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. 2019-WW-11

TO: Jared Walz
13768 Golden Ave.,
Monona, IA 52159

Walz Energy LLC
5550 Wild Rose Lane, Suite 400
West Des Moines, IA 50266

Joseph W. Younker, Attorney
Bradley & Riley PC
Tower Place 1 South Gilbert Street
Iowa City, IA 52240-3914

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 multiple illegal discharges to a water of the state, multiple ongoing violations of its storm water National Pollutant Discharge Elimination System (NPDES) permit and violations of Consent Order No. 2018-WW-13. 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:
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. The Walz Energy construction site (site) is approximately 48 acres and is located at Section 30, Township 95N, Range 4W, Clayton County, Iowa. This site is locally known as 22578 Hwy 18, Monona, Iowa. 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.

2. 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.

3. On August 22, 2018, Walz Energy entered into Consent Order No. 2018-WW-13 with the Department for two illegal discharges to a water of the State, multiple ongoing violations of the above referenced permit and a violation of its wastewater construction permit. In this consent order, Walz Energy agreed to the following: cease all illegal discharges to waters of the State,
comply with NPDES permit No. 22-00-1-05 and 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. To date these provisions have not been complied with.

4. On October 1, 2018, Department staff Tom McCarthy, an Environmental Specialist Senior, and Joe Sanfilippo, an Environmental Program Supervisor, went to the site to conduct a storm water inspection. Prior to arriving on site Mr. McCarthy obtained permission from site representative John Haman to conduct an investigation. Once on site, the following observations were made: (1) the storm water pollution prevention plan (SWPPP) had not been updated to show that strewn straw would be used for slopes less than 4:1, the SWPPP required stabilization using disc-anchored mulch on slopes that were less than 4:1; (2) the site had not been stabilized in accordance with the permit despite no soil disturbing activities taking place within 21 or more calendar days; (3) a large amount of storm water was observed in the east storm water basin; (4) natural vegetation was not included in the SWPPP and was not properly managed to provide adequate protection and (5) secondary containment had been built around two animal food storage basins but the berms of the animal food storage basins had been breached and they were discharging into the east storm water basin.¹

5. On October 4, 2018, Mr. McCarthy and Mr. Sanfilippo met with John Haman and Blake Dougherty of Walz Energy. Mr. Dougherty provided copies of the mandatory NPDES SWPPP inspection reports.² Mr. McCarthy discussed that Walz Energy documented noncompliance with the NPDES permit in the inspection reports but none of the deficiencies had been corrected as of that day. Mr. McCarthy discussed that the site needed to be covered with appropriate erosion control in accordance with the SWPPP, that the storm water basins needed to be pumped down to allow for at least one inch of storm water, and Walz Energy needed to address the food storage basins and repair the berms. Mr. Haman stated that Miron Construction will be involved in construction as soon as the site was dry enough to work. Mr. McCarthy also discussed the need to submit the information agreed to in Consent Order 2018-WW-13.

6. On October 5, 2018, a Notice of Violation (NOV) was sent to Walz Energy for the above discussed violations. This NOV included a copy of the relevant inspection report, a summary of the relevant law and a copy of the relevant portions of Consent Order No. 2018-WW-13. This NOV recommended the following corrective actions: (1) comply with all provisions of the SWPPP; (2) submit a plan detailing the number of gallons stored in the storm water basins and maps of land upon which the storm water will be land applied. This plan must include the application rate of the storm water and a time line for application; (3) correct deficiencies noted

¹ These basins are referred to as the east basin and the north basin and they store silage leachate, which is high in ammonia nitrogen (NH-3).

² The SWPPP is a portion of a storm water NPDES permit and it is drafted by the permittee. It is the permittee’s plan as to how it will comply with the NPDES permit.
in the weekly storm water inspections; and (4) comply with paragraph 2 and 4 of Consent Order No. 2018-WW-13.

7. On October 18, 2018, Mr. McCarthy returned to the site to conduct a follow-up inspection. Mr. McCarthy observed that most of the site was dry and workable but no stabilization had occurred and there were large areas of bare soil. Mr. McCarthy observed a large amount of storm water in the site’s storm water basins but the level of water had lowered since his last visit. The two food storage basins’ berms were still breached and were discharging into the large east storm water basin. In addition, all the deficiencies noted in the prior inspection were still present.

