

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p><b>Cyclone Cattle, L.L.C.</b></p> <p>AFO #60582 Pottawattamie County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- 17</p>
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TO: Russ Keast  
Cyclone Cattle, L.L.C.  
45565 Aspen Road  
Henderson, Iowa 51541

John C. Rasmussen, Registered Agent  
Cyclone Cattle, L.L.C.  
233 Pearl Street, P.O. Box 1078  
Council Bluffs, Iowa 51503

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cyclone Cattle, L.L.C. (Cyclone Cattle) for the purpose of resolving water quality violations resulting from a manure discharge from the Cyclone Cattle open feedlot. 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:**

Alison Manz, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**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: 515/281-8563

**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 a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Cyclone Cattle owns and operates a cattle open feedlot located at 36488 Beachnut Road, Carson, Iowa (Section 18, Macedonia Township, Pottawattamie County, Iowa). The feedlot has a capacity of 3,500 head of cattle. The facility holds a National Pollutant Discharge Elimination System (NPDES) permit and total containment of manure at the feedlot is required by the permit. The facility has two large sediment basins with two settled open feedlot effluent basins (SOFEBs). Cyclone Cattle has an easement with its neighbor, Aaron Vorthmann, to take all of the manure from the facility on his land.

2. In 2011, DNR and Cyclone Cattle entered into an administrative consent order to address water quality violations that occurred at the facility as a result of a manure discharge. This administrative consent order addresses events that occurred following the issuance of the administrative consent order in 2011.

3. In September 2012, Alison Manz, DNR Field Office 4 environmental specialist, conducted a routine inspection at Cyclone Cattle. During the inspection, Ms. Manz observed evidence of an overflow from the SOFEBs and severe erosion along the SOFEBs. She also noted deteriorating conditions in the sediment basins and a failure to have total containment for the dead animal composting and feed stock at the facility. Various other NPDES permit violations were observed during the inspection. In October 2012, DNR Field Office 4 issued a Notice of Violation letter for the violations observed during the inspection.

4. In July 2013, Ms. Manz conducted a follow-up inspection at Cyclone Cattle. The sediment basins had been repaired and some of the pens had been modified to assure total containment. Ms. Manz found continued issues with the structural integrity of the SOFEBs and the dead animal and compost piles had not been removed. In August 2013, DNR Field Office 4 issued a Notice of Violation letter for the violations observed during the inspection.

5. In November 2013, Ms. Manz returned to the facility. Ms. Manz noted that the compost piles had not been removed and the erosion along the sediment basin had not been repaired. In November 2013, DNR Field Office 4 issued a Notice of Violation letter for the violations observed during the inspection. In November 2013, DNR Field Office 4 notified DNR's NPDES permitting section that Cyclone Cattle was not in compliance with its NPDES permit. In December 2013, Cyclone Cattle informed Ms. Manz in an email that the compost piles had been moved, the berm erosion had been repaired, and the facility was continuing to work on the dewatering of the SOFEBs. Ms. Manz requested a completion date for the

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dewatering and sludge removal. The facility stated that process may be completed by August 2014.

6. In April 2014, Ms. Manz met with representatives from Cyclone Cattle to discuss compliance issues regarding the facility. During the meeting, Ms. Manz explained that several areas still needed to be addressed, including: dewatering the SOFEBS and removing the sludge; installing staff gauges in the SOFEBS; repairing erosion; and installing reinforcements along the SOFEBS. Ms. Manz sent a letter with dates for the issues to be addressed.

7. In June 2015, Ms. Manz visited Cyclone Cattle. The facility manager informed Ms. Manz that both SOFEBS had been completely excavated of all solids and the size of the SOFEBS would be expanded. Ms. Manz recommended that the sediment basins be cleaned out on a more frequent basis. In a letter dated July 2015, Ms. Manz reminded Cyclone Cattle that the facility's NPDES permit had expired and DNR was waiting on the completion of the required improvements before issuing the renewed permit. The letter required the improvements be completed by September 1, 2015.

