IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

MARCUS WOLLMAN dba PRO PUMPING 7 AG SERVICES, LLC

#18644 CMS Sioux County

TO: Marcus Wollman
Pro Pumping LLC
1401 S Main Street #112
Mitchell, South Dakota 57301

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Marcus Wollman dba Pro Pumping & Ag Services, LLC for the purpose of resolving violations connected with a manure discharge that occurred during land application. 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:**
Doyle McKeever, Field Office 3
Iowa Department of Natural Resources
1900 N Grand, Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: (712) 262-4177

**Relating to legal requirements:**
Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: (515) 725-9572

**Payment of penalty to:**
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

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

1. Marcus Wollman dba Pro Pumping & Ag Services, LLC\(^1\) (Pro Pumping) operates a commercial manure application business. Pro Pumping was hired by Van Voorst Dairy to apply manure from the Van Voorst Dairy (3941 Dove Avenue, Sioux Center, Iowa Section 1, Eagle Township, Sioux County) to a field located in the north portion of Section 12 of Eagle Township, Sioux County.

2. On May 6, 2018, DNR's emergency spill line received a call from Russ Gradert. Mr. Gradert stated that manure was flowing into an unnamed tributary of Six Mile Creek on the north side of his property in Sioux County. Doyle McKeever, DNR Field Office 3 environmental specialist, contacted Mr. Gradert. Mr. Gradert stated that the manure was coming from the field to the north and indicated that he dammed the flow to stop the manure from continuing to enter the tributary.

3. Later in the day, Mr. McKeever met with Mr. Gradert and Mr. Gradert took Mr. McKeever to the spill area. Mr. McKeever observed the flow path of manure from the fence line to the tributary. Liquid manure was on the surface of the field to the north of the fence line and there were small pools of manure near where the manure flow entered the tributary.

4. Mr. McKeever conducted field tests and collected laboratory samples of the impacted area. The results of his inspection of the area are as follows:

<table>
<thead>
<tr>
<th>Sample Location</th>
<th>Ammonia Concentration from Field Test</th>
<th>Ammonia Nitrogen from Laboratory Sample</th>
<th>Visual Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 feet upstream of the discharge</td>
<td>&lt;3.0 ppm</td>
<td>.34 ppm</td>
<td>Water was clear with a low flow and no odor</td>
</tr>
<tr>
<td>At the discharge point</td>
<td>&gt;3.0 ppm</td>
<td>1.3 ppm</td>
<td>Water was slightly dirty with a low flow and a manure odor</td>
</tr>
<tr>
<td>Downstream bridge - half mile downstream from the discharge</td>
<td>&lt;3.0 ppm</td>
<td>.31 ppm</td>
<td>Water was clear with a low flow and no odor</td>
</tr>
</tbody>
</table>

\(^1\) Pro Pumping & Ag Services, LLC is a registered company in the state of South Dakota; however, it is not registered to do business in the state of Iowa.
5. On May 7, 2018, Mr. McKeever and Jennifer Christian, DNR Field Office 3 environmental specialist, returned to the area to determine if the tributary had been further impacted. They did not observe any dead fish in any impacted water of the tributary. They conducted field tests and collected laboratory samples of an area upstream and an area downstream of the discharge area. The results are as follows:

<table>
<thead>
<tr>
<th>Sample Location</th>
<th>Ammonia Concentration from Field Test</th>
<th>Ammonia Nitrogen from Laboratory Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downstream bridge - half mile downstream from the discharge</td>
<td>2.4 ppm</td>
<td>1.3 ppm</td>
</tr>
<tr>
<td>Upstream at Dove Avenue – half mile upstream from the discharge</td>
<td>&lt;.2 ppm</td>
<td>.18 ppm</td>
</tr>
</tbody>
</table>

6. Later in the day, Mr. McKeever spoke to Jim Van Voorst with Van Voorst Dairy. Mr. Van Voorst was unaware of the manure release and was going to visit the site to speak to the applicator.

7. On May 8, 2018, Mr. McKeever spoke to Mr. Van Voorst. Mr. Van Voorst indicated that that Pro Pumping was the applicator and that a valve on the equipment malfunctioned causing the manure release.

8. On August 7, 2018, DNR issued a Notice of Violation letter to Pro Pumping for the violations discovered by DNR Field Office 3 in May 2018. The letter also indicated the violations would be referred for further enforcement.

IV. CONCLUSIONS OF LAW

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

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3’s investigation it was determined manure from the land application was released to the tributary. The above-mentioned facts indicate a violation of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the
confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 3’s investigation it was determined manure from the land application was released to the tributary. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.2(7) requires that all manure removed from an animal feeding operation or its manure control facilities shall be land applied in a manner which will not cause surface or groundwater pollution. During DNR Field Office 3’s investigation it was determined manure from the land application was released to the tributary. The above-mentioned facts indicate a violation this provision.

5. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land applying manure from a confinement feeding operation who becomes aware of a release to notify the DNR of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. At no point did Pro Pumping notify the DNR of the release. The above facts indicate a violation of this provision.

6. DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 5, Section IV [Conclusions of Law] will recur if Pro Pumping implements the requirements set forth in Paragraphs 1-2, Section V [Order] of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Pro Pumping agrees to do the following:

1. Pro Pumping shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;

2. Pro Pumping shall develop and implement a Standard Operating Procedure detailing training to ensure proper procedures are being used when transferring and applying manure, this should include a procedure to inspect and test all equipment prior to application. Additionally, the training shall include procedures for notifying the DNR when a release occurs. A copy of the Standard Operating Procedure shall be submitted to DNR Field Office 3 within 30 days of the date the Director signs this administrative consent order and implemented immediately upon approval from the field office; and

3. Pro Pumping shall pay an administrative penalty in the amount of $2,500.00 in accordance with the following payment plan. If any of the payments
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 $2,500.00. The administrative penalty is determined as follows:

   **Economic Benefit** – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Pro Pumping gained an economic benefit by not addressing the release when it occurred. Pro Pumping avoided the cost associated with preventing the release from reaching the tributary, including the costs of constructing a dam. Based on the above-mentioned information $500.00 is being assessed.

   **Gravity** – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a manure release to an unnamed tributary that posed a potential risk to the environment. 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, $1,000.00 is assessed for this factor.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 2019</td>
<td>$312.50</td>
<td>October 1, 2020</td>
<td>$312.50</td>
</tr>
<tr>
<td>January 1, 2020</td>
<td>$312.50</td>
<td>January 1, 2021</td>
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</tr>
<tr>
<td>April 1, 2020</td>
<td>$312.50</td>
<td>April 1, 2021</td>
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</tr>
<tr>
<td>July 1, 2020</td>
<td>$312.50</td>
<td>July 1, 2021</td>
<td>$312.50</td>
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Culpability – Pro Pumping 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. Pro Pumping failed to notify the DNR of the spill. Therefore, $1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Pro Pumping. For that reason Pro Pumping 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.

KAYLA LYN, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of October, 2019

MARCUS WOLLMAN

Dated this 30 day of Sep, 2019

Kelli Book, DNR Field Office 3, EPA, VIII.D.1 and VIII.D.3