

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Walz Energy LLC Clayton County, Iowa NPDES No. 22-00-1-05	ADMINISTRATIVE CONSENT ORDER NO. 2018-WW- 13
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TO: Jon Haman
Walz Energy LLC
5550 Wild Rose Lane, Suite 400
West Des Moines, IA

Eldon McAfee, Attorney
Brick Gentry, PC
6701 Westown Parkway, ste. 100
West Des Moines, IA 50266

I. SUMMARY

This administrative consent order (order) is entered into between Walz Energy LLC (Walz Energy) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to two illegal discharges to a water of the state, multiple ongoing violations of its storm water permit and a violation of its wastewater construction permit. Walz Energy agrees to pay an administrative penalty of \$10,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions or responses regarding this order should be directed to:

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Walz Energy LLC

Relating to technical requirements:

Tom McCarthy, Environmental Specialist Senior
IDNR Field Office No. 1
909 W Main St STE 4
Manchester, IA 52057
563/927-2640

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8244

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to 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 I and the rules promulgated or permits issued pursuant thereto; 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

Walz Energy neither admits nor denies the following statements of facts and enters into this agreement solely for the purpose of settlement:

1. On March 22, 2017, Walz Energy's Engineer, Nic Rowe, of ProAg Engineering, Inc. published a Notice of Intent (NOI) for a Storm Water NPDES General Permit No. 2 for the project titled Walz Energy LLC (Walz Energy). The owner in this NOI was listed as Feeder Creek Energy LLC¹.

2. The Walz Energy construction site is approximately 48 acres and wastewater from this site flows east over land and via underground tile lines into the headwaters of Bloody Run Creek (Bloody Run). Bloody Run is an Outstanding Iowa Water (OIW). OIWs are waters which constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, and water quality shall be maintained and protected. Bloody Run is a trout stream which is heavily used by anglers; the Department stocks it with brook and rainbow trout and it also contains wild brown trout. Because Bloody Run is an OIW storm water discharges associated with construction activity are not authorized by Storm Water NPDES General Permit No. 2.²

¹ This entity is not registered with the Iowa Secretary of State.

² This language is contained in NPDES General Permit No. 2.

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3. On April 3, 2017, the Department received a complaint regarding the operation of a confinement feeding site known as W 6 Farms. On the same date the Department received a NOI for the above referenced permit.

4. On April 7, 2017, Brian Jergenson, an Environmental Specialist with the Department, went to the site to investigate. Once on site, Mr. Jergenson met Jared, Mike and Dean Walz, the owners of W 6 Farms, and Jon Haman, the owner of Walz Energy. Mr. Jergenson did not document any violations regarding W 6 Farms; however, he observed construction activities at an adjacent site. This site is known as Walz Energy Feedlot and Biogas Project (Walz Energy Feedlot) and is located at Section 30, Township 95N, Range 4W, Clayton County, Iowa. This site is locally known as 22578 Hwy 18, Monona, Iowa. Mr. Jergenson observed that storm water controls had not been implemented but he did not observe a discharge of storm water. Mr. Jergenson asked Mr. Haman if a National Pollution Discharge Elimination System (NPDES) permit had been obtained for the construction site. Mr. Haman indicated that he thought the site did have a permit. Then, Mr. Jergenson recommended that the facility implement storm water controls.

5. On April 17, 2017, the Department informed Walz Energy that because of the location of the site and its potential to discharge to Bloody Run creek (an Outstanding Iowa Water (OIW)) an individual storm water NPDES permit was required.

6. On May 30, 2017, Walz Energy submitted an application for an individual storm water NPDES permit with the Department.

7. On June 21, 2017, Mr. Jergenson and Rick Martens, an Environmental Specialist with the Department, conducted a follow-up investigation at the site of the Walz Energy Feedlot. Once on site, Department staff met with Mr. Haman and Blake Dougherty. Both Mr. Haman and Mr. Dougherty represented that they are operating the feedlot. Mr. Haman stated that approximately 20 acres of the site was currently disturbed due to construction activity. Mr. Jergenson and Mr. Martens then proceeded to inspect the storm water controls. Numerous controls were observed and Mr. Haman stated that Walz Energy had purchased a silt fence machine and over 3,000 feet of silt fence had been placed on the site. Department staff noted that the soil which had been disturbed appeared to be clay and loam. A grove of trees was located near the northwest corner of the site; Mr. Haman stated that the area likely contained a sinkhole. No discharge of sediment to a water of the state was observed during this inspection. On June 28, 2017, a copy of the inspection report from the above discussed inspection was sent to Walz Energy.

