IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

MERLIN ROZEBOOM
Facility ID # 66706
Lyon County, Iowa

To: Merlin Rozeboom
2028 Fir Ave.
Rock Rapids, Iowa 51246

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Merlin Rozeboom for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from a discharge from the feedlot owned by Mr. Rozeboom located at 2028 Fir Ave., Rock Rapids, Iowa (Feedlot). This administrative consent order (Order) requires Mr. Rozeboom to pay an administrative penalty of $5,000.00 pursuant to a payment plan and to implement a plan of action to prevent all discharges from the Feedlot and/or obtain a permit to cover future discharges, and in the future comply with the laws and rules governing the animal feeding operations and water quality for the waters of the state.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Don Cunningham, 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; 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. Rozeboom owns and operates the Feedlot, located at 2028 Fir Ave., Rock Rapids, Iowa.

2. The Feedlot has one solids settling basin (SSB). The Feedlot has a maximum capacity of 550 head of beef-finishing cattle (550 animal units).

3. On December 27, 2018, DNR Field Office 3 received two separate, anonymous complaints reporting that effluent was overflowing from the SSB. DNR environmental specialist Don Cunningham immediately responded to the Feedlot to investigate.

4. During the investigation, Mr. Cunningham observed settled open feedlot effluent (for purposes of this order only, "effluent") overflowing from the SSB at a very high rate of flow. The effluent overflowed from the SSB into a ditch, then flowed through a culvert under Fir Avenue. The effluent then entered a tile intake that discharges into a tributary of Mud Creek (Tributary). Additionally, the flow rate of the effluent was so high that the effluent bypassed the tile line, flowing through a channelize portion cropland and discharging directly into the Tributary. Mr. Cunningham documented the discharge with pictures and a written report.

5. Mr. Cunningham collected water samples at four locations and the laboratory results are as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>E. coli (MPN/100 mL)</th>
<th>Ammonia as Nitrogen (mg/L)</th>
<th>Biochemical Oxygen Demand (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the effluent entered the culvert</td>
<td>390,000</td>
<td>38</td>
<td>200</td>
</tr>
<tr>
<td>Upstream in the Tributary</td>
<td>8,200</td>
<td>0.50</td>
<td>9</td>
</tr>
<tr>
<td>50 Feet Downstream from the Discharge Point</td>
<td>240,000</td>
<td>6.4</td>
<td>84</td>
</tr>
<tr>
<td>Intersection of the Tributary and Fir Avenue</td>
<td>N/A</td>
<td>2.0</td>
<td>N/A</td>
</tr>
</tbody>
</table>
These results indicate that effluent discharged into the Tributary caused elevated pollutant levels in the Tributary.

6. After collecting samples, Mr. Cunningham made contact with Mr. Rozeboom by telephone. Mr. Rozeboom admitted to knowing of the discharge, and also admitted that the SSB discharged for several days over the summer of 2018.

7. On December 28, 2018, Mr. Rozeboom contacted Mr. Cunningham to inform him that dirt had been added to the SSB to prevent overflowing. On January 3, 2019, Mr. Rozeboom contacted Mr. Cunningham to inform him that 120,000 gallons of effluent had been pumped from the basin.

8. On February 21, 2019, DNR issued Mr. Rozeboom a Notice of Violation for violations observed during the December 2018 investigation.

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(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Untreated effluent discharged from the Feedlot to the Tributary without a permit. The facts of this case indicate violations of these provisions.

3. 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 manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

4. 567 IAC 65.6 adopts by reference the federal regulations regarding CAFOs and NPDES permit requirements.

5. 40 CFR 122.23(b)(6) defines a “Medium CAFO” as a facility that has between 300 and 999 head of non-dairy cattle and that discharged pollutants to the waters of the United States through a man-made device. Due to the size of the Feedlot, the discharge of manure via a channelized ditch, and the discharge of the manure via the culverts, the facts of the case demonstrate that the Feedlot is a Medium CAFO.