8. On October 19, 2018, Mr. McCarthy spoke to Mr. Dougherty over the phone. They discussed the last two inspections and the need to pump down and repair the food storage basins. Mr. Dougherty followed up after the call via e-mail and stated the following: Walz Energy would have a crew on site to fix the food waste storage basins; a Nutrient Management Plan would be submitted; the disturbed areas would be re-seeded with rye and winter wheat; Walz Energy would have its engineer look more into how much water is being held in the basins; and that Walz Energy was looking for a third party storm water management contractor.

9. On October 23, 2018, a NOV was sent to Walz Energy for the above discussed violations. This NOV included a copy of the relevant inspection report, a summary of the relevant law and a copy of the relevant portions of Consent Order No. 2018-WW-13. This NOV recommended the following corrective actions: (1) comply with all provisions of the SWPPP; (2) correct deficiencies noted in the weekly storm water inspections; and (3) comply with paragraph 2 and 4 of Consent Order No. 2018-WW-13.

10. On December 10, 2018, Mr. McCarthy and Mr. Sanfilippo conducted a follow-up storm water inspection. Prior to arriving on site, Mr. McCarthy called Mr. Haman to inform him of the inspection. Mr. Haman stated that he could not be at the inspection but granted them permission to inspect. Mr. Haman stated that the area around the buildings had been seeded but was unsure if the area had been covered. He stated that the food storage basins had been repaired and that no area farms wanted the water from the facility’s storm water basin. He stated that he may be able to land apply the storm water when the ground was frozen.

Once on site, the Department made the following observations: (1) there were large areas of disturbed soil with no stabilization; (2) there were large amounts of storm water in the storm water basins; (3) much of the construction site was inundated with water; (4) there were several areas of severe erosion and gully formation; (5) the food storage basins’ berms had been breached and evidence of a frozen discharge was noted; (6) construction waste was improperly stored in the open on site.

11. On December 12, 2018, a NOV was sent to Walz Energy for the above discussed violations. This NOV included a copy of the relevant inspection report, a summary of the relevant law and the relevant portions of Consent Order No. 2018-WW-13. This NOV recommended the following corrective actions: (1) comply with all provisions of the SWPPP; (2) submit a plan detailing the number of gallons of storm water stored on site and maps of land...
upon which the storm water will be land applied along with the rate of application and a timeline for application; (3) comply with Consent Order No. 2018-WW-13; (4) submit SWPPP weekly inspections records from October 15, 2018, through the date of the NOV; and (5) remove and properly dispose of construction waste materials that are not stored under a roof; and (6) repair both food storage basins and pump them down and land apply the material. In addition, all the deficiencies noted in the prior inspection were still present.

12. On December 31, 2018, Walz Energy submitted the plan detailing how all the material in the anaerobic lagoon and all material created by the digester will be managed. This plan was required to be submitted no later than September 21, 2018, by Consent Order 2018-WW-13. On January 15, 2019, the Department responded in writing that the plan could not be accepted because of numerous deficiencies that were detailed in this letter. To date another plan has not been submitted.

13. On January 14, 2019, Mr. McCarthy observed the site from the road and noted that Walz Energy had not taken the steps necessary to comply with its NPDES permit.

14. On February 4, 2019, Mr. McCarthy and Mr. Sanfilippo met with Mr. Haman and Heath Kellogg of Walz Energy. During this meeting a representative of Miron Construction was introduced by Walz Energy. Walz Energy stated that Miron Construction will work on the storm water issues. The parties discussed stabilizing the areas that had disturbed soils and dewatering the storm water basins and the food storage basins.

15. On March 15, 2019, Mr. McCarthy observed the site from the road and noted that Walz Energy had not taken the steps necessary to comply with its NPDES permit.

16. On April 9, 2019, Mr. McCarthy returned to the site. Once on site, Mr. McCarthy observed that the storm water retention basins water levels had decreased since his last inspection. However, areas of disturbed soil had not been stabilized, but in the areas that were seeded in the fall, vegetation was beginning to emerge.

