IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: DAVE VAN BEEK Facility ID # 61396 Lyon County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2019-AFO- 30

To: Dave Van Beek
2138 Dipper Ave.
Inwood, Iowa 51240

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Dave Van Beek for the purpose of resolving violations of animal feeding operation regulations and water quality laws and regulations resulting from discharges from a feedlot owned by Mr. Van Beek. This Order requires Mr. Van Beek to pay an administrative penalty of $5,000.00, to implement a plan of action to prevent all further discharges from the Feedlot, and in the future comply with the laws and rules governing animal feeding operations and water quality.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Michele Sabatini-Rosacker
DNR Field Office 3
Iowa Department of Natural Resources
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
712-262-4177

Relating to legal requirements:
Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

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 Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and of Iowa Code chapter

459; Iowa Code chapter 459A and the rules adopted 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

1. Mr. Van Beek owns an open feedlot animal feeding operation located at 2138 Dipper Avenue, Inwood, Iowa (Feedlot)[1]. The Feedlot has a total capacity of 2,500 head of finishing cattle. At all times relevant to this Order, the feedlot had 1,200 head of finishing cattle. To contain effluent[2] until land application, the Feedlot utilizes a two part system. First, solids are settled in an open, uncontained area. Second, effluent from this area is pumped to a settled open feedlot effluent basin (SOFEB). The Feedlot does not have an NPDES permit.

2. On May 28, 2019, DNR Field Office 3 environmental specialist Michelle Sabatini-Rosacker and environmental specialist senior Bryon Whiting observed a discharge of runoff from a field directly to the north of 220th Street in Lyon County, Iowa, just south of the Feedlot. The runoff was discharging from the fields to a road ditch that helps create a tributary of Dry Run Creek (Tributary). The runoff was brown in color smelled of manure. Field testing of the Tributary's water at the point of discharge showed ammonia levels greater than 3.0 ppm, indicating manure was present in the runoff. Upstream of the discharge, the Tributary's water was clear and odorless. The DNR staff conducted an investigation to determine the source of the discharge.

3. The DNR staff followed the runoff upstream through an open field. The runoff was flowing through a channelized area of the field south of the Feedlot. This channel flowed from the north for approximately one-half mile until its point of origin. Runoff was flowing from the Feedlot to the channel's point of origin.

4. Specifically, DNR staff observed and documented effluent leaving the Feedlot's feeding area, flowing to the solids settling area, then releasing from that area to the southwest and flowing around the SOFEB. The solids settling area did not have any containment along its southwest side to prevent the release. After flowing around the SOFEB, the effluent flowed to the channelized area of the field.

5. DNR staff took samples at several locations along Tributary for laboratory testing. The results of the testing are as follows:

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[1] Mr. Van Beek also owns a confinement animal feeding operation located at that location. That facility is not a part of this Order.

[2] For brevity in this Order, the terms "manure," "open feedlot effluent," and "settled open feedlot effluent" as defined in 567 IAC 65.101 shall all be referred to as "effluent" unless otherwise clarified or specified. "Effluent" when used in this Order may contain more than one or a mix of these pollutants.

Location	E.coli (MPN/100 mL)	Ammonia as Nitrogen (mg/L)	Total Suspend Solids (mg/L)	Biochemical Oxygen Demand (mg/L)
Upstream, in the ditch that helps start the Tributary	41	0.66	22	< 2
Discharge Site	980,000	35	300	340
Downstream, once the Tributary was fully formed	36,000	2	93	< 60

These results indicate effluent entered the Tributary and resulted in water quality violations.

6. On July 3, 2019, the DNR issued Mr. Van Beek a Notice of Violation for the violations observed by DNR staff on May 24, 2019.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into a water of the state, except adequately treated pollutants discharged pursuant to a permit from the DNR. Due to holes in the SOFEBs, effluent from the Feedlot discharged to the Tributary. These facts indicate the Mr. Van Beek is in violation of these sections.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions. At the Tributary, DNR staff observed brown water that smelled of manure. Laboratory testing of the Tributary's water showed elevated levels of multiple pollutants. These conditions were caused by the discharge of effluent from the Feedlot to the Tributary. These facts indicate Mr. Van Beek is in violation of this section.

