

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

IN THE MATTER OF:

VAN ESSEN FARMS, INC.
Facility ID # 56950

Lyon County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 19

To: Van Essen Farms, Inc.
2730 340th Street
Rock Valley, Iowa 51247

I. SUMMARY

This administrative consent Order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Van Essen Farms, Inc. (Van Essen), 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 Van Essen located at 2730 340th Street Rock Valley, Iowa (Feedlot). This Order requires Van Essen to pay an administrative penalty of \$1,500.00; to implement a plan of action to prevent all unpermitted discharges from the Feedlot 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:

Jennifer Christian, 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

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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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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. Van Essen owns and operates the Feedlot, located at 2730 340th Street Rock Valley, Iowa. To control effluent¹, the Feedlot utilizes one solid's settling basin (SSB) and one settled open feedlot effluent Basin (SOFEB), which stores effluent until land application. The Feedlot has a maximum capacity of 1,700 head of beef-finishing cattle (1,700 animal units).

2. Prior to the issuance of a construction permit for the SOFEB in 2005, the Feedlot discharged effluent from the SSB through a PVC pipe (Pipe) into the road ditch on the north of 340th Street. The road ditch flows to an unnamed tributary of Dry Creek (Tributary). The Pipe was not removed during construction as shown in the submitted construction documents. Instead, the intake of the Pipe was extended upward to a height where it would not drain effluent from the SSB.

3. The Feedlot operates under NPDES Permit Number 8456950 (Permit). The terms of the Permit are incorporated into this Order by reference. Section I(A)(1) prohibits the discharge of pollutants from the Feedlot unless a precipitation event causes an overflow and the "provided the manure control system is designed, constructed, operated and maintained to contain all manure including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event (5.10 inches)."

4. On July 5, 2019, DNR Field Office 3 received a call from a neighboring feedlot (Neighbor's Feedlot) stating the Neighbor's Feedlot was discharging effluent to the Tributary. DNR Environmental Specialist Senior Julie Sievers and DNR Environmental Specialist Jennifer Christian responded to investigate.

5. During their investigation, the DNR staff observed a flow path of effluent from the Neighbor's Feedlot discharging to the Tributary. However, DNR staff also observed a separate, distinct flow path of effluent (Van Essen Discharge) discharging approximately 10 feet upstream from the Neighbor's Feedlot discharge.

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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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6. Following the Van Essen Discharge uphill, the DNR staff determined the flow of effluent originated at the road ditch at the location of the outlet of the Pipe. The road ditch did not contain water or other liquids upstream of this location.

7. DNR staff collected water samples at three locations for laboratory testing. The laboratory results are as follows:

Location	E.coli (MPN/100 mL)	Ammonia as Nitrogen (mg/L)	Biochemical Oxygen Demand (mg/L)
Van Essen Discharge, immediately prior to entering Tributary	2,400,000	220	3200
Downstream of Van Essen Discharge, mixed with Neighbor's Discharge	1,300,000	230	820

These results indicate that effluent discharged into the Tributary caused elevated pollutant levels in the Tributary.

8. On July 6, 2019, Ms. Christian contacted Van Essen. Harold Van Essen explained the effluent leaked from the SSB to the Tributary due to a crack in the Pipe. Van Essen promptly began repairs to the pipe.

9. On November 13, 2019, the DNR issued Van Essen a Notice of Violation detailing the violations observed by DNR staff and the associated regulations.

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 on two separate days. While the Feedlot operates under the Permit, the discharges were not allowed under the terms of the 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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4. 567 IAC 65.6 adopts by reference the federal regulations regarding Confined Animal Feeding Operations (CAFOs) and NPDES permit requirements.

5. 40 CFR 122.23(b)(4) defines a "Large CAFO" as an animal feeding operation that has more than 1,000 head of non-dairy cattle. Due to the size of the Feedlot, the facts of the case demonstrate that the Feedlot is a Large CAFO.

6. 567 IAC 65.101(3) prohibits the discharge of settled open feedlot effluent from a feedlot that is a Large CAFO unless the discharge is authorized by a NPDES permit. Effluent discharged from the Feedlot into the Tributary for reasons other than a 25-year, 24-hour rain event is in violation of the terms of the Permit. The facts of this case indicate a violation of these rules

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

V. ORDER

THEREFORE, the DNR orders and Van Essen agrees to the following:

1. Van Essen shall operate the Feedlot 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, Van Essen shall develop a Plan of Action (POA) approved by the DNR that addresses the operation and maintenance of the SSB and/or SOFEB, including repairs or upgrades to and/or removal of the Pipe. 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; and
3. Van Essen shall pay an administrative penalty in the amount of \$1,500.00 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. 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

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ADMINISTRATIVE CONSENT ORDER
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an administrative consent order with an administrative penalty of \$1,500.00. 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.” Van Essen obtained an economic benefit by failing to land apply manure prior to the discharge. Using a reasonable estimate for the delayed and avoided costs, \$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 Feedlot operates under an NPDES permit but failed to comply with its permit. To resolve this matter by consent order, \$500.00 is assessed for this factor.

Culpability – Van Essen has a duty to operate and maintain the Feedlot in a manner that prevents violations of the Permit and of applicable laws and regulations, particularly when dealing with the high volumes of manure produced at the Feedlot. By failing to remove the Pipe, Van Essen failed to follow the construction designs submitted to the DNR for approval. Therefore, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Van Essen. For that reason, Van Essen 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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Kayla Lyon
KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 24th day of
June, 2020.

Van Essen Farms INC.
VAN ESSEN FARMS, INC.

Dated this 10 day of
June, 2020.

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