

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

<p>IN THE MATTER OF:</p> <p>CALDERWOOD FARMS, INC.</p> <p>Tama County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2020-AFO- 26</p>
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TO: David Calderwood
Calderwood Farms, Inc.
805 1st Street
Traer, Iowa 50675

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Calderwood Farms, Inc. (Calderwood Farms) for the purpose of resolving water quality violations resulting from a manure discharge during land application. This administrative consent order requires Calderwood Farms to ensure that all handling, transferring, and land application of manure is done in a manner that does not result in a manure release to a water of the state, develop and submit a Standard Operating Procedure for the proper land application of manure, and to pay an administrative penalty in the amount of \$3,000.00. 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:

Bryan Bunton, DNR Field Office 5
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-0105

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

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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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 to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 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. Calderwood Farms is a commercial manure service with five certified applicators. The events noted in this administrative consent order occurred as Calderwood Farms was land applying manure for the Insanity Pork facility, owned by Mayo Farms, Inc.

2. On October 31, 2019, David Calderwood contacted DNR Field Office 5 and stated that approximately 2,600 gallons of manure had been released to private property during a land application because of a leak in the umbilical hose and an estimated 500 gallons of manure entered Wolf Creek directly.

3. Bryan Bunton, DNR Field Office 5 environmental specialist, responded to the discharge site. He observed manure entering Wolf Creek north of the 300th Street Bridge. A temporary earthen berm had been constructed in an effort to prevent manure from entering the creek; manure was pooling in the field and ditch. Mr. Bunton collected laboratory samples of the impacted area. The results of the samples are noted below:

Sample Location	Ammonia	Biological Oxygen Demand	E.coli	Total Suspended Solids
Upstream of the Discharge Site	<0.50 mg/L	14 mg/L	41 [MPN]/100mL	3 mg/L
Discharge Site	1.5 mg/L	15 mg/L	740 [MPN]/100mL	11 mg/L
Downstream of the Discharge Site	2.3 mg/L	<2 mg/L	570 [MPN]/100mL	14 mg/L

4. On November 1, 2019, Mr. Bunton conducted a follow up visit to the discharge site. He noted dead fish approximately 1.3 – 2.0 miles downstream of the

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discharge location. The DNR Fisheries Bureau was contacted to conduct a formal fish kill investigation. Mr. Bunton noted that the clean-up was about half completed. A back-hoe was being used to incorporate the remaining manure in the ditch and field.

5. On November 4, 2019, the DNR Fisheries Bureau conducted its formal investigation of the potential fish kill. The DNR Fisheries Bureau deemed the fish kill insignificant and no fish restitution was assessed.

6. On November 5, 2019, Mr. Bunton visited the discharge location and confirmed that the clean-up was complete and all manure had been incorporated.

7. On November 21, 2019, DNR issued a Notice of Violation letter to Calderwood Farms for the violations resulting from the October manure release. The letter informed Calderwood Farms that the matter was being referred for further enforcement.

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 a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 5 observed manure was discharged to Wolf Creek when an equipment malfunction led to the release. The above-mentioned facts indicate a violation 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 manure release created elevated pollutants in the water and dead fish were observed. The above-mentioned facts indicate violations of the general water quality criteria.

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

5. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall

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manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During the October 2019 investigation, DNR Field Office 5 observed manure originating from Insanity Pork entered Wolf Creek. The above-mentioned facts indicate a violation of this provision.

6. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-5, Section IV [Conclusions of Law] will occur again if Calderwood Farms implements the requirements set forth in Paragraph 1-2, Section V [Order] of the administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Calderwood Farms agrees to do the following:

1. Calderwood Farms shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;
2. Calderwood Farms shall develop a Standard Operating Procedure for proper land application. The Standard Operation Procedure should also include a plan to ensure equipment is properly inspected prior to and during each use. The Standard Operating Procedure shall be submitted to DNR Field Office 5 for approval within 30 days of the date the Director signs this administrative consent order. Calderwood Farms shall immediately implement the Standard Operating Procedure upon its approval by the field office; and
3. Calderwood Farms shall pay an administrative penalty in the amount of \$3,000.00 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

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administrative penalty of \$3,000.00. 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. Calderwood Farms gained an economic benefit when a portion of the manure it was land applying was discharged to Wolf Creek instead of being land applied. The economic benefit is estimated to be \$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. The release of manure resulted in elevated pollutant and in violations of the animal feeding operation regulations. The violations threaten the integrity of the animal feeding operation regulations. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Calderwood Farms has a duty to know the regulations and to be aware that its actions are subject to the regulations. Officials were notified of the release as soon as it occurred and immediate actions were taken to prevent the further impacts on Wolf Creek. Based on the information above, there is no amount being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

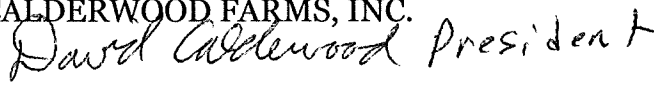
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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
October, 2020.



CALDERWOOD FARMS, INC.
 President

Dated this 5 day of
October, 2020.

Kelli Book, DNR Field Office 5, EPA, VIII.D.1.a