

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

IN THE MATTER OF:

BRIAN ROORDA DAIRY, LLC

Facility #59250 Sioux County

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO- 19

TO: Brian Roorda, Registered Agent
Brian Roorda Dairy, LLC
3267 460th Street
Maurice, Iowa 51036

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Roorda Dairy, LLC (Brian Roorda Dairy) for the purpose of resolving violations resulting from a manure discharge from the Brian Roorda Dairy animal feeding operation that resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Amber Wolf, Field Office 3
Iowa Department of Natural Resources
1900 North Grand – Gateway North Mall
Spencer, Iowa 51301
Phone: (712) 262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: (515) 725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC)

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN ROORDA DAIRY, LLC

chapter 10, which authorize the Director to assess administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. Brian Roorda Dairy is a combined dairy facility operated by Brian Roorda and is located at 3267 460th Street, Maurice, Iowa (NW ¼ of the NE ¼ of Section 10, Sherman Township, Sioux County, Iowa). The facility is owned by Stoutjesdyk Dairy, LLC but is leased and operated by Brian Roorda Dairy. The confinement portion of the facility has a capacity of 1,500 mature dairy cattle and 200 immature dairy cattle. The confinement portion of the facility uses one small basin and a 3-cell larger basin for manure storage. The open feedlot portion of the facility has a capacity of 150 mature dairy cattle and 300 immature dairy cattle. The facility has a NPDES permit (DNR Permit #8459250). At the time of the investigation, the facility had 1,100 head in confinement and 80 head in open feedlots.

2. On September 14, 2014, at 10:00 am, Amber Wolf, DNR Field Office 3 environmental specialist, received a page regarding a manure discharge from Brian Roorda Dairy. Ms. Wolf contacted Brian Roorda who stated that a manure discharge had occurred at the facility. Mr. Roorda explained a switch was mistakenly turned on during the overnight shift, which caused manure to pump from one manure storage structure on the south side of the facility to another manure storage structure on the west side of the facility. The west manure storage structure overflowed and manure spilled in a dry ditch and continued flowing into a waterway west of the facility. Mr. Roorda stated the discharge was discovered at 8:00 am, but he was unsure of how long the discharge had been occurring.

3. Ms. Wolf and Ben Shuberg, DNR Field Office 3 environmental specialist, met with Mr. Roorda later in the day on September 14, 2014. He stated that human error caused the discharge and informed the field office personnel that he was pumping down the west manure storage structure into his open feedlot effluent basin. Mr. Roorda showed the field office personnel the area where the manure had overflowed the west manure storage structure and how he placed dirt on top of the dike to hold back additional discharge. The manure that had pooled in the dry ditch was pumped out and applied to a field that had been chopped for silage. Mr. Roorda and his son had been checking the downstream bridge crossings before the field office personnel arrived and noted that the manure had made it downstream.

4. Following the discussion with Mr. Roorda, the field office personnel toured the area, observing the dike that had been built across the waterway. They noted the waterway immediately upstream of the storage structures was dry. The field office personnel proceeded to take field tests at an upstream location, the

IOWA DEPARTMENT OF NATURAL RESOURCES
 ADMINISTRATIVE CONSENT ORDER
 ISSUED TO: BRIAN ROORDA DAIRY, LLC

discharge site, then at two locations downstream. The manure flowed from the waterway into Orange City Slough Creek and into the West Branch of the Floyd River. The field office personnel tracked the flow of manure approximately 6 miles downstream. The field office personnel observed dark murky water with a strong manure odor and dead fish at every bridge crossing over Orange City Slough Creek. Dead fish were last observed where the creek flowed into the West Branch of the Floyd River. The following table summarizes the field test results, stream conditions, and laboratory results of the sample locations:

Location	Field Test for Ammonia	Laboratory Sample for E. Coli	Laboratory Sample for Ammonia	Laboratory Sample for BOD	Stream Conditions
Discharge point into waterway	>3 mg/L	17,000 E.coli/100mL	66 mg/L	200 mg/L	Dark, murky water with a manure odor
Tile/Culvert crossing 460 th Street ¼ mile northwest of the facility (Upstream)	0	2,100 E.coli/100mL	0.19 mg/L	3 mg/L	Clear water, no manure odor
470 th Street Bridge (Downstream)	>3 mg/L	4,100 E.coli/100mL	24 mg/L	38 mg/L	Several small dead fish with dark, murky water with some foam and a manure odor
480 th Street Bridge (Downstream)	>3 mg/L	11,000 E.coli/100mL	75 mg/L	97 mg/L	Water much darker with strong manure odor and several dead fish

IOWA DEPARTMENT OF NATURAL RESOURCES
 ADMINISTRATIVE CONSENT ORDER
 ISSUED TO: BRIAN ROORDA DAIRY, LLC

490 th Street Bridge (Downstream)	N/A	N/A	N/A	N/A	Dark murky water with a manure odor and dead small fish and minnows
Hwy 75 Bridge where Orange City Slough Creek joins West Branch of Floyd River (Downstream)	N/A	N/A	N/A	N/A	Murky water with a slight manure odor and dead minnows
510 th Street Bridge (Downstream)	N/A	N/A	N/A	N/A	Murky water with a slight manure odor and no dead fish observed
C12 Bridge, east of Struble (Downstream)	N/A	N/A	N/A	N/A	Clear water with no manure odor and the presence of live minnows