8. On August 18, 2017, a draft individual storm water NPDES permit was placed on public notice. During the public notice period a hearing on the NPDES permit was requested and a hearing was held on November 29, 2017.

9. On September 29, 2017, the Department issued a wastewater construction permit to Walz Energy for construction of an anaerobic lagoon at the location of Walz Energy Feedlot. This permit stated that no construction activities shall be initiated unless an NPDES storm water

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permit was obtained from the Department if the site disturbance equals to or exceeds one (1) acre.

10. On October 11, 2017, Mr. Martens and Clark Ott, Environmental Specialist Senior with the Department, conducted a follow-up investigation. Once on site they observed and documented the following:

a. At the portion of the Walz Energy site which is adjacent to the point where Greenfield Avenue road crosses Bloody Run (A1), the Department staff looked east which is downstream and towards Bloody Run. Looking east they observed turbid brown colored water, no odor or foam was observed. Water samples were taken and sent to the University of Iowa State Hygienic Laboratory for analysis and the results were as follows: Total Suspended Solids (TSS) 82 milligrams per liter (mg/L) and turbidity 1900 Nephelometric Turbidity units (NTU);

b. Department staff proceeded upstream 25 feet above the point at which the water flowing from Walz Energy Feedlot site entered Bloody Run (A2). From this location Department staff observed that the water discharging from Walz Energy Feedlot was turbid and brown in color, but at the location of A2 the water was clear with no observed turbidity. Laboratory samples were taken at this location and the results were as follows: TSS 4 mg/L and turbidity 3.3 NTUs;

c. Department staff proceeded 25 feet downstream from the point at which the water flowing from the Walz Energy Feedlot entered Bloody Run (A3). At this location Department staff observed that the water was turbid and brown. Laboratory samples were taken and the results were as follows: TSS 420 mg/L and turbidity 930 NTUs.

d. Department staff met with Mr. Haman at the Walz Energy Feedlot. Mr. Haman noted that several rain events had occurred recently and in the last 24 hours one and a half inches of rain had fallen. Together they proceeded to the storm water retention basin located on the east property line (A4). Department staff observed that the water in the basin was turbid and brown in color. Laboratory samples were taken and the results were as follow: TSS 820 mg/L and turbidity was 2900 NTUs.

e. Department staff observed that much of the site had exposed soils, was wet, muddy and had pooled water. At the property fence line a bale and soil structure dike had been placed by Walz Energy to retain storm water. Nevertheless, a steady flow of turbid basin water was passing through the structure and entering a waterway located on the property of Nicholas and Phillip Meyer. Department staff followed the water flowing from the retention basin, crossed the property line and entered the property owned by the Meyers. They proceeded approximately 20 feet below the property line (A5) and took laboratory samples of the water, the results were as follows: TSS 1040 mg/L and turbidity 3300 NTUs.

f. Last, Department staff told Mr. Haman to repair the retention basin and cease the discharge.

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11. On October 24, 2017 a Notice of Violation (NOV) was issued for the above discussed violations. Included with this NOV was a copy of the relevant investigation report and the relevant law.

12. On November 7, 2017, Tom McCarthy a Environmental Specialist Senior with the Department and Mr. Martens returned to conduct a follow-up investigation. During this investigation, no discharge of sediment laden storm water was observed. Department staff met with Mr. Haman and the site manager for the project. Together they inspected the storm water controls at the location of the Meyers' and Walz Energy's property line. Mr. Haman discussed the earthen dike which had been installed to prevent runoff and stated that the field tiles had been modified to divert clean water around the facility. The Department recommended that additional storm water controls be implemented to protect exposed soil and recommended that the site meet all the requirements of a storm water General Permit No. 2 pending approval of the individual NPDES storm water permit.

