 64.3(1) , 65.101(3), 65.104(9)(e) and (f), 65.112(10)(b), and NPDES Permit No. IA0082465.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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