Environmental Groups File Request for DNR Director Kayla Lyon to Review Supreme Beef Decision Under the “Director Discretion Rule”

47 community groups, environmental leaders, and legislators sign-on in support of DNR doing another review of Supreme Beef

May 24, 2021 -- Des Moines, IA. Today the Sierra Club Iowa Chapter, Iowa Environmental Council, Iowa conservationists Steve Veysey and Larry Stone, and 43 other community groups, environmental leaders, and legislators submitted a letter to the Iowa Department of Natural Resources (DNR) Director Kayla Lyon requesting DNR review the Supreme Beef concentrated animal feeding operation (CAFO) under a section of the law commonly known as the ‘DNR Discretion Rule’.

The authority granted to DNR under 567 IAC 65.5(3) and IAC 65.103(5) allows the DNR to conduct a “departmental evaluation,” which would provide special protection to environmentally exceptional areas when reviewing proposed CAFO construction projects and Nutrient Management Plans (NMPs) and Manure Management Plans (MMPs).

The Director’s Discretion Rule has never been used, that we know of, since it was adopted by the DNR in 2006. A copy of the letter can be viewed below.

Quotes:
Steve Veysey, Water Quality Advocate - Agriculture groups should understand that unless the worst-of-the-worst is prevented, public pressure builds towards requiring the entire industry to face more restrictive regulation. This one is a no-brainer. Deny the NMP.

Wally Taylor, Sierra Club Iowa Chapter & Legal Chair - Because the regulations as written do not cover this unique situation, it’s important for the department to exercise its discretion to protect Bloody Run Creek and the other water resources in the area.

Alicia Vasto, Water Program Associate Director for Iowa Environmental Council - “DNR has another opportunity to put public health and interests above those of industrial agriculture. Iowans should be able to rely on the DNR to protect our shared natural resources.”
Michael Schmidt, Staff Attorney for Iowa Environmental Council - “We have repeatedly explained the problems with this site, the plans for manure, and the pollution risks. We call on the DNR to protect water quality for all Iowans and to stop the massive expansion of this CAFO.”

Jessica Mazour, Conservation Program Coordinator for Iowa Chapter Sierra Club - “We’re giving DNR one more opportunity to do the right thing and reverse their decision to approve Supreme Beef’s incomplete and incorrect Nutrient Management Plan. We hope DNR holds to their mission statement “to conserve and enhance our natural resources”.

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The Iowa Environmental Council (IEC) is an alliance of diverse organizations and individuals working together to protect Iowa's natural environment. Founded in 1995, it is the largest and most comprehensive environmental coalition in the state. Through education, advocacy and coalition building, the Council raises awareness, generates action and creates large-scale change that makes Iowa a better place to live, work and explore. Learn more at iaenvironment.org.

The Iowa Chapter of the Sierra Club is the largest environmental non-profit in Iowa that endorses candidates, lobbies at the Capitol and empowers volunteers to engage with elected officials on key issues impacting our environment. www.sierraclub.org/iowa

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May 24, 2021

Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: Kayla.Lyon@dnr.iowa.gov

Re: Supreme Beef NMP and Departmental Evaluation

Dear Director Lyon:

As part of public comments submitted regarding the Supreme Beef Nutrient Management Plan, many Iowans wrote passionately about the truly unique and environmentally sensitive nature of Bloody Run Creek and surrounding watersheds. This area of Karst geology contains cold water trout streams, Outstanding Iowa Waters, spring creeks, limestone bluffs, algific talus slopes, and many other wonderful features. Along with this great beauty comes danger. There are thousands of identified sinkholes and uncountable fissures and crevices in exposed and barely hidden fractured limestone and dolomite that are direct conduits from the surface to the shallow spring-laden aquifer below. Iowa Department of Natural Resources (DNR) has a duty to protect Iowa water and landscapes from contamination that threatens public health and livelihoods. Some agricultural operations subject to DNR’s permitting authority must be restricted from areas where the risk posed to water quality and the environment is just too high.