8. In December 2015, Ms. Manz visited Cyclone Cattle. Ms. Manz observed liquid overflowing one of the SOFEBS. The records indicated that the liquid level in the SOFEBS was above the required start pumping level. The facility personnel stated that Mr. Vorthmann would not allow application on his land. Following the visit, the consultant for Cyclone Cattle sent an email to Ms. Manz with an update on the progress of the improvements. The expansion of the SOFEBS was half completed but further expansion had been delayed because of the weather. A Notice of Violation letter was issued to Cyclone Cattle for failing to report the release of the liquid. Additionally, the letter stated that Cyclone Cattle must assure adequate land is available for application when Mr. Vorthmann would not allow application.

9. On February 28, 2016, Mr. Vorthmann contacted DNR Field Office 4 and stated that Cyclone Cattle was irrigating diluted manure on his fields and the diluted manure was running off into a water of the state. Holly Vandemark, DNR Field Office environmental specialist senior, investigated the complaint on the same day. Ms. Vandemark observed runoff from the field entering a tributary of the Nishnabotna River. Ms. Vandemark conducted field tests from the field discharge, at a culvert discharge downstream of the field discharge, and at a location in the tributary approximately 50 yards downstream of the culvert discharge. The field test results at each location indicated an ammonia concentration of between 60-90 mg/L. Ms. Vandemark also collected laboratory samples from each of the areas. The laboratory sample results indicated the following:

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Location	Ammonia (mg/L)	Biological Oxygen Demand (BOD) (mg/L)	e. Coli (#/100mL)
Field Discharge	48	350	14,000
Culvert Discharge	38	210	13,000
Downstream of Culvert	31	220	16,000

During Ms. Vandemark's inspection, Brandon Nelson with Cyclone Cattle contacted Ms. Vandemark to inform her of the discharge. He stated the basin was full and the facility was irrigating the wastewater to avoid overflowing the berm. On April 1, 2016, DNR issued a Notice of Violation letter to Cyclone Cattle for the water quality violations observed during the February investigation. The letter stated the violations would be referred for further enforcement.

10. On April 20, 2016, DNR Field Office 4 received a complaint regarding foam in the river. The complaint indicated the retention basins from Cyclone Cattle were running over. On April 20, 2016, Keith Wilken and Wendy Wittrock, DNR Field Office 4 environmental specialists, investigated the complaint.

11. The field office personnel first stopped at the intersection of 370<sup>th</sup> Street and Beechnut Road (Section 18, Macedonia Township, Pottawattamie County). They observed runoff flowing southeast along a grassed waterway and subsequently entering a culvert under 370<sup>th</sup> Street and discharging to an unnamed tributary of the West Nishnabotna River. The water was turbid with large amounts of foam on the surface. There was a tile line outlet at the location, but the field office personnel was unable to determine if it was flowing during to the heavy flow in the tributary. The field tests from the tributary indicated an ammonia concentration of 10-30 ppm and a dissolved oxygen concentration of 4-5 ppm. The laboratory sample results indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 22 mg/L, BOD - 210 mg/L, and total suspended solids - 810 mg/L.

12. The field office personnel determined that the discharge from at least two facilities were merging in the grass waterway near the discharge point to the tributary. The two discharges contributed to the water quality violations in the tributary. The field office personnel determined that one of the facilities was Cyclone Cattle. The field office personnel noted that some of the flow from Cyclone Cattle was being diverted around the SOFEBs and into the grassed waterway. The field test of the diverted runoff indicated and ammonia concentration of between 10-20 ppm. The laboratory sample results indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 22 mg/L, BOD - 210 mg/L, and total suspended solids - 810 mg/L.

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13. The field office personnel continued downstream in the unnamed tributary to the intersection of the tributary and Pioneer Trail. The field tests from this location indicated an ammonia concentration of 3-4 ppm and a dissolved oxygen concentration of 6-8 ppm. The laboratory sample results from this location indicated the following concentration levels: E.coli - >2,400,000 [MPN]/10mL, ammonia - 12 mg/L, BOD - 180 mg/L, and total suspended solids - 460 mg/L.

