

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: SPARBOE FOODS, LLC	ADMINISTRATIVE ORDER NO. 2016-SW- <u>03</u> NO. 2016-WW- <u>10</u>
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To: Mr. Darryl Dietzenbach
Registered Agent
Sparboe Foods, LLC
809 Sunset Street
New Hampton, IA 50659

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

I. SUMMARY

This administrative order (Order) is issued to Sparboe Foods, LLC (Sparboe) due to violations of its Permit No. 19-SDP-03-03P-LAN and its failure to comply with certain solid waste and water quality requirements. In addition to requiring Sparboe to pay an administrative penalty, the Department of Natural Resources (DNR) is requiring, among other things, Sparboe to submit to DNR all records of land-applied wastes at any site, whether permitted or unpermitted, and requiring Sparboe to provide written certification that it is properly disposing of its Dissolved Air Flotation (DAF) sludge—including a summary of the quantities and disposal destination of the waste sludge generated from the DAF unit since February 21, 2016.

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
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-725-8239

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

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

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. Sparboe's facility in New Hampton, Iowa, has been issued three solid waste land application permits by the DNR. Permit 19-SDP-03-03P-LAN authorizes Sparboe to land-apply up to 2.0 dry tons of sludge per acre at the property owned by Kevin W. Clark in Chickasaw County, Iowa, located at 3036 240th Street, Fredericksburg, Iowa (Clark Farms). Sparboe had a contract with Mr. Clark to haul waste from its New Hampton facility and land-apply the waste pursuant to the terms of its permit on the Clark Farms property.
2. On February 22, 2016, DNR Field Office (FO) 1 received a call from Ken Rasing, Chickasaw County Sanitarian, regarding improper land application of waste on the Clark Farms 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 Clark Farms owned by Norm and Jill Wurzer (Wurzer Farm) on Monday, February 22, 2016 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 Farms 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 Farms land application site. Mr. Dugan provided no comments on the disposal during the site investigation.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

5. During the February 22nd meeting Sparboe reported to DNR that Clark Farms hauled two loads of DAF 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 Farms on February 22, 2016.

6. At approximately 12:30 pm on February 22, 2016, DNR staff arrived at the Wurzer Farm 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 Clark Farms. A grassed waterway that passes through the Wurzer Farm property daylights near the north-south fence line with the Clark Farms 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 Farms 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 Farms property.

8. Following the investigation at the creek, the group proceeded to a cornfield on the northwest portion of the Clark Farms 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 Farms location 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 Farms cornfield, hog pit and impoundment matched the appearance of the material observed on the banks of the creek. DNR staff, assisted by Mr. Rasing,

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

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 Farms property near the creek was Sparboe Foods DAF 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 Clark Farms. Sparboe was informed that it and its applicator are responsible for compliance with Sparboe's land application permit.

13. On February 25, 2016, DNR staff again contacted Jim Biedermann to ask about the progress at the Clark Farms site. Mr. Biedermann reported that Clark Farms had a person working to clean up the creek banks. Furthermore, no one from Sparboe had been to the site to monitor the progress of the cleanup activities.

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 Clark Farms 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 Casey Clark, owner of Clark Farms. Mr. Clark reported that Clark Farms 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 Farms, 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. During the February 25, 2016 visit to Sparboe's facility, DNR staff asked Mr. Dugan to provide DNR copies of the company's records of its land

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

application activities. Mr. Dugan responded that he had submitted that information to the DNR and destroyed the records he received from Clark Farms after he transferred the information to the DNR forms. According to DNR records, the last quarterly report was received from Sparboe on October 2, 2015 and covered the months of April, May and June 2015. A report for July through September, 2015, was due December 31, 2015 and had not been received, and a report for October through December 2015 would be due March 31, 2016. In addition, an annual agronomist report is due November 1 of every year. The most recent annual report submitted by Sparboe was received by DNR on November 2, 2012.

17. At 2:15 on February 25, 2016, Jim Biedermann called Karen Halverson at Clark Farms 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 Clark Farms at 3:45 pm.

18. At 3:55 pm on February 25, 2016, this individual, Don Warnke, arrived at Clark Farms. 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. As the parties left the site, DNR staff instructed Mr. Dugan to have the back-up contractor ready if Mr. Warnke failed to get the job done the next day.

19. At 8:10 am on Friday, February 26, DNR FO1 staff contacted Mr. Dugan. He stated that there was still a Clark Farms semi-tanker at the back of Sparboe's facility in New Hampton that contained DAF sludge. DNR discussed disposal options with Mr. Dugan. Mr. Dugan indicated that Sparboe was looking at disposal at Big Ox anaerobic digester. He also reported that if Clark Farms 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.

