

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

LYLE REMMERDE

AFO #56481
Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO-12

TO: Lyle Remmerde
2691 340th Street
Rock Valley IA 51247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Lyle Remmerde for the purpose of resolving water quality violations resulting from a manure discharge from Mr. Remmerde's open feedlot. This administrative consent order requires Mr. Remmerde to repair and maintain the dewatering equipment; to comply with the facility's NPDES permit; and to pay an administrative penalty in the amount of \$2,500.00. 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:
Jennifer Christian, 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

RECEIVED

APR 10 2020

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LYLE REMMERDE

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

Mr. Remmerde neither admits nor denies the Statement Facts and enters into this administrative consent order for settlement purposes only.

1. Lyle Remmerde owns and operates an animal feeding operation, known as Remmerde Farms, located at 2691 340th Street, Rock Valley, Iowa (Section 10, Plato Township, Sioux County). The operation has 5,500 head of beef cattle in open feedlots and 1,400 head of swine in confinement. The confinement building has a below building manure storage pit and the confinement portion of the operation is not subject to this administrative consent order. The remaining portion of the operation consists of a total drainage area of 23.96 acres and utilizes three Settled Open Feedlot Effluent Basins (SOFEBs) with an effective capacity of 5,684,680 gallons when measured at the two-foot freeboard level. Dry Creek is approximately 0.75 miles from the SOFEBs.

2. Mr. Remmerde's operation has an active National Pollutant Discharge Elimination System (NPDES) permit. The permit requires that effluent from SOFEBs 1 and 2 be removed during the months of April, July, and October; and effluent from SOFEB 3 be removed during the months of July and October. Section 1 of the NPDES permit requires that there be no discharge except if the following events cause an overflow: precipitation events greater than the 25-year, 24-hour rainfall event (5.0 inches) or a precipitation event that is a chronic precipitation event. The basins must be properly designed, constructed, maintained and operated.

3. On September 11, 2019, Mr. Remmerde contacted DNR Field Office 3 to report that the one of the SOFEBs at his facility was overflowing, but not discharging to a water of the United States. He stated the facility received 2.5 inches of rain. The field office personnel requested that Mr. Remmerde contact the field office if the discharge reaches Dry Creek.

4. On September 12, 2019, Carrington Tolzen and Jennifer Christian, DNR Field Office 3 environmental specialists, visited the facility. Mr. Remmerde stated that the SOFEB was currently overflowing but was not aware if the manure was discharging into Dry Creek. He stated that he operated the center pivot the previous afternoon to eliminate the discharge, but then the area received 0.4 inches of rain overnight. Mr. Remmerde also stated that the center pivot had not been operating properly and that he replaced the nozzles and ordered a new pump.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LYLE REMMERDE

5. The field office personnel, along with Mr. Remmerde, observed the SOFEB overflowing and followed the manure path as it discharged into a tributary of Dry Creek. The field office personnel collected a laboratory sample from the tributary at the discharge point and downstream in Dry Creek. The results of the samples are listed below:

Sample Location	E.coli/100 mL (Limit is 1.000)	Ammonia Nitrogen as N mg/L (Limit is 0.05)	BOD mg/L (Limit is 2)
Discharge Point	2,400,000	290	580
Downstream Point	2,400,000	4.7	25

6. On January 31, 2020, DNR issued a Notice of Violation letter and Notice of Referral to Mr. Remmerde for the violations observed during the September 2019 visit. The letter informed Mr. Remmerde the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

Mr. Remmerde neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 459A.104 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 65.101(3) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Mr. Remmerde's facility operates under a NPDES permit and cannot discharge unless allowed by the conditions of the permit. The September 2019 discharge to Dry Creek was not a permitted discharge. The above-mentioned facts indicate violations of these provisions.

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; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. The above-mentioned facts indicate a violation of the general water quality criteria.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LYLE REMMERDE

4. 567 65.101(2) and the facility's NPDES permit allow an overflow and subsequent discharge of pollutants if the site receives rainfall in excess of the 25-year, 24-hour rainfall event or a chronic precipitation event and all provisions of the permit are followed, including the proper operation and maintenance of the manure control structures. Mr. Remmerde's facility did not experience a 25-year, 24-hour rainfall event nor a chronic precipitation event; therefore, the discharge was not allowed by the permit. The above-mentioned facts indicate violations of these provisions.

5. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Remmerde complies with the provisions listed in Paragraphs 1-3 of Section V Order of this administrative consent order.

V. ORDER

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

1. Mr. Remmerde shall immediately repair and then properly maintain the dewatering equipment;
2. Mr. Remmerde shall comply with the facility's NPDES permit at all times; and
3. Mr. Remmerde shall pay an administrative penalty in the amount of \$2,500.00 within 30 days of the date the Director signs this administrative consent order.

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:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LYLE REMMERDE

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. Remmerde has gained an economic benefit by delaying and avoiding the costs associated with complying with his NPDES permit. It is estimated that Mr. Remmerde gained an economic benefit of at least \$500.00 and that amount 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. DNR Field Office 3 documented a manure discharge that resulted in elevated pollutants in Dry Creek. 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.

Culpability – Mr. Remmerde has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Mr. Remmerde has had a NPDES permit for several years and was aware of the requirements and responsibilities of properly managing the manure at the facility. Therefore, \$1,000.00 is assessed for this factor.

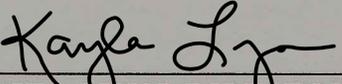
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Lyle Remmerde. For that reason, Lyle Remmerde waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

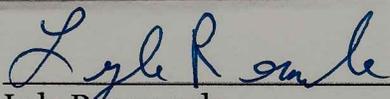
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LYLE REMMERDE



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resource

Dated this 24th day of
April, 2020.



Lyle Remmerde

Dated this 7 day of
April, 2020.

AFO #56481; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.b, VIII.D.3