13. On November 10, 2017, Mr. Haman contacted the Department and stated that additional controls, including a silt fence had been implemented.

14. On November 16, 2017, Mr. Haman notified the Department that construction on the wastewater anaerobic lagoon had begun on October 2, 2017.

15. On November 17, 2017, a NOV was sent to Walz Energy for construction of the wastewater anaerobic lagoon prior to obtaining a storm water NPDES permit in violation of the wastewater construction permit.

16. On January 12, 2018, NPDES Permit No. 22-00-1-05 was issued to Walz Energy for discharges related to the above discussed construction site.

17. On January 25, 2018, the Department returned to the site for a follow-up investigation. Once on site, the Department documented that a large retention basin had been added in accordance with the storm water pollution prevention plan (SWPPP). However, the representative of Walz Energy stated that soil disturbing activities had ceased in late November or early December yet, the site had not been stabilized. The Department noted the following violations: (1) the SWPPP required that wood fiber matting be used on berms that have a back slope greater than 3:1, yet there was no stabilization on these slopes; (2) the SWPPP required silt fence on the back sides of temporary soil piles, yet there was no protection on the back side of the temporary soil pile that was adjacent to the large retention basin; (3) the SWPPP required stabilization using disc-anchored mulch on slopes that were less than 4:1, yet there were large areas with no stabilization; and (4) portable toilets were observed on the site despite not being addressed in the SWPPP.

18. On February 21, 2018, a NOV was sent for the above discussed violations. A summary of the relevant law and a copy of the relevant inspection report were included with this NOV.

19. On March 29, 2018, in response to a complaint, Mr. Ott returned to the site to conduct a follow-up inspection. Once on site, Mr. Ott observed that mulch had been placed over a large portion of the disturbed soil; however, several areas appeared to have lost cover due to wind or

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rain. There were also areas of disturbed soil that had no stabilization material. The berm for the lagoon was mulched with straw on the downstream side; however the straw had not been disk-anchored into place. Further, the SWPPP had not been updated to include this method of stabilization; it stated that wood fiber matting would be used on berms that had a back slope of greater than 3:1. The downslope side of the temporary soil pile on the east side of the property did not have any erosion controls including a silt fence as required in the SWPPP. Mr. Ott again observed portable toilets at the site that were not addressed in the SWPPP and these portable toilets were different than the ones observed during the January 25, 2018, inspection.

Next Mr. Ott met with Mr. Dougherty and asked if there had been any changes to the SWPPP since the January 25, 2018, inspection. Mr. Dougherty stated that no changes to the SWPPP had been made. Then Mr. Ott discussed the following deficiencies noted in the January inspection that were still present: (1) the need for a silt fence on the downslope side of the temporary soil piles; (2) the wood fiber matting for the berm and disk-anchored mulch requirements in the SWPPP; (3) and the failure to address the location of the portable toilets in the SWPPP. Mr. Ott then reviewed the SWPPP inspection notes. Despite inspections being done timely the inspections failed to document the above discussed deficiencies.

20. On April 3, 2018, Walz Energy made the following change to its SWPPP: "Immediately following grading of slopes of 3:1 or greater which drain to waters of the state slopes will be stabilized with shredded corn stalks (or other method approved by the engineer) over approved seed mixture and 4 inches of topsoil."

21. On April 4, 2018, a NOV was sent for the above discussed violations. A summary of the relevant law and a copy of the relevant inspection report were included with this NOV.

22. On May 4, 2018, the Department received a complaint alleging water was being discharged from the Walz Energy site into Bloody Run Creek. Mr. McCarthy and Brett Meyers, an Environmental Specialist with the Department, went to the site to investigate. Once on site, they observed and documented sediment laden storm water flowing from the Walz Energy site via an underground tile line to an unnamed tributary to Bloody Run and eventually to Bloody Run. Laboratory samples were taken and the following observations were made at the below locations:

a. Site B1 (where the Walz Energy tile line discharges into an unnamed tributary to Bloody Run): TSS 220 mg/L, water was turbid and yellow in color. The color of the water flowing out of the tile line was consistent with the color water in the retention basins and exposed sediment on the Walz Energy site;

b. Site B2 (10 feet downstream of site 1 which is upstream of the flow from the Walz Energy site): TSS 2mg/L, water was clear;

c. Site B3 (where Bloody Run flows under the Greenfield Avenue Bridge): TSS 13 mg/L, water was turbid and yellow in color;

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d. Site B4 (where Bloody Run flows under the Hickory Avenue Bridge): TSS 42 mg/L, water was turbid and yellow in color; and

e. Site B5 (where Bloody Run flows under the Spook Cave Road Bridge): TSS 42 mg/L, water was turbid and yellow in color.

