

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

IN THE MATTER OF: FEEDLOT SERVICE COMPANY and FRED ROANE	ADMINISTRATIVE ORDER NO. 2021-SW- <u>14</u> NO. 2021-WW- <u>22</u>
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To: Feedlot Service Company
Mr. Fred Roane
31363 Morton Avenue
Neola, Iowa 51559

Re: Non-compliance with Iowa water quality, solid waste and manure
control regulations.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Feedlot Service Company to resolve violations of Iowa law governing water quality, solid waste disposal and manure controls resulting from the land application of solid waste and manure on property near Neola in Pottawattamie County, Iowa.

As detailed below, Mr. Roane must implement multiple provisions to ensure that Iowa law is complied with at all times. The Order also requires payment of a \$9,000.00 administrative penalty.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz, Env. Specialist Senior
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712-243-1934

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-321-8504

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 Order is issued pursuant to Iowa Code § 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 I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 455B.307(2) which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 459A.502 which authorizes the Director to pursue civil penalties for the violation of regulations governing feedlot operations; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following facts are relevant to this matter:

1. Fred Roane is the owner and manager of the Feedlot Service Company, a transportation service company. As it relates to this referral, the Feedlot Service Company hauls and land applies industrial waste bi-products from various industries. Mr. Roane also owns a 900-head open cattle feedlot located at 26338 310th Street in Neola, Iowa. According to Mr. Roane, the paunch manure land applied at the property originates from two packing houses in Omaha, Nebraska. Historically, the paunch manure is either stockpiled at the feedlot or stockpiled in the application field.
2. On February 25, 2021, DNR Field Office (FO) 4 received three complaints against Fred Roane alleging animal parts were being applied to fields. Complainants also expressed concerns about water quality impacts.
3. On March 2, 2021, FO4 received a complaint alleging improper application of industrial waste by Mr. Roane.
4. On March 5, 2021, FO4 received a complaint alleging Mr. Roane was applying industrial waste that included manure and animal parts from packing plants.
5. On March 8, 2021, FO4 staff conducted site investigations. Staff observed numerous dead animal parts including cow hooves, bellies, hearts, hides, tails, chunks of flesh, bones, other unknown parts of animals, and other forms of solid waste items. These items were mixed with paunch manure and surface land applied to two different fields. Mr. Roane claimed that the paunch manure was licensed with the Iowa Department of Agriculture and Land Stewardship (IDALS). FO4 staff advised Mr. Roane to immediately remove the dead animal parts.

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Staff also documented the following violations of Iowa law:

- Leachate leaking from a truck hauling paunch manure.
- Leachate from the paunch manure, stockpiled along the west side of the feedlot, flowing through portions of feedlot pens and entering a tributary of Keg Creek. Water samples were obtained.
- Manure runoff from the feedlot flowing into the roadside ditch, flowing south, and into Keg Creek. Water samples were obtained.
- A white tallow-type product spilled behind a terrace at the feedlot, just north of the paunch manure stockpile.

Response by Fred Roane: Mr. Roane states that his consultant, Joe Turner, had previously provided a copy of Iowa Department of Agriculture & Land Stewardship Fertilizer Manufacturer/Dealer License No. PD 14623 to DNR FO4 on December 16, 2020, and that the DNR concluded in a December 21, 2020 letter that "based on the information provided by Mr. Turner, it appears you are following IDALS rules."

6. On March 11, 2021, FO4 conducted a joint investigation with Alan Keller, IDALS Feed and Fertilizer Bureau Chief. Mr. Keller advised Mr. Roane that the paunch manure was not licensed with IDALS and application following any IDALS regulations must cease immediately. Additionally, Mr. Roane was advised to immediately excavate and remove all animal parts from the fields, to incorporate the paunch manure, and to submit all land application records. During this visit, DNR noted that the white tallow product observed at the feedlot, behind a terrace, had been excavated and land applied. Finally, on the same day, FO4 received a complaint alleging improper application of paunch manure mixed with animal parts.

7. On March 15, 2021, FO4 conducted a follow-up investigation. Staff verified dirt work had been completed to ensure leachate from the paunch manure stockpiled at the feedlot was not directed to the unnamed tributary. On the same day, FO4 received a letter from Mr. Roane in which he stated that the animal parts were the result of a transition occurring at the JBS plant. Mr. Roane also stated that this was an isolated incident due to the JBS transition, extreme cold weather conditions, lack of communication between involved parties, and failure to inspect the operation more closely.

8. On March 22, 2021, FO4 received the water sample results from the State Hygienics Laboratory. The results documented that water quality violations had occurred.