Several commenters specifically discussed the authority granted to DNR under 567 IAC 65.5(3) and IAC 65.103(5) to conduct a “departmental evaluation,” which would provide special protection to environmentally exceptional areas when reviewing proposed CAFO construction projects and NMPs and MMPs. This authority is sometimes referred to as the "Director’s Discretion Rule."

In the April 2 “Summary of Comments” the agency response on this issue states "DNR has reviewed the NMP and it meets the requirements of the regulations." No further explanation was given. Respectfully, the purpose of the Director’s Discretion Rule is to allow the Department to look beyond specific requirements and conduct an evaluation pursuant to this subrule to holistically determine the potential adverse effects on natural resources or the environment. The response to our comments on this issue did not do that.

We the undersigned request that the Department conduct such an evaluation based upon the factors listed in 567 IAC 65.103(5), make public those findings, and present a decision. Those factors include:

  • The likelihood open feedlot effluent will be applied to frozen or snow-covered cropland.
• The proximity of the open feedlot operation structures or open feedlot effluent application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.
• Topography, slope, vegetation, potential means or routes of conveyance of open feedlot effluent spilled or land applied.
• Application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent.
• Whether open feedlot effluent for land application is hauled or otherwise transported more than five miles.
• Open feedlot effluent from the operation will cause pollution of a water of the state.
• Open feedlot effluent from the operation will cause a violation of state water quality standards.
• An adverse effect on natural resources or the environment will occur in a specific area due to the current concentration of animal feeding operations or the associated open feedlot effluent application areas.

We are aware that the Administrative Rules Review Committee placed an objection on the two separate sections of 567 IAC Chapter 65 that enumerate the Director’s Discretion rule for confinement-based CAFOs (IAC 65.5(3)) and open feedlot-based CAFOs (IAC 65.103(5)). This does not invalidate the rule. Moreover, the ARRC rationale states that the Master Matrix review process is the correct forum to review environmental factors for the decision to approve or deny a proposed facility. This only applies to confinement-based CAFOs. The Master Matrix review process does not apply to open feedlot-based CAFOs, and there is no equivalent review process other than that contained in IAC 65.103(5) that can be used to explicitly protect environmentally sensitive areas. The Department should undertake this evaluation consistent with the factors listed in the rule.

Thank you for considering our request. We look forward to hearing from you soon.

Sincerely,

Sierra Club Iowa Chapter
Iowa Environmental Council
Larry Stone, Clayton County Resident
Steve Veysey, retired Iowa State University chemist
State Representative Sharon Steckman
Iowa Representative, Ranking Member of the House Environmental Protection Committee Art Staed
State Representative Marti Anderson
State Representative Bruce Hunter
State Representative Liz Bennett
State Senator Joe Bolckom
State Senator Rob Hogg
State Senator Claire A Celsi
State Senator Pam Jochum, Dubuque
Panora Conservation Chapter of the Izaak Walton League of America
Iowa’s Coldwater Conservancy
Trout Unlimited Driftless Chapter
Trout Unlimited Spring Creeks Chapter
Trout Unlimited North Bear Chapter
Trout Unlimited MoKan Chapter
Trout Unlimited TU 710 Nebraska Chapter
Trout Unlimited Twin Cities Chapter
Trout Unlimited Lee Wulff
Iowa Farmers Union
Iowa Organic Association
Iowa Audubon
Hawkeye Fly Fishing Association
Protecting Outstanding Iowa Waters
Common Good Iowa
Iowa Citizens for Community Improvement
Food & Water Watch
Environmental Law and Policy Center
Iowa Rivers Revival
AIA Iowa
Iowa Alliance for Responsible Agriculture
Cedar Wapsie Sierra Club Group
White Pine Sierra Club Group
Cedar Prairie Sierra Club Group
Central Iowa Sierra Club Group
Poweshiek CARES
100 Grannies for a Livable Future Iowa City
Midwest Waterscapes
Mike Delaney
Christine A. Curry
Chris Schoen, Resident of Clayton County
Dianna K. Elsinger, Resident of Clayton County
Jennifer Elsinger, Resident of Clayton County
Laura Elsinger, Resident of Clayton County