6. Pursuant to 40 CFR 122.23(d), Medium CAFOs may not discharge pollutants to the waters of the United States unless the discharge is authorized by a NPDES permit.
Manure from the Feedlot was not covered authorized to be discharged under a NPDES permit at the time of the discharge.

7. 567 IAC 65.101(3) states that in no case shall settled open feedlot effluent from a feedlot that is a Medium CAFO be discharged into a water of the United States unless the discharge is authorized by a NPDES permit. Effluent discharged from the Feedlot into the Tributary without the authorization of a NPDES permit. The facts of this case indicate violations of these rules.

8. DNR has determined that there is no likelihood that the violations cited in this Order will recur if Mr. Rozeboom implements the requirements set forth in Paragraphs 1-2, Section V of this Order.

V. ORDER

THEREFORE, the DNR orders and Mr. Rozeboom agrees to the following:

1. Mr. Rozeboom shall operate all feedlots in compliance with all applicable DNR rules and regulations and shall cease all non-permitted discharges;

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, Mr. Rozeboom 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:

   a. Mr. Rozeboom shall develop a Plan of Action (POA) approved by the DNR that addresses the design, construction, operation and maintenance of all existing and planned structures necessary to prevent all future discharges of any type from the Feedlot to a water of the state. This POA shall be submitted to Field Office 3 for approval within 30 days of the date the Director signs this Order and shall be implemented within 60 days of the date the Director signs this Order, OR;

   b. Mr. Rozeboom 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. Mr. Rozeboom shall pay an administrative penalty in the amount of $5,000.00, paid in increments of $500.00 due monthly pursuant to the following payment schedule and until paid in full:

   February 15, 2020 - $500    March 15, 2020 - $500
   April 15, 2020 - $500        May 15, 2020 - $500
   June 15, 2020 - $500         July 15, 2020 - $500
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ISSUED TO: MERLIN ROZEBOOM

August 15, 2020 - $500
October 15, 2020 - $500

Payment shall be considered received by the DNR on the day it is postmarked. If the DNR has not received a payment due for any month by the 15th of that month, the DNR shall notify Mr. Rozeboom in writing of his failure to pay. If Mr. Rozeboom has not paid the penalty within five (5) days of receiving the notice, payment in full of the remaining amount of the penalty shall be due within 30 days of the notice. Mr. Rozeboom may pay the penalty in full at any time. Additionally, nothing in this plan shall prevent Mr. Rozeboom from making additional payments toward the penalty amount, but the DNR shall not consider any additional payments a reduction of the $500.00 payment owed on the 15th day of every month.

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. 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 $5,000.00. 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.” Mr. Rozeboom has obtained a substantial economic benefit from failing to implement adequate controls to ensure the SSB does not overflow and has the appropriate capacity level for the Feedlot. The December discharge and the discharge from the summer of 2018 show that this is an ongoing problem from which Mr. Rozeboom is gaining a significant ongoing benefit. Using a reasonable estimate for the costs of updating the SSB, $1,500.00 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. 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. The discharge in this case was extensive and severe, as shown by the laboratory results. Additionally, as shown by the
channelization of the cropland, a substantial amount of manure discharged from the Feedlot. Therefore, $3,000.00 is assessed for this factor.

Culpability – Mr. Rozeboom attempted to implement controls for the Feedlot, as shown by the SSB. However, these controls were improperly maintained and are inadequate or improperly maintained relative to the size of the Feedlot, as demonstrated by multiple discharges over the year. Mr. Rozeboom has a duty to construct and maintain the Feedlot in a manner that prevents violations of open feedlot laws and regulations, particular when evidence shows that his facility is in violation of those rules. Therefore, $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 Mr. Rozeboom. For that reason Mr. Rozeboom waives the 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 459A.501.

KAYLA LYON
DIRECTOR
Iowa Department of Natural Resources

MERLIN ROZEBOOM

Dated this 21st day of January, 2019.

Dated this 21st day of January, 2020.

Noah Poppelreiter, DNR Field Office 3, EPA, VIILD.1.b