

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

IN THE MATTER OF:

TERRY VAN MAANEN

Lyon County Iowa
AFO #60218

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO- 18

TO: Terry Van Maanen
Winding Meadows Dairy
2633 Elmwood Avenue
Rock Valley, Iowa 51247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Terry Van Maanen for the purpose of resolving water quality violations resulting from a manure discharge at his animal feeding operation located in Lyon County. This administrative consent order requires Mr. Van Maanen to pay a \$10,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jacob Simonsen, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Ave., Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

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

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

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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

1. Terry Van Maanen owns and operates a confined dairy facility known as Winding Meadows Dairy. The facility is located at 2633 Elmwood Avenue; Rock Valley, Iowa (Section 32, Doon Township, Lyon County) and has an animal capacity of 2,400 head of mature dairy cattle. At the times of the violations noted in this administrative consent order, Winding Meadow Dairy was in the process of installing an anaerobic digester system facility. The manure digester is owned and operated by Gevo NW Iowa RNG, LLC (Gevo).

2. On June 25, 2021, DNR issued a construction permit to Mr. Van Maanen for the anaerobic digester system. The system was to be constructed to process all manure generated at the facility into methane gas which would be pumped off site or flared off. The permit specifically stated that the construction permit and operating responsibilities were held by Mr. Van Maanen and the permit could not be transferred to another party for the operation of the digester system. The permit required that the underlying title of the property where the digester system is located must remain under the ownership of Mr. Van Maanen and the property could not be sold as long as the digester system is operational. The construction permit also stated that manure could not be added to the digester system until construction was complete and the facility's engineer submitted a construction certification.

3. On February 7, 2022, Brent German, a Gevo representative, contacted DNR Field Office 3 and notified the DNR of a manure release from the digester at the Winding Meadows Dairy. Mr. German stated an unknown amount of manure had been released for an unknown amount of time up to three weeks. Mr. German estimated up to 1,000,000 gallons of manure had been released but it was unknown if any water sources had been impacted. Dwight Hasselquist, Gevo site manager, was on-site and Mr. German and a representative from Pinnacle Engineering was on the way to the facility to assist in the assessment and remediation of the release.

4. Jacob Simonsen and Brandon Miner, DNR Field Office 3 environmental specialists, traveled to Winding Meadows Dairy. They spoke to Mr. Hasselquist regarding the release. Mr. Hasselquist stated dirty water from the top of the north lagoon at the facility had been pumped into the digester by a certified manure applicator to test the digester. The applicator pumped water and manure from the north lagoon on two occasions in January 2022. It was noted during the first time the pumping was done that the manure was foamy and the volume dropped approximately 5 feet. The loss in volume was attributed to the foam dissipating in the digester. On the day of the investigation, Mr. Hasselquist stated that facility personnel noted the water level in the digester dropped approximately 2

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½ feet indicating a leak. The facility personnel discovered manure was flowing from the tile line that surrounded the digester. The tile line discharged to a nearby field and the manure then flowed down a steep slope into Lizard Creek. Facility staff plugged the tile and constructed berms along the flow path of the manure to prevent further discharge to Lizard Creek.

5. The field office personnel collected laboratory samples at the point of release into Lizard Creek and downstream at the Elmwood Avenue bridge. Upstream sampling was not possible because Lizard Creek was frozen upstream of the discharge point. The field office personnel continued downstream to the 260th Street bridge and continued to note the presence of manure. Due to the time of day, the investigation was suspended. The results of the laboratory samples are noted below:

Sample Location	E.coli ([MPN]/100mL)	Ammonia Nitrogen (mg/L)	BOD (mg/L)
Point of Release	1,000	520	1,200
Elmwood Avenue bridge (downstream)	<1,000	65	150

6. On February 8, 2022, Mr. Simonsen and Heath Gravert, DNR Field Office 3 environmental specialist, returned to Winding Meadows Dairy. They met with Pinnacle representatives, Mr. Hasselquist, and Mr. German to discuss the progress made on remediation. Mr. Hasselquist stated the digester would be emptied by the end of the day to start the investigation into what caused the release. The berms were being reinforced and straw bales were added to ensure no more manure entered Lizard Creek. Pinnacle began excavating the area and stated the work would be documented and submitted to the DNR. The field office personnel conducted field tests of the impacted areas. They traveled to Rock River downstream of where Mud Creek flows into Rock River. No manure was noted in Rock River; however, no flowing water was observed due to a layer of ice on the water.

7. On February 10, 2022, Mr. Hasselquist supplied Mr. Simonsen with the calculations estimating the amount of liquid that was actually released from the digester. The calculations showed an estimated loss of 376,414 gallons based on the four-foot decrease