IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
TRIPLE G FEEDLOT, INC.

and

G&G FARMS, INC.

Facility ID # 58995 and 69220

Lyon County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2019-AFO-31

To: Triple G Feedlot, Inc.
   Gerry Brands, Registered Agent
   2357 Buchanan Ave.
   Inwood, Iowa 51240

To: G&G Farms, Inc.
   Gary Brands, Registered Agent
   2357 Buchanan Ave.
   Inwood, Iowa 51240

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Triple G Feedlot, Inc. and G&G Farms, Inc. (jointly, Triple G), for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from discharges from a feedlot owned by Triple G, located at 2357 Buchanan Ave., Inwood, Iowa. This administrative consent order (Order) requires Triple G to pay an administrative penalty of $6,000.00, 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 administrative consent order should be directed to:

Relating to technical requirements:
Michele Sabatini-Rosacker
DNR Field Office?
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
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; 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. Triple G owns an open feedlot animal feeding operation located at 2357 Buchanan Avenue, Inwood, Iowa (Feedlot). The Feedlot is divided into two open feedlot operation structures, one on the west side of Buchanan Avenue and one on the east side. The Feedlot has a total capacity of 2,000 head of finishing cattle. To contain effluent until land application, the Feedlot utilizes two large, multi-basin settled open feedlot effluent basins (SOFEBs), one at the east structure and one at the west. 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 investigated the Feedlot to ensure its compliance with applicable laws and regulations. DNR staff observed multiple discharges from both SOFEBs.

3. At the east SOFEB, DNR staff observed large, underground holes at the southeast side of the SOFEB. Effluent was releasing through these holes, entering a tile line, and discharging from the tile line to an unnamed tributary of the Big Sioux River (Tributary). The water of the Tributary at this location appeared black and smelled of manure. Immediately south of this location, in the ditch where the tributary starts, the water was clear and had no noticeable smell.

4. At the west SOFEB, DNR staff observed a large hole in the southern earthen wall of the SOFEB. Effluent was actively releasing though this hole, flowing down the hill, and discharging to the Tributary. The water in the Tributary at the point of this discharge was brown in color.

5. Additionally, the hole in the West SOFEB was approximately a foot and a half in height and appeared to have been cut or eroded over an extended period of time. DNR

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1 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.
staff observed a film forming on the ground downhill from the SOFEB’s wall. These facts indicated effluent discharged over a period of time prior to May 24, 2019.

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

<table>
<thead>
<tr>
<th>Location</th>
<th>E.coli (MPN/100 mL)</th>
<th>Ammonia as Nitrogen (mg/L)</th>
<th>Total Suspend Solids (mg/L)</th>
<th>Biochemical Oxygen Demand (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upstream, in ditch where the Tributary starts</td>
<td>&lt; 10.0</td>
<td>0.11</td>
<td>48</td>
<td>&lt; 2</td>
</tr>
<tr>
<td>Discharge site of west SOFEB, at tile line discharge</td>
<td>580,000</td>
<td>28</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Downstream, at 240th Street bridge</td>
<td>15,000</td>
<td>0.45</td>
<td>480</td>
<td>&lt; 60</td>
</tr>
</tbody>
</table>

These results indicate effluent entered the Tributary.

7. DNR staff contacted Gerry Brands, co-owner of Triple G. Mr. Brands stated that he was aware of the hole in the west SOFEB and of the effluent discharge. Mr. Brands did not report this discharge to the DNR within six hours of becoming aware of the discharge. However, Mr. Brands stated he was not aware of the holes in the east SOFEB. Mr. Brands agreed to repair the SOFEBs and provide documentation the DNR of their repair

8. On May 31, 2019, Mr. Brands sent the DNR photos of the repairs to the west SOFEB.

9. On June 7, 2019, Mr. Brands sent the DNR photos of the repairs to the east SOFEB.

10. On June 28, 2019, the DNR issued Triple G 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 Triple G 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 black 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 Triple G 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 holes in the SOFEBs, effluent from the Feedlot discharged to the Tributary. Triple G does not have an NPDES permit authorizing the Feedlot to discharge effluent. These facts indicate Triple G is in violation of these sections.

6. 567 IAC 65.101(9) requires that any release of manure, process wastewater, open feedlot effluent, or settled open feedlot effluent be reported to the DNR with 6 hours of the release. Triple G did not report the release from the west SOFEB within six hours of discovering the release. These facts indicate Triple G is in violation of this section.

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

V. ORDER

THEREFORE, the DNR orders and Triple G agrees to the following:

1. Triple G shall operate all feedlots in compliance with all laws and regulations related to animal feeding operations and water quality.

2. In order to prevent future non-permitted discharges from the Feedlot to a water of the state or the Waters of the United States, Triple G shall choose one of the following options, and shall inform the DNR of the choice within 30 days of the date the Director signs this Order:
IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: TRIPLE G FEEDLOT, INC., AND G&G FARMS, INC.

a. Triple G shall immediately cease all discharges of any pollutant to waters of the state and/or waters of the United States. Within 30 days of the date the Director signs this Order, Triple G shall develop a plan of action to prevent all future discharges from the Feedlot and shall submit the plan to DNR Field Office 3 for approval. By July 1, 2020, Triple G shall implement the plan of action; OR

b. Triple G shall submit a complete NDPES permit application to the DNR and shall comply with all the terms contained therein. The permit application shall be submitted within 180 days of the date the Director signs this Order.

3. Triple G shall pay an administrative penalty in the amount of $6,000.00 within 30 days from the date the Director signs this Order. This penalty shall be joint and several on both Triple G Feedlot, Inc., and G&G Farms, Inc.

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 $6,000.00 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.” Triple G delayed costs in repairing the Feedlot’s SOFEBs and avoided overhead costs related to maintaining and monitoring the SOFEBs. Additionally, Triple G avoided costs related to properly disposing of the effluent. Using a reasonable estimate for the all of those costs, $1,000.00 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. Triple G violated multiple Iowa laws and regulations. With regard to the discharge from the west SOFEB, the violations occurred over an extended period of time. The environment was harmed from those violations as evidenced by the presence of effluent in the Tributary. By
committing the violations, Triple G also harmed the integrity of the animal feeding operation program. $2,000.00 is assessed for this factor.

Culpability — Triple G has a duty to operate and maintain the Feedlot in a manner that prevents violations of open feedlot laws and regulations. Triple G failed to maintain and monitor the Feedlot in a manner that would prevent discharges. Additionally, Triple G was aware of the discharge from the west SOFEB well before DNR staff investigated the Feedlot, yet failed to repair the SOFEB or report the discharge to the DNR. $3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Triple G Feedlot, Inc., and G&G Farms, Inc. For that reason both entities waive their 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.

Dated this 31st day of October, 2019

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 24th day of October, 2019

For TRIPLE G FEEDLOT, INC.

Dated this 24th day of October, 2019

For G&G FARMS, INC.

Noah Poppeleiter, CNR Field Office 3, EPA, VIII.D.1.b