20. 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 Farms would do the cleanup and would not allow any other contractors on site.

21. 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

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

emphasized the need to land apply the material in the impoundment after the stream banks were finished.

22. Mr. Warnke also reported that he had hauled loads from Sparboe to his farm located in Bremer County for land application over multiple years. Mr. Warnke's farm is located at 2383 120th, Sumner, Iowa. Sparboe does not have a permit to use that property for land application. Mr. Dugan called at 3:30 pm on February 26, 2016 to report that approximately 100' of stream bank remained to be done. Mr. Dugan reported that Mr. Warnke would return the next morning (Saturday, February 27) to finish the remaining stream bank cleanup.

23. DNR FO1 staff returned to the site 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.

24. On March 7, 2016, Mr. Warnke reported to DNR FO1 staff that he had taken the previously-mentioned Clark Farms semi-tanker that had been stored at the back of Sparboe's facility in New Hampton containing Sparboe DAF sludge to the Clark Farms 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 had 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.

25. DNR did not authorize this tanker to be taken to the Clark Farms property. When DNR staff contacted Jim Biedermann on March 7, he reported that he was unaware that the tanker was gone but would check on it. He added that the truck was Mr. Warnke's personal truck and that Clark Farms had invoiced Sparboe for the load.

26. 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.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

27. 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 Farms, submit a plan and schedule for land-applying and incorporating the remaining material at the Clark Farms site, 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 Farms property.

28. On March 9, 2016, Karen Halverson reported that Jim Biedermann called her on March 4, 2016 and requested that Clark Farms remove the tanker. Ms. Halverson reported that Mr. Warnke picked up the tanker on Saturday, March 5, 2016 and brought it to the farm.

29. Records received from Clark Farms via email on March 16, 2016 indicated that nothing was hauled from Sparboe to Clark Farms (identified as Farm 5) on Thursday, February 18, 2016, but Clark Farms 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.

30. On March 21, 2016, DNR FO1 received Sparboe's quarterly land application reports for what appear to be sites in Howard and Winneshiek Counties.

31. On March 22, 2016, a Notice of Violation (NOV) was issued by DNR FO1 to Sparboe and Clark Farms and sent via certified mail.

32. Following consultation with the DNR, Sparboe removed liquid and dried sludge from the Clark Farms property for proper disposal. This removal action occurred between April 19 and 21, 2016.

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. The facts outlined above establish violations of this regulatory requirement, as Sparboe does not have a permit to land-apply waste sludge at the property owned by Don Warnke at 2383 120th street, Sumner, Iowa.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

3. DNR issued permit #19-SDP-03-03P-LAN to Sparboe for land application of Sparboe DAF sludge at the Clark Farms 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 of the requirements of Sparboe's permit and 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. Sparboe shall pay an administrative penalty of \$9,000.00 within 60 days of this Order being signed by the Director.

2. All of the previously land applied sludge at the Clark Farms property must be incorporated within 15 days of this Order being signed by the Director.

3. Sparboe must submit to DNR FO1 all records of sludge land-applied at any site, permitted or unpermitted, within 30 days of this Order being signed by the Director.

4. Sparboe must submit to DNR documentation establishing that the material removed from Clark Farms referenced in Section III., paragraph 31, above, was properly disposed of. This documentation shall be submitted to DNR within 30 days of this Order being signed by the Director.

5. Sparboe must provide assurance to the DNR that it is properly disposing of its DAF sludge by submitting the quantities and disposal destination of the waste sludge generated from the DAF unit since February 21, 2016, within 30 days of this Order being signed by the Director.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC**

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 Sparboe does not comply with the requirements of this Order, or if Sparboe violates the terms of its permits 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 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. Economic Benefit. The economic benefit is derived from Sparboe's reliance on a low-cost land application contractor. A penalty of \$4,000.00 is included for this factor.
- b. Gravity of the Violation. Sparboe failed to provide oversight for its land application contractor resulting in permit violations and water quality violations. A penalty of \$3,000.00 is included for this factor.
- c. Culpability. Sparboe is the generator of the waste material that was improperly land applied and the holder of the land application permit issued by DNR. Sparboe is responsible for land application pursuant to its permit. A penalty of \$3,000.00 is included for this factor.

4. Based on Sparboe's recent efforts to mitigate the illegal land-application and sludge storage referenced above, DNR will decrease the administrative penalty in this order by \$1,000.00.

5. As such, an administrative penalty of \$9,000.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SPARBOE FOODS, LLC

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 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

Dated this 20th day of
May, 2016

CC: Sparboe Foods, LLC, 900 N. Linn Ave., New Hampton, IA 50659; DNR Field Office #1; Amie Davidson; VI.B.2.e; VI.C; III.C.