5. On September 15, 2014, Mr. Shuberg and Lois Benson, DNR Field Office 3 environmental specialist, returned to the site to continue the investigation. The field office personnel did not take any laboratory samples but did visit numerous bridge crossings:

Location	Field Test for Ammonia	Stream Conditions
C12 Bridge, east of Struble (Downstream)	N/A	Water was dark with a manure odor and dead fish
150 th Street Bridge (Downstream)	30 ppm	Water was dark and dead and dying fish
165 th and Keystone Avenue Bridge	15 ppm	Water was a little lighter and manure odor was a

IOWA DEPARTMENT OF NATURAL RESOURCES
 ADMINISTRATIVE CONSENT ORDER
 ISSUED TO: BRIAN ROORDA DAIRY, LLC

(Downstream)		little less and no fish were observed
Hwy 3 Bridge – 2 miles west of Le Mars (Downstream)	8 ppm	Water was normal and no fish were observed

6. On September 15-16, 2014, DNR’s Fisheries personnel began its fish kill assessment of the impacted areas of Orange City Slough Creek and the West Branch of the Floyd River in Sioux County and Plymouth County. The fish kill investigation was led by Mike Hawkins, Natural Resources Biologist, who was assisted by Jim Berquist, Natural Resources Technician and James Sholly, Natural Resources Aide. The Fisheries personnel used the methods for narrow streams, incompletely accessible as outlined in American Fisheries Society, Special Publication 30.

7. The Fisheries personnel observed dead fish in Orange City Slough Creek and the West Branch of the Floyd River downstream from the Roorda facility. The fish kill began in Section 10 of Sioux County and extended downstream 40,498 yards to Section 35 of Plymouth County.

8. The fish kill assessment determined that 365,418 fish were killed, valued at \$41,471.67. The Fisheries Bureau investigative costs were \$1,505.10. The total fish value and investigative costs totaled \$42,976.77.

9. On October 31, 2014, DNR issued a Notice of Violation letter and Notice of Referral to Brian Roorda Dairy for the violations discovered by DNR Field Office 3 in September 2014. The letter indicated the violations would be referred for further enforcement. The letter included the investigative report and the Fisheries report. The Environmental Services field investigative costs were \$1,249.70.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3’s investigation it was determined than manure from the confinement operations at Brian Roorda Dairy flowed to a dry ditch and continued flowing into a waterway west of the facility. The manure flowed from the waterway into Orange City Slough Creek

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN ROORDA DAIRY, LLC

and into the West Branch of the Floyd River. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The field office personnel noted the water was discolored and had a manure odor. The laboratory results indicated elevated pollutants and a fish kill was confirmed. The above mentioned facts indicate violations of the general water quality criteria.

4. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 3's investigation it was determined than manure from the confinement operations at Brian Roorda Dairy flowed to a dry ditch and continued flowing into a waterway west of the facility. The manure flowed from the waterway into Orange City Slough Creek and into the West Branch of the Floyd River. The above-mentioned facts indicate violations of these provisions.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from Brian Roorda Dairy.

V. ORDER

THEREFORE, the DNR orders and Brian Roorda Dairy agrees to do the following:

1. Brian Roorda Dairy shall operate and maintain all animal feeding operation structures and production areas in compliance with its NPDES permit and all applicable rules and regulations;
2. Brian Roorda Dairy shall submit a Plan of Action to DNR Field Office 3 to address how the facility will prevent future discharges to any waters of the state. The Plan of Action shall be submitted within 30 days of the date the Director signs this administrative consent order. If the Plan of Action includes the construction of additional containment structures or berms the construction shall be completed within 180

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN ROORDA DAIRY, LLC

days of the date the Director signs this administrative consent order;
and

3. Brian Roorda Dairy shall pay fish restitution and investigative costs in an amount of \$35,000.00¹ and an administrative penalty in the amount of \$5,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Brian Roorda Dairy received an economic benefit by failing to adequately control the manure storage structures at the facility. Brian Roorda avoided the costs associated with properly monitoring the manure storage structures as well as the costs of properly training its employees on operation and monitoring of the structures. It is estimated that economic benefit is at least \$500.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a manure discharge that led to documented water quality violations and a large fish kill. These violations threaten

¹ For settlement purposes the fish restitution and investigative has been reduced through a negotiated settlement.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN ROORDA DAIRY, LLC

the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Brian Roorda Dairy has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Brian Roorda Dairy. For that reason Brian Roorda Dairy waives the right to appeal this administrative consent order or any part thereof.

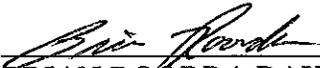
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
July, 2015.



BRIAN ROORDA DAIRY, LLC

Dated this 17 day of
June, 2015.

Facility #59250; Kelli Book, DNR Field Office 3, EPA, VIII.D.1 and VIII.D.3