14. The field office personnel continued to the West Nishnabotna River downstream of the confluence with the unnamed tributary to investigate the impact on the river. The field tests in this areas indicated an ammonia concentration of 3-4 ppm and a dissolved oxygen concentration of 8-10 ppm. The laboratory sample results from this location indicated the following concentration levels: E. coli - 2,400,000 [MPN]/10 mL, ammonia - 1.2 mg/L, BOD - 18 mg/L, and total suspended solids - 560 mg/L.

15. The field office personnel visited the West Nishnabotna River upstream of the confluence with the unnamed tributary. The field tests at this location indicated an ammonia concentration of 1-2 ppm and a dissolved oxygen concentration of 8-10 ppm. The laboratory sample results from this locations indicated the following concentration levels: E. coli - 170,000 [MPN]/10 mL, ammonia - 0.24 mg/L, BOD - 6 mg/L, and total suspended solids - 560 mg/L.

16. During the investigation, the field office personnel contacted Cyclone Cattle concerning the discharge. Representatives from Cyclone Cattle indicated the inlet pipe of the sediment basin had become plugged which resulted in the overflow of the basin. The overflow went to an emergency basin between the sediment basin and the SOFEBs. The emergency diversion terrace was inadvertently removed causing the manure runoff to go around the SOFEB. The field office personnel requested that Cyclone Cattle construct another earthen berm to direct the flow into the SOFEBs and stop the discharge from the feedlot. The field office personnel also observed the area near the SOFEBs contained broken hay bales and the feed storage area was largely uncontrolled.

17. On May 13, 2016, DNR issued a Notice of Violation letter to Cyclone Cattle for the water quality violations discovered during the April 2016 field office investigation. Cyclone Cattle was required to submit in writing by June 1, 2016 the following information: evaluation of the sediment basins to determine if one inlet was adequate; evaluation of emergency basin to determine if it was being used only as an emergency basin; take preventative measure to prevent the inlet pipes from being plugged; and make repairs to the erosion along the sediment basin. The letter also reminded Cyclone Cattle that the final construction and upgrades to the SOFEBs must be completed by September 1, 2016. The letter informed Cyclone Cattle the violations were being referred for further enforcement.

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18. On June 17, 2016, the field office personnel visited the Cyclone Cattle facility to follow up on the requirements outlined in the Notice of Violation letter. The field office noted that the broken bales were removed and that the facility was removing manure from the west SOFEB and stockpiling it at the facility. The inlet pipe had been unplugged. However, there was still an erosion cut in the berm of the east SOFEB. Facility representatives indicated a contractor would be repairing the cut soon. The facility representatives also agreed that the final construction upgrades for the SOFEBs were required to be completed by September 1, 2016.

19. On August 26, 2016, Ms. Manz met with representatives of Cyclone Cattle. The representatives stated the September 1 deadline would not be met for the final construction upgrades of the SOFEBs. The representatives claimed that the weather had caused the delay.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the February and April 2016 DNR Field Office 4's investigations it was determined that the open feedlot effluent from the Cyclone Cattle facility was discharged, contrary to the facility's NPDES permit, to an unnamed tributary causing violations of the water quality standards. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.101(2) states an open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent into any waters of the United States due to a precipitation event, in any of the following apply: (1) for an open feedlot operation that houses cattle, other than veal calves, the operation in designed, constructed, operated and maintained to comply with the requirements of 567 IAC 62.14(12) and not to discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent resulting from precipitation events less than or equal to the 25-year, 24-hour precipitation event into any waters of the United States. During the February and April 2016 DNR Field Office 4's investigations it was determined that the open feedlot effluent from the Cyclone Cattle facility was discharged, contrary to the facility's NPDES permit and unrelated to a precipitation event, to an unnamed tributary causing violations of the water quality standards. The above-mentioned facts indicate violations of this provision.

