

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

<p>IN THE MATTER OF:</p> <p>FREDCO, INC.</p> <p>Ida County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 20<u>21</u>-AFO- 03</p>
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TO: Fredco, Inc.
Debra Friedrichsen, Registered Agent
5192 US Hwy 20
Holstein, Iowa 51025

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Fredco, Inc. (Fredco) for the purpose of resolving animal feeding operation and water quality violations resulting from a discharge from the Fredco animal feeding operation. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

<p><u>Relating to technical requirements:</u> Jennifer Christian, Field Office 3 Iowa Department of Natural Resources 1900 N. Grand; Gateway North, Suite E17 Spencer, Iowa 51301 Phone: 712/262-4177</p>	<p><u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Iowa Department of Natural Resources 7900 Hickman Road, Suite 1 Windsor Heights, Iowa 50324 Phone: 515/725-9572</p>
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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 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 violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issues pursuant

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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

Fredco neither admits nor denies the Statement of Facts and enters into the administrative consent order for settlement purposes only.

1. Fredco owns and operates a combined open lot and confinement operation with a capacity for housing 2,300 head finishing cattle and 300 head finishing swine in open feedlots and 600 head nursery swine and 15 head farrowing swine in a confinement building. The manure from the open feedlots is stored in a Settled Open Feedlot Effluent Basin (SOFEB) and the manure from the confinement is stored in a slurry store. The facility is located at 1531 Eagle Avenue; Holstein, Iowa (SE 1/4 of the NE 1/4 of Section 33, Griggs Township, Ida County). The facility does not have a National Pollutant Discharge Elimination System (NPDES) permit.

2. On September 3, 2018, Fred Sohm, Ida County Emergency Management Coordinator, contacted DNR Field Office 3 and spoke to Jennifer Christian, DNR Field Office 3 environmental specialist. Mr. Sohm stated that Fredco was pumping manure from its SOFEB to a corn field and the manure was discharging to a tributary of Battle Creek. Mr. Sohm stated the tributary was discolored for several miles downstream. Mr. Sohm visited the Fredco facility and spoke to Brian Friedrichsen, with Fredco and both men contacted Ms. Christian by telephone. Mr. Friedrichsen explained to Ms. Christian that there was not much storage left in the SOFEB, with approximately three to four feet of freeboard, and he was concerned with the weather forecast. Therefore, he turned the pump on and ran it for 30 hours in the same location about half of mile west of the facility in a corn field. Mr. Friedrichsen explained that he used a hose to dewater the SOFEB; this process is known as flood irrigation. He estimated that approximately 900,000 gallons of effluent was land applied from the SOFEB, lowering the freeboard to six to seven feet.

3. On September 4, 2018, Ms. Christian and Doyle McKeever, DNR Field Office 3 environmental specialist, began their investigation by visiting locations downstream of the Fredco facility.

● Faith Avenue culvert downstream of the facility on the tributary to Battle Creek. The water in this area was brown in color and the field tests indicated elevated ammonia levels and low dissolved oxygen. The laboratory samples of the impacted area indicated an E.coli concentration of 14,000/100 mL; an ammonia concentration of 3.1 mg/L; and a BOD concentration of 26 mg/L.

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•Eagle Avenue Culvert downstream near the Holstein Cemetery on the tributary to Battle Creek. The water in this area was brown in color and the field tests indicated elevated ammonia levels and low dissolved oxygen. The laboratory samples of the impacted area indicated an E.coli concentration of 32,000/100 mL; an ammonia concentration of 9.7 mg/L; and a BOD concentration of 60 mg/L.

4. Ms. Christian and Mr. McKeever continued to the facility and spoke with Brett and Joe Friedrichsen, Brian Friedrichsen's sons. They took the field office personnel to the field where the hose was still located and then traveled down gradient to a grassed waterway containing the outlets of two field tiles. This water source is an unnamed tributary of Battle Creek. One of the tiles drained the field located to the northwest that received the effluent from Fredco. The laboratory samples from this tile indicated an E.coli concentration of 17,000/100 mL; an ammonia concentration of 6.3 mg/L; and a BOD concentration of 70 mg/L. The other tile drained land located to the northeast that did not receive any effluent. The laboratory samples from this tile indicated an E.coli concentration of 24,000/100 mL; an ammonia concentration of 0.83 mg/L; and a BOD concentration of 8 mg/L. Brett Friedrichsen told the field office personnel that they had turned the pump off when they noted the effluent was running off the field.

5. On October 22, 2018, DNR issued a Notice of Violation letter to Brian Friedrichsen for the discharge violations observed by the field office in September. The letter informed Mr. Friedrichsen that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

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

1. Iowa Code section 459.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of open feedlot operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Open feedlot effluent from the Fredco facility was released to the unnamed tributary of Battle Creek. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.101(3) states an open feedlot operation which has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation which is a large concentrated animal feeding operation (CAFO), or a medium CAFO,

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or a designated CAFO, shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The Fredco facility has more than 1,000 animal units and is considered a large CAFO. The facility discharged open feedlot effluent to the unnamed tributary of Battle Creek without an NPDES permit. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.102 adopts by reference the federal regulations regarding CAFOs and NPDES permit requirements. 40 Code of Federal Regulations (CFR) 122.23(b)(4) defines a large CAFO as an animal feeding operation with an animal unit capacity of 1,000 cattle or more. Based on the animal unit capacity at the facility, the Fredco facility is considered a large CAFO.

5. 40 CFR 122.21 requires the owner or operator of a CAFO to apply for an NPDES permit if it discharges pollutants to waters of the United States. During September 2018 investigation, DNR Field Office 3 determined that the open feedlot effluent from the facility was discharged to the unnamed tributary of Battle Creek.

6. 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 levels of pollutants in the impacted areas of the tributary and the field office noted the water was brown in several areas. The above-mentioned facts indicate violations of the general water quality criteria.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Fredco complies with the provisions listed in Paragraphs 1-2 of Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Fredco agrees to do the following:

1. Fredco shall develop and implement a Standard Operating Procedure for the proper land application of effluent from the facility. This procedure shall include specific provisions regarding proper flood irrigation methods. The Standard Operating Procedure shall be submitted to DNR Field Office 3 for review and approval within 30 days of the date the Director signs this administrative consent order. Fredco shall immediately

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implement the Standard Operating Procedure upon approval by DNR Field Office 3 and

2. Fredco shall pay an administrative penalty in the amount of \$8,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Fredco neither admits nor denies the Penalty Section and enters into the administrative consent order for settlement purposes only.

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 \$8,000.00. 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.” Fredco gained an economic benefit by pumping the open feedlot effluent directly into the

crop field by means of a singular hose as opposed to applying effluent using a recommended and effective application method, such as a center pivot or irrigation gun. Failure to utilize these more effective applications methods results in substantial cost savings. Therefore, an economic benefit of \$2,000.00 is being 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

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the matter. DNR Field Office 3 documented a discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Based on the above facts, \$3,000.00 is assessed for this factor.

Culpability –Fredco have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's 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 Fredco. For that reason, Fredco waives the right to appeal this administrative consent order or any part thereof.

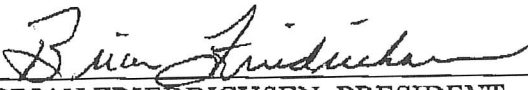
VIII. NONCOMPLIANCE

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.



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 3rd day of
February, 2021.



BRIAN FRIEDRICHSEN, PRESIDENT
FREDCO, INC.

Dated this 18th day of
January, 2021.

Facility #57140; Kelli Book; DNR Field Office 3; EPA; I.C.1, VIII.D.1 and VIII.D.3.a