Next, Department staff went back to the Walz Energy site and met with Mike and Dean Walz who stated they were not the owners but did work there. Department staff then explained that the yellowish clay color silt and turbid water found on site was the same appearance as the water in the tile discharge and that it appeared the storm water on site was discharging via a tile line to Bloody Run. The Department urged Mike and Dean Walz to investigate and stop any contaminated tile flow off the property as soon as possible. While on site, Department staff observed that no soil moving activities were ongoing, yet there were large areas of disturbed soil on the site that still had not been properly stabilized with silt fences, cover material or planted vegetation.

23. On May 10, 2018, Joe Sanfilippo, Environmental Program Supervisor with the Department, Mr. McCarthy and Mr. Meyers met with Mr. Dougherty and Mr. Haman at the Walz Energy site. Mr. Haman explained that during the day on May 8, 2018, the Walz Energy tile discharge was clear but that night the area received .45 inches of rain and after that rain event the discharge from the Walz Energy tile line was cloudy. He provided Department staff with a site map which detailed approximately 1500 feet of tile line running through the site. Mr. Haman explained that the tiling was installed at a depth of up to 22 feet, and that at approximately 8 to 13 feet deep, rock covered the socked tile; but in some areas only 6 inches of soil covered the tile line. Mr. Haman further explained that the Walz Energy tile connects to the Meyer tile at a depth of 8 feet and flows east. Last, he explained that the portable toilet had been moved and that the area will be covered with topsoil and hydro-seeded in two weeks.

As Department staff walked the site they noted that it appeared that the standing storm water in the eastern basin soaked through the ground and into the tile line. Mr. Haman stated that it appears the tile was overwhelmed by the large amount of standing water. Everyone agreed that several feet of soil on top of the tile lines should help prevent soil from entering the tile. Department staff reiterated the immediate need for additional silt fencing and soil cover in order to reduce the large amount of run-off into the storm water retention basins and ultimately into the tile lines.

Next Department staff went to the location of site 1 (where the Walz Energy tile line discharges to an unnamed tributary to Bloody Run on the Meyer's property). There they met with Nick and Phillip Meyer. Department staff observed a large amount of silt in and around the Walz Energy tile, but at the time clear water was flowing out of it. The Meyers stated that on May 9, 2018, following rain the evening of May 8, 2018, cloudy water was flowing out of the Walz Energy tile line.

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24. On May 11, 2018, Mr. Sanfilippo returned to the site for a follow-up investigation and he took laboratory samples and made the following observations:

a. Site C1 (Meyer's property where Walz Energy tile line discharges to an unnamed tributary to Bloody Run): TSS 42mg/L, water flowing out of the tile line was yellow in color and slightly cloudy.

b. Site C2 (approximately 20 feet upstream of the point at which the Walz Energy tile line discharges into the unnamed tributary to Bloody Run): TSS 3 mg/L, water was clear.

c. Site C3 (where the tile line discharges into the unnamed tributary of Bloody Run): TSS 31mg/L, water was yellow in color and slightly cloudy.

d. Site C4 (20 feet downstream of the discharge of the Walz Energy tile line): TSS 8 mg/L, the water was less cloudy than at site C1 and C3.

Next, Mr. Sanfilippo called Mr. Haman who gave him permission to enter the Walz Energy site. On site, Mr. Sanfilippo observed that additional soil had been placed over the tile line that runs along the north side of the site. That appeared to be the only soil moving activity to have taken place since late November or early December. Mr. Sanfilippo also observed the site had still not been properly stabilized.