9. On March 23, 2021, FO4 staff sent a Notice of Violation (NOV) letter and report of investigation to Mr. Roane. Mr. Roane was notified that the feedlot would be classified as a medium Concentrated Animal Feed Operation (CAFO). As such, a plan for total containment of feedlot effluent and paunch manure was required. Mr. Roane was also notified to immediately cease all discharges and to

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submit land application records and maps of all available fields for paunch manure application.

10. On March 24, 2021, FO4 received the paunch manure application records, aerial photos of application fields, and lab analysis for the previous year. The records did not document compliance with land application regulations in 567 IAC 121.

11. On March 29, 2021, FO4 staff visited the feedlot and paunch manure application fields. Staff documented the paunch mixed with animal parts still on the surface of the ground, as well as clumps of a white, greasy substance scattered around the fields. Mr. Roane stated it was tallow from an ethanol plant. Mr. Roane was directed to incorporate the paunch and tallow in the fields. Later the same day, Mr. Roane provided a video showing that the material on the south field had been incorporated.

Response by Fred Roane: Mr. Roane denies he stated that the tallow came from an ethanol plant. He states that he explained to FO4 staff that the tallow from packing plants had been transported in a tanker that had been cleaned out at the facility in order to haul product from the ethanol plant.

12. On April 1, 2021, Mr. Roane contacted FO4 staff and stated that Pro Ag Engineering had begun plans for containment at the feedlot. Mr. Roane asked if the leachate from the stockpiled paunch could be combined with the manure runoff at the feedlot. This was deemed acceptable. Mr. Roane also asked if the application of paunch manure could occur on a field just north of the feedlot. In response, DNR provided an outline showing what portions of the field was able to be land applied.

13. On April 5, 2021, FO4 staff visited the feedlot and paunch manure application fields. According to Mr. Roane, the animal parts had been removed; however, during this visit staff documented animal parts still in the field. Mr. Roane was again advised to remove the animal parts. The soil was tilled; however, the soil bound to the greasy material so it was not effectively incorporated. On the same date, FO4 staff issued an NOV and report of investigation. The NOV required a plan for total containment at the feedlot be submitted by April 15, 2021. The NOV also required a land application plan be submitted by May 1, 2021.

14. On April 14, 2021, FO4 received a letter from Justin Sprague, Pro Ag Engineering, outlining a preliminary plan of action to be taken at the feedlot. Additionally, Mr. Sprague requested an extension to June 21, 2021, to submit a final permit application. The extension was granted.

15. On May 2, 2021, FO4 received the land application plan for the paunch manure application, which was approved.

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16. On May 6, 2021, Mr. Roane requested FO4 staff meet with him at a potential paunch manure stockpiling and land application site. According to Mr. Roane, in addition to stockpiling the paunch manure at the existing feedlot, this new stockpile location would be more convenient and easily assessable to different acres.

17. On May 17, 2021, FO4 staff sent a letter to Mr. Roane documenting the May 6th visit. In the letter, staff advised Mr. Roane that, although the field would be an acceptable location to stockpile, according to the long-range plan there are only 200 acres near this field, not the reported 500 acres. Staff also advised Mr. Roane to ensure all available fields are listed in the plan.

18. On May 24, 2021, FO4 received an email from Don Hudgell, Council Bluffs Waste Water Treatment Facility (WWTF) Superintendent. Mr. Hudgell advised DNR that the Council Bluffs WWTF would not be accepting the wastewater from Monogram Meats, located in the City of Harlan. Mr. Hudgell provided an email and lab analysis of the product. It was reported that Mr. Roane had been hauling the wastewater and land applying the product from Monogram Meats. FO4 contacted Monogram Meats and Mr. Roane and advised them to discontinue land applying the wastewater as a wastewater land application permit may be required.

Response by Fred Roane: Mr. Roane denies any implication that the Company knowingly violated regulations. This application practice had been implemented in accordance with DNR rules in Iowa Administrative Code 567 chapter 67 and 567 chapter 121 for sludge. The Company was asked by the DNR to discontinue land application until a determination could be made whether the product could be classified as sludge or a wastewater application permit would be required.

19. On June 14, 2021, Justin Sprague contacted FO4 and stated Mr. Roane was anxious to begin the construction of his manure and paunch controls at the feedlot. However, because this facility would be applying for a permit for total containment, all controls must receive a permit before construction. DNR agreed to allow the project to move forward.

20. On June 18, 2021, DNR staff received the completed application from Justin Sprague. According to Mr. Sprague, Joe Turner was in the process of finishing up the Nutrient Management Plan (NMP).

21. On June 25, 2021, DNR staff received the NMP.

22. On July 9, 2021, FO4 staff sent an email to Mr. Turner stating the NMP was not approved and advising him on the issues in the plan that must be revised.

