

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

IN THE MATTER OF:

REGANCREST HOLSTEINS, LLC
Facility ID #59535

Allamakee County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO-06

TO: Regancrest Holsteins, LLC
1095 Highway 9
Waukon, Iowa 52172

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Regancrest Holsteins, LLC (Regancrest), for the purpose of resolving the violations of animal feeding operation regulations and water quality regulations resulting from the release of manure from an animal feeding operation owned by Regancrest in Allamakee County, Iowa. This administrative consent order (Order) requires Regancrest to take steps to prevent all future discharges; pay an administrative penalty of \$1,500.00; and in the future comply with the laws and rules governing animal feeding operations and water quality standards for the waters of the state. Regancrest neither agrees nor disagrees with the statements of fact or conclusions of law in this Order and enters into this order for settlement purposes only.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Brett Meyers, DNR Field Office 1
Iowa Department of Natural Resources
909 W Main St, Ste 4
Manchester, Iowa 52057
563-927-2640

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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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 and of Iowa Code chapter 459; 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. Regancrest neither agrees nor disagrees with these statements of fact and enters into this Order for settlement purposes only.
2. Regancrest owns and operates an animal feeding operation located at 1095 Highway 9, Waukon, Iowa (Facility). The Facility has a capacity of 990 head of dairy cattle, 260 head of non-dairy heifers and calves, and 16 head of finishing cattle, totaling 1,662 animal units; all in confinement buildings.
3. In 2017, Regancrest expanded the Facility. The expansion included a new manure pumping system (System) that was designed and intended to transfer manure from the main confinement building to an exterior concrete manure storage tank.

Release #1

4. On February 12, 2018, DNR Field Office 1 received an anonymous complaint about the release of manure from the Facility.
5. DNR environmental specialist Brett Meyers responded to the Facility to investigate. Mr. Meyers observed evidence that manure was released from the Facility, flowed to property neighboring the Facility, then flowed down a ravine downhill from that property. There was no evidence that manure reached any body of water. Bill Regan of Regancrest informed Mr. Meyers the spill happened in the early morning hours of February 11, 2018. Mr. Regan told Mr. Meyers the release was caused by clog in the System attributed to improper use of the System by Regancrest employees.
6. Between February 12 and 14, 2018, Regancrest cleaned up the manure, which was in a largely frozen state.
7. On February 15, 2018, Mr. Meyers reinvestigated the Facility after a thaw caused snow melt in the area. Field testing of a tributary of Jones Creek (Tributary) showed no evidence of manure in the Tributary.

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8. On February 23, 2018, the DNR issued Regancrest a Notice of Violation for violations of 567 IAC 65.2(3).

Release #2

9. On March 3, 2018, Regancrest contacted DNR Field Office 1 to report a release of manure from the Facility. According to Mr. Regan, the release again occurred due to a clog in the System attributed to improper use of the System by Regancrest employees.

10. Mr. Regan informed DNR Field Office 1 that the manure remained on the Facility's property. Due to this, no additional investigation was conducted and no Notice of Violation was issued.

Release #3

11. On Monday, September 3, 2018, Regancrest notified the DNR about a release of manure at the Facility that occurred that day.

12. On September 5, 2018, Mr. Meyers investigated the Facility. Mr. Meyers found evidence that manure was released from the Facility, flowing over several driveways and onto the neighboring property. Mr. Regan estimated that approximately 50-100 gallons of manure was released. Field testing by Mr. Meyers showed no evidence of manure in the Tributary.

13. According to Mr. Regan, the release again occurred due to a clog in the System attributed to improper use of the System by Regancrest employees.

14. On October 4, 2018, the DNR issued a Notice of Violation letter to Regancrest detailing for violations of 567 IAC 65.2(3).

IV. CONCLUSIONS OF LAW

1. Regancrest neither agrees nor disagrees with these conclusions of law and enters into this Order for settlement purposes only.

2. Iowa Code section 459.103 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.

3. 567 IAC 65.2(3) states that all manure produced in a confinement shall be retained between periods of manure application. Based on investigations and interviews, it was determined Regancrest failed properly retain all manure stored in the Facility and that

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manure was released from the Facility three different times over a period of eight months. The facts of this case indicate violations of this rule.

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

V. ORDER

THEREFORE, the DNR orders and Regancrest agrees to the following:

1. Regancrest shall operate the Facility and all other animal feeding operations under its control in compliance with all applicable DNR rules and regulations;

2. Regancrest shall develop a Standard Operating Procedure (SOP) to ensure operational or maintenance failures involving the System do not cause manure releases in the future. The SOP must be submitted to DNR Field Office 1 for approval within 30 days of the date the Director signs this Order: The SOP must be implemented immediately upon approval by DNR Field Office 1;

3. Regancrest shall pay an administrative penalty in the amount of \$1,500.00 within 30 days of the date the Director signs this administrative consent 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 an administrative consent order with an administrative penalty of \$1,500.00. Regancrest neither agrees or disagrees with the facts, analysis, and conclusions reached in this section and agrees to this penalty amount for the purposes of settling this matter. 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.” Regancrest failed to properly ensure that employees were properly operating and maintaining the System. This failure was a result of lack of planning, preparation, and

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monitoring, saving Regancrest overhead costs. Some of this benefit is mitigated by the remediation efforts taken by Regancrest. Using reasonable estimates, and in the interest of resolving this matter administratively, \$1,500.00 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. This case involves multiple releases in less than a year, including releases that impacted neighboring property. Failing to adequately operate and maintain the Facility to such a degree that multiple releases in such a short time frame threatens the integrity of the animal feeding operation program and shows an increased risk of improper operation and maintenance in the future. However, due to the extenuating circumstances of COVID-19 which caused unavoidable delays in the negotiations of this matter, the DNR has determined the most effective method of ensuring future compliance by Regancrest is to settle this matter administratively. Therefore, to ensure compliance, no penalty is assessed for this factor.

Culpability – Regancrest has a duty to follow the applicable laws and regulations while storing manure. Regancrest failed to exercise the proper care in this case, resulting in multiple violations of law and rule. However, due to the extenuating circumstances of COVID-19 which caused unavoidable delays in the negotiations of this matter, the DNR has determined the most effective method of ensuring future compliance by Regancrest is to settle this matter administratively. Therefore, to ensure compliance, no penalty is assessed for this factor.

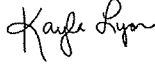
VII. WAIVER OF APPEAL RIGHTS

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

VIII. NONCOMPLIANCE

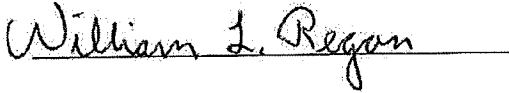
Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191 or Iowa Code section 459.603.

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Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES



Dated this 14 day of

_____ , 2019

For REGANCREST HOLSTEINS, LLC

Noah Poppelreiter, DNR Field Office 1, EPA, VIII.D.2