17. On May 1, 2019, Mr. McCarthy notified Mr. Haman that the Department would inspect the site that day. Once on site, Mr. McCarthy and Mr. Sanfilippo observed and documented that the food storage basins were leaking into the east storm water basin. The east storm water basin was breached and evidence of a past breach was also apparent. A field test of the water in the east basin was taken and it established that ammonia nitrogen (NH3-N) was greater than 3 parts per million (ppm). Mr. McCarthy and Mr. Sanfilippo proceeded to the location where the Walz Energy tile line discharges to an unnamed tributary to Bloody Run on the neighbor’s property (Meyer’s property) (site 1). A laboratory sample was taken at the location of the tile which drains Walz Energy (the Walz Energy tile) and the result was 2.7 ppm of NH3-N. Samples from the two other tiles, which do not drain Walz Energy but drain to site 1, were taken and the results were as follows: west tile was 1.6 ppm of NH3-N and the east tile was .74 ppm of NH3-N.3

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3 The flow in the west tile was low, and for that reason it was difficult to obtain a sample. Mr. McCarthy believes the sample captured water flowing via an eddy from the Walz Energy tile.
Following the onsite investigation, Mr. McCarthy called Mr. Haman and told him to stop the discharge of contaminated water from Walz Energy. Mr. McCarthy stated that the food storage basins should be pumped down and all the basins’ berms needed to be repaired.

18. On May 20, 2019, the Department received a complaint alleging that heavy rains caused a discharge from Walz Energy. Following the receipt of this complaint, Mr. McCarthy called Mr. Haman and informed him that he would conduct an inspection that day. Mr. Haman stated that was okay but that the berms were not repaired due to the muddy conditions. Once on site Mr. McCarthy observed and documented the following:

a. At the location of site 1, Mr. McCarthy observed that water flowing out of the tiles was clear. Mr. McCarthy took field samples which indicated a presence of NH-3 in both the Walz Energy tile discharge and the east tile. Mr. McCarthy also observed an overland flow of green algae laden water. This water was flowing from Walz Energy to the location of site 1.

b. Mr. McCarthy proceeded to the location of the north food storage basin. Here, Mr. McCarthy observed that the basin’s berm was breached and it was discharging silage leachate into the east storm water basin. Mr. McCarthy also observed that the areas of exposed dirt had not been stabilized. Next, Mr. McCarthy proceeded to the location of the east storm water basin. Mr. McCarthy observed a heavy algae bloom in the basin. The basin was discharging green algae laden water overland to the location of site 1. Along the flow path, dozens of dead worms were observed. A laboratory sample was taken of the water discharging from the basin (site 2). The result was as follows: 68 ppm of NH-3.

c. Mr. McCarthy proceeded downstream to the location where the water from site 1 flows into another unnamed tributary to Bloody Run (site 3). Mr. McCarthy observed a flow path of green algae laden water flowing to this location. A laboratory sample was taken and the result was as follows: 40 ppm of NH-3.

d. Mr. McCarthy proceeded upstream, above the point at which the water from Walz Energy enters Bloody Run (site 4). At this location, a laboratory sample was taken and the result was as follows: less than 0.050 ppm of NH-3.

e. Mr. McCarthy proceeded to the point at which the water flowing from Walz Energy enters Bloody Run and converges with the water flowing from site 4 (site 5). At this location, a laboratory sample was taken and the result was as follows: 5.2 ppm of NH3-N.

Mr. McCarthy called Mr. Haman and informed him that Walz Energy had a significant overland discharge of green algae laden water to Bloody Run. Later in the day, Mr. Dougherty sent an e-mail to Mr. McCarthy and stated that the two lower east berms and food storage basins had been repaired and seeded. Mr. McCarthy responded that because the food storage basins discharged silage leachate to the east storm water basin, it now contained highly contaminated water and cannot be discharged.