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IV. CONCLUSIONS OF LAW

1. **NO ADMISSION.** Mr. Roane/ Feedlot Service Company enters into this consent agreement cooperatively with the DNR in the interest of settling the issues raised above. He/The Company makes no admission as to the DNR's conclusions of law.

2. Iowa Code § 455B.186 prohibits the depositing or discharging of any pollutant into any water of the state of Iowa. The facts outlined above establish a violation of this section of the Iowa Code.

3. Iowa Code § 455B.307 prohibits the disposal of solid waste anywhere other than at a permitted facility. The facts outlined above establish violations of this section of Iowa Code.

4. 567 IAC 121 prohibits the land application of solid waste without a permit from the DNR. The facts outlined above establish violations of this regulation.

5. 567 IAC 61.3 establishes water quality criteria for Iowa waters. Pollutants entering Keg Creek due to Mr. Roane's failure to comply with Iowa law caused water quality violations.

6. Finally, 567 IAC 65.101 regulates manure management at open feedlots. An open feedlot operation must provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, scraped solids, and open feedlot effluent by using an open feedlot control method. It also requires that any release be reported to the DNR. The facts outlined above establish violations of this regulation.

V. ORDER

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

1. Within 30 days of this Order being signed by the Director, Mr. Roane must provide a list to FO4 staff of all sources of product (liquid and solid) being obtained and land applied subsequent to the date this Order is signed by the Director. This list should include the name, location, and contact information for each person or company providing the material.

2. Mr. Roane and the company must immediately discontinue the land application of all putrescible products, including grease.

3. Mr. Roane must cease the illegal disposal of solid waste and be in compliance with all Iowa solid waste laws at all times in the future.

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4. Mr. Roane must comply with the land application requirements of 567 IAC 121 at all times in the future. This includes updating and maintaining on-site the long-range compliance plan and maintaining land application records on-site.

5. Mr. Roane and the company must ensure all trucks used to haul bi-products are properly equipped and maintained to ensure leachate does not leak from the trucks.

6. Unless prior approval by the DNR is granted for stockpiling at other locations, Mr. Roane shall only stockpile the paunch manure at the existing open cattle feedlot located at 26338 310th Street, Neola, Iowa, 51559.

7. Mr. Roane's open cattle feedlot is classified as a medium CAFO and, as such, Mr. Roane must construct total containment.

8. Mr. Roane must utilize a nutrient management plan (NMP) for the manure produced at the feedlot. The NMP must be submitted to the DNR every 5 years and must be complied with at all times.

9. Land application records of all solid and liquid manure produced at the feedlot must be maintained in compliance with 567 IAC 65.100 and be on-site at all times.

10. Mr. Roane must pay an administrative penalty of \$9,000.00 within 30 days of this Order being signed by the Director.

VI. CIVIL PENALTY

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Iowa Code § 455B.191 provides for civil penalties of up to \$5,000.00 per day for water quality violations.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. The administrative penalty assessed by this Order is determined as follows:

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a) 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. Roane avoided the time and expense of properly applying the paunch manure and removing the dead animal parts. Feedlot Service Company receives payment for each load of paunch manure hauled from packing plants.

Mr. Roane also avoided the expense of properly controlling the paunch manure leachate and the manure runoff from the open feedlot, which caused water quality violations. This is not the first time DNR has addressed inadequate manure controls by this operator. Additionally, EPA also classified this feedlot as a medium CAFO and required modifications to the manure controls. Whether the manure controls were not adequate or Mr. Roane failed to maintain the controls, the time and expense were avoided.

Therefore, \$3,000.00 is assessed for this factor.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

As a transportation business, it is Mr. Roane's responsibility to ensure all regulations are followed. Failure to ensure the paunch manure was either licensed through IDALS or land-applied in compliance with DNR solid waste regulations threatens the integrity of the regulatory program. In addition, the feedlot manure and paunch manure leachate discharged into a water of the state and contributed to documented water quality violations.

Therefore, \$3,000.00 is assessed for this factor.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

The feedlot manure release and leachate from the paunch manure to a water of the state could have been prevented if the facility was operated in

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compliance with Iowa law. Mr. Roane and the employees of Feedlot Service Company know or should have known the requirements of Iowa law but failed to take any action until required by the DNR.

Therefore, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is being entered by consent, there is no right of appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General.

Kayla Lyon, Director
Iowa Department of Natural Resources



Fred Roane

Dated this 22nd
day of September, 2021

CC: DNR Field Office 4; David Scott; I.C.1, VI.B.1, VI.C, VIII.D.3