25. On May 31, 2018, an NOV was sent for the above discussed violations. Along with this NOV was a copy of the investigation report and a summary of the deficiencies noted and the relevant law.

26. On June 6, 2018, the Department along with the Environmental Protection Agency (EPA) went to the site. The Department and EPA observed that the site had not been properly stabilized in accordance with its SWPPP but volunteer weeds had begun to cover the site.

27. On June 12, 2018, Mr. McCarthy returned to the site. He observed that the site had not been stabilized in accordance with its SWPPP, but volunteer grasses and weeds had become better established on the site since the prior visit.

28. On July 16, 2018, Mr. McCarthy returned to the site and observed that the site had not been stabilized in accordance with its SWPPP.

29. On July 20, 2018, the Department received a complaint alleging turbid water in Bloody Run. Mr. McCarthy called Mr. Haman and left him a voice mail. Mr. McCarthy also sent Mr. Haman an e-mail regarding the complaint. Mr. Haman returned Mr. McCarthy's call on July 30, 2018.

30. On July 24, 2018, in response to the complaint Mr. McCarthy went to the site to investigate. Once on site Mr. McCarthy documented that the site had not been stabilized in accordance with its SWPPP but a discharge was not observed.

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The facts alleged in paragraph 31 and 32 are admitted by Walz Energy, have been put forth by Walz Energy and are neither admitted nor verified by the Department:

31. Walz Energy is aware of its legal duty to monitor the site and prevent construction storm water discharges (discharge(s)). However, on October 11, 2017, Walz Energy was not aware of the discharge and for that reason it did not notify the Department of the discharge. However, once Walz Energy was made aware of the discharge Mr. Haman responded to the Department within 20 minutes. Further, within two hours after Mr. Haman became aware of the discharge it was contained by constructing an earthen dike on the east end of the property. This earthen dike remains in place and continues to contain all the storm water runoff from the property.

32. Following the October 11, 2017, discharge over the next 2 days, Walz Energy constructed two additional earthen containments in the middle and the west end of the property to provide additional capacity to contain any storm water runoff.

IV. CONCLUSIONS OF LAW

Walz Energy neither admits nor denies the following conclusions of law and enters into this agreement solely for the purpose of settlement:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision.
2. Iowa Code sections 455B.103(A) and 455B.197 authorize the issuance of permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.
3. 567 IAC 61.3(2) "c" and "f" state that
 - c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.
 - ...
 - f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

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The above stated facts demonstrate noncompliance with these provisions.

4. Department subrule 567 IAC 64.3(1) provides that 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. The above stated facts demonstrate noncompliance with this provision.

5. NPDES Permit No. 22-00-1-05 Part II provides that “[t]he storm water pollution prevention plan submitted to the Department prior to issuance of this permit as later amended, must be implemented.” The above stated facts demonstrate non-compliance with this provision.

6. NPDES Permit No. 22-00-1-05 Part II C. 2. A.(1) requires that a SWPPP must contain “[a] description of temporary and permanent stabilization practices [.] Also “[s]tabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where soil-disturbing activity will not occur for a period of 21 or more calendar days, later than the 14th day after no soil-disturbing activity has occurred on such areas.” Walz Energy told the Department that soil disturbing activities ceased by early December 2017. Yet as of July 24, 2018, the site had not been stabilized in accordance with the SWPPP. Thus, the above stated facts demonstrate non-compliance with this provision.

7. NPDES Permit No. 22-00-1-05 Part II C. 2. A.(2) requires that a description of structural practices which include silt fences be included in the SWPPP. Structural practices should be placed on upland soil. The failure to install a silt fence in accordance with the SWPPP violates this provision.

8. NPDES Permit No. 22-00-1-05 Part II C. 2. C. c(3) states that the plan “shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.” The failure to address the controls for waste disposal pertaining to the portable toilets in the SWPPP violates this provision.

9. NPDES Permit No. 22-00-1-05 Part II C. 2. C.4 requires that “[q]ualified personnel ... shall inspect disturbed areas of the construction site that have not been stabilized[.]” Qualified personnel is defined in Part V of the NPDES permit as “those individuals capable enough and knowledgeable enough to perform the required functions adequately well to ensure compliance with the relevant permit conditions and requirements of the Iowa Administrative Code.” The failure to stabilize all the areas with disturbed soils in accordance with the SWPPP and the failure to document this in the inspection records demonstrates that the personnel conducting the inspections was not qualified and therefore shows non-compliance with this provision.