19. On May 29, 2019, the Iowa District Court in Clayton County appointed Jared Walz as receiver for Walz Energy.
20. On May 28, 2019, the Department received a complaint alleging that there had been heavy rains in the location of Walz Energy and the complainant was concerned that Walz Energy may be discharging. Following receipt of this complaint, Mr. McCarthy went to the site to investigate. Once on site, Mr. McCarthy observed that the water in Bloody Run was normal turbidity and a field test indicated that NH3-N was normal. Mr. McCarthy also observed that the food storage basins had been repaired. However, the following deficiencies were noted: (1) the SWPPP had still not been fully implemented; (2) the SWPPP had not been updated to show that strewn straw would be used for slopes less than 4:1; (3) much of the site still had exposed soil and was not properly stabilized; (4) most areas had not been seeded properly in accordance with the SWPPP; and (5) natural vegetation was not included in the SWPPP and was not properly managed to provide adequate protection.

21. On June 11, 2019, a NOV was sent to Walz Energy 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 June 26, 2019, Mr. McCarthy returned to the site for a follow-up inspection. Once on site Mr. McCarthy met with Mr. Walz. The following was observed: (1) areas around the buildings were too wet to mow; (2) all areas that were not too steep had been mowed; (3) berms around the east stormwater basins were still in need of repair and needed to be built up to increase containment capacity; (4) the portable toilets had been removed; (5) the west storm water basin breached berm had been repaired, mulched and seeded; (6) the north site along the crop field had been tiled to reduce clean water flowing into the site; (7) the food storage basins had been pumped down and land applied and 3 feet of freeboard was documented in the lower basin; (8) no overland flow of contaminated water was occurring; (9) field samples indicated ammonia levels were normal in the tile outfalls; and (10) Mr. McCarthy observed improvement in compliance since May 29, 2019.

IV. CONCLUSIONS OF LAW

Walz Energy neither admits nor denies the following conclusions of law and enters into this agreement solely for the purposes 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. Walz Energy’s NPDES permit did not allow for the discharge of NH-3. Thus, 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 adoptec 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 associatec
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" states:

   c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

The above stated facts demonstrate noncompliance with this provision.

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.” The above stated facts demonstrate non-compliance with this provision.

7. 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 shows non-compliance with this provision. And failure to document and/or fix the breached and discharging berms of the food storage basins and the storm water basins shows non-compliance with this provision.

8. 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.
9. 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 green algae laden water with high NH-3 to an OIW has the potential to adversely affect the environment. Therefore, the above stated facts demonstrate non-compliance with this provision.

10. Consent Order 2018-WW-13 required compliance with all conditions of the NPDES permit and the cessation of all illegal discharges to waters of the State. The above stated facts demonstrate non-compliance with this order.

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. Comply with Consent Order 2018-WW-13;

4. Properly maintain the food storage basins and maintain two feet of freeboard at all times; and

5. Pay an administrative penalty of $10,000.00 in accordance with the following terms: $5,000.00 shall be paid within 30 days of the date the Director signs this order and $5,000.00 shall be paid within 30 days of the date the first payment is made. Should the first payment of $5,000.00 be late $10,000.00 shall be due immediately.

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 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 of 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. This avoided several thousand dollars in materials and labor expenses. Further, an economic benefit was obtained through the failure to properly maintain the food storage basins. These basins stored silage leachate and Walz Energy allowed them to overflow and discharge to the storm water retention basins and eventually to a water of the state. This saved money that should have been expended in properly maintaining the basins which includes maintaining the berms and pumping them down so they do not overflow. For these reasons, it is reasonable to estimate that at least $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 food storage basins and the storm water retention basins resulted in a discharge of green algae laden water high in NH-3 to Bloody Run. This degrades the water quality. 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 multiple illegal discharges occurred. In addition, Walz Energy violated Consent Order No 2018-WW-13. Such noncompliance thwarts the integrity of 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 NPDES permit by the Department and entered into Consent Order No. 2018-WW-13, which required compliance with that permit. Moreover, on multiple occasions the Department communicated to Walz Energy the need to implement proper storm water controls, the need to properly maintain the food storage basins and the need to comply with Consent Order No. 2018-WW013. Nevertheless, noncompliance persisted and multiple illegal discharges occurred. 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.

[Signature]
On behalf of Walz Energy LLC

Dated this 12 day of September 2019

[Signature]
Kayla Lyon, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 17 day of September 2019

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.