4. Iowa Code section 459.103 provides that the Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and

minimum effluent control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

5. 567 IAC 65.101(3) prohibits an open feedlot from discharging manure, open feedlot effluent, or settled open feedlot effluent into any waters of the United States unless the discharge is pursuant to a NPDES Permit. Due to the failure to contain effluent in the solids settling area, effluent from the Feedlot discharged to the Tributary. Mr. Van Beek does not have an NPDES permit authorizing the Feedlot to discharge effluent. These facts indicate Mr. Van Beek is in violation of these sections.

6. DNR has determined that there is no likelihood that the violations cited in this Order will recur if Mr. Van Beek implements the requirements set forth in Paragraphs 1-3, Section V of this Order.

V. ORDER

THEREFORE, the DNR orders and Dave Van Beek agrees to the following:

1. Mr. Van Beek shall operate all feedlots in compliance with all laws and regulations related to animal feeding operations and water quality.

2. Mr. Van Beek shall do one of the following:

   a. Submit an NPDES Operation Permit application for the Feedlot, which must be completed within 30 days of the date the Director signs this Order. The NPDES Operation Permit requires the permittee to comply with all conditions of the permit.

   OR

   b. Immediately put in place interim remedial measures that eliminate the discharge to a water of the state or a water of the United State followed by permanent measures that eliminate the causation of the discharge. Mr. Van Beek shall submit the plan for interim and permanent measures to DNR Field Office 3 within 30 days of the date the Director signs this Order. The permanent measure must be completed and in operation within 90 days of receiving plan approval from DNR Field 3.

3. Mr. Van Beek shall pay an administrative penalty in the amount of $5,000.00 within 30 days from the date the Director signs this Order.

Location	E.coli (MPN/100 mL)	Ammonia as Nitrogen (mg/L)	Total Suspend Solids (mg/L)	Biochemical Oxygen Demand (mg/L)
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   OR

   b. Immediately put in place interim remedial measures that eliminate the discharge to a water of the state or a water of the United State followed by permanent measures that eliminate the causation of the discharge. Mr. Van Beek shall submit the plan for interim and permanent measures to DNR Field Office 6 within 30 days of the date the Director signs this Order. The permanent measure must be completed and in operation within 90 days of receiving plan approval from DNR Field 6.

3. Mr. Van Beek shall pay an administrative penalty in the amount of $5,000.00 within 30 days from the date the Director signs this Order.

VI. PENALTY

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. 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. Because the DNR determines this matter is best handled administratively, the DNR must follow the limits of Iowa Code section 455B.109 and 567 IAC chapter 10. Pursuant to those limits, a penalty of $5,000.00 is assessed. 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." Mr. Van Beek avoided costs of preventing effluent from leaving the solids settling area, such as constructing diversions or containment. Using reasonable estimates for these costs, $2,000.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. Mr. Van Beek violated multiple Iowa laws and regulations. The environment was harmed from those violations as evidenced by the presence of effluent in the Tributary. By committing the violations, Mr. Van Beek also harmed the integrity of the animal feeding operation program. $1,000.00 is assessed for this factor.

Culpability – Mr. Van Beek has a duty to operate and maintain the Feedlot in a manner that prevents violations of open feedlot laws and regulations. Mr. Van Beek failed to maintain and monitor the Feedlot in a manner that would prevent discharges. This is particularly noticeable due to the lack of effluent control and containment in the solids settling area. $2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Dave Van Beek. For that reason, Mr. Van Beek waives his right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this 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 or Iowa Code section 459.603.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 28 day of October, 2019

DAVE VAN BEEK

Dated this 20 day of October, 2019

Noah Poppelreiter, DNR Field Office 3, EPA, VIII.D.1.b