10. NPDES Permit No. 22-00-1-05 Part IV 2 states “[t]he permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act.” The above stated facts demonstrate numerous instances of permit non-compliance. Therefore, Walz Energy is in non-compliance with this provision.

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11. NPDES Permit No. 22-00-1-05 Part IV 5 states “[t]he permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.” Discharging sediment into an OIW has the potential to adversely affect the environment. Therefore, the above stated facts demonstrate non-compliance with this provision.

12. Wastewater Construction Permit No. 2018-0109S required that a storm water NPDES permit be obtained prior to construction. The above stated facts demonstrate non-compliance with this provision of law.

V. ORDER

THEREFORE, the Department orders, and Walz Energy consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of NPDES Permit No. 22-00-1-05;
3. In the future obtain all NPDES permits prior to engaging in construction activity;
4. No later than September 21, 2018, submit a plan to the Department, for its approval, detailing how all material in the anaerobic lagoon and all material created by the digester will be managed. No material may be removed from the lagoon or from the digester without having an approved plan and/or permit from the Department; and
5. Pay an administrative penalty of \$10,000.00 within 30 days of the date the Director signs this 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 the 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 Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit**. 567 IAC chapter 10 requires that the Department 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

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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.” An economic benefit was obtained through avoiding the cost installing and maintaining adequate storm water runoff control measures throughout the construction site and by failing to properly stabilize the site after ground disturbing activities ceased for the winter. This avoided several thousand dollars in materials and labor expenses. In addition, despite the wastewater construction permit requirement that an NPDES permit be obtained prior to the start of construction, construction began without that permit. And construction continued after an illegal discharge to a water of the state, but before obtaining an NPDES permit. The required NPDES permit was not obtained until January 12, 2018; thus, if Walz Energy had waited to construct until obtaining an NPDES permit, construction would have been delayed an entire construction season. For that reason, it is reasonable to assume a significant economic benefit was obtained by constructing in violation of its wastewater construction permit and continuing construction after the illegal discharge, but prior to the issuance of an NPDES permit. For these reasons, it is reasonable to estimate that \$4,000.00 was saved. Therefore, \$4,000.00 is assessed for this factor.

b. **Gravity of the Violation.** 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 the type of violation. As indicated above, substantial civil penalties are authorized by statute. Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa’s waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. This site is located in a watershed that drains to an OIW. An OIW is defined as surface water that the Department has classified as an outstanding state resource water in the water quality standards. Walz Energy was made aware of this classification in April of 2017; nevertheless, Walz Energy failed to implement the proper storm water controls and two illegal discharges occurred. In addition, Walz Energy violated terms of its wastewater construction permit and its NPDES permit. Such noncompliance thwarts the integrity of the construction permit, NPDES permit and water quality programs. Therefore, the amount of \$3,000.00 is assessed for this factor.

c. **Culpability.** Walz Energy is engaged in the business of animal feeding and development. These are highly regulated activities and therefore Walz Energy has an obligation to be aware of the applicable regulations and comply with those regulations. Walz Energy was issued a wastewater construction permit by the Department; this permit required that a storm water NPDES permit be obtained prior to construction activities. Moreover, on multiple occasions the Department communicated to Walz Energy and its engineer the need to implement proper storm water controls. Nevertheless, adequate controls were not installed and two illegal discharges occurred. Furthermore after the NPDES permit was issued the SWPPP was not complied with. Therefore, the amount of \$3,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent Walz Energy. By signature to this order, all rights to appeal this order are waived by Walz Energy.

VIII. NONCOMPLIANCE

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



Jon Haman, on behalf of Walz Energy LLC

Dated this 21 day of
August, 2018

 Bruce Trautman

ACTING DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22 day of
August, 2018

Walz Energy NPDES Permit No. 22-00-1-05 (Copy of Order to Central Office Records File), FO 1, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.