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4. 567 IAC 65.101(9) requires that a person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Open feedlot effluent from the Cyclone Cattle facility was discharged on at least two occasions and notifications were not received by the DNR. The above-mentioned facts indicate violations of this provision.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. The above mentioned facts indicate violations of the general water quality criteria.

6. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Cyclone Cattle complies with the provisions listed in Paragraphs 1-7, Section V Order of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Cyclone Cattle agrees to do the following:

1. Cyclone Cattle shall operate and maintain its animal feeding operation in compliance with all applicable rules and statutes;
2. Cyclone Cattle shall complete all construction on the SOFEBs within 60 days of the date the Director signs this administrative consent order and shall notify DNR Field Office 4 immediately when the construction is complete;
3. Cyclone Cattle shall shut off the center pivot of the irrigation system as it crosses the grassed waterway during application periods;
4. Cyclone Cattle shall only apply to ground when conditions are appropriate and runoff shall not occur;
5. Cyclone Cattle shall obtain additional land for manure application within 30 days of the date the Director signs this administrative consent order so that the SOFEBs can be dewatered as needed at any time. The additional land must be available to Cyclone Cattle at all time;

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6. Cyclone Cattle shall submit an engineering statement to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order. The engineering statement shall document that the emergency basin between the sediment basins and the SOFEs will only be used for emergencies and that adequate conditions exist to assure flow from the sediment basins to the SOFEs can be accomplished;
7. Cyclone Cattle shall ensure that all feed stock storage, manure runoff, dead animal leachate, and all process wastewater areas must be totally contained at all times;
8. Cyclone Cattle shall ensure that all solid waste is properly disposed of at the facility; and
9. Cyclone Cattle shall pay an administrative penalty in the amount of \$10,000.00 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 \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Cyclone Cattle gained an economic benefit by failing to properly contain the manure from its facility. Cyclone Cattle delayed the costs associated with obtaining additional land for manure application and the costs associated with proper maintenance of the equipment at

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the facility. Based on the above facts, the economic benefit Cyclone Cattle received was at least \$1,000.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 4 documented manure discharges that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$3,000.00 is assessed for the violations listed in Paragraphs 2 and 3 of Section IV Conclusions of Law; \$1,000.00 is assessed for the violation listed in Paragraph 4 of Section IV Conclusions of Law; and \$1,000.00 is assessed for the violation listed in Paragraph 5 of Section IV Conclusions of Law for a total of \$5,000.00 assessed for this factor.

Culpability – Cyclone Cattle 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. Cyclone Cattle failed to notify the DNR of at least two manure releases. Therefore, \$2,000.00 is assessed for the violations listed in Paragraphs 2 and 3 of Section IV Conclusions of Law; \$1,000.00 is assessed for the violation listed in Paragraph 4 of Section IV Conclusions of Law; and \$1,000.00 is assessed for the violation listed in Paragraph 5 of Section IV Conclusions of Law for a total of \$4,000.00 assessed for this factor.

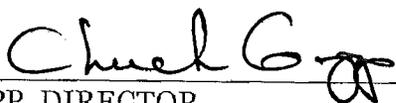
## **VII. WAIVER OF APPEAL RIGHTS**

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

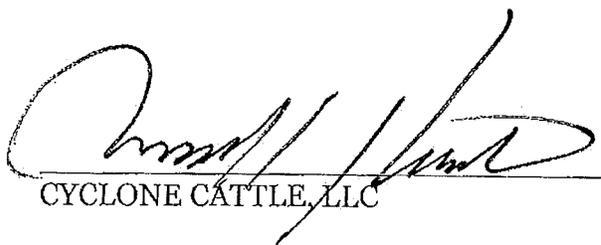
## **VIII. NONCOMPLIANCE**

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.

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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resource

Dated this 14<sup>th</sup> day of  
October, 2016.

  
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CYCLONE CATTLE, LLC

Dated this 6 day of  
OCTOBER, 2016.

AFO #60582; Kelli Book, DNR Field Office 4, EPA, VIII.D.1.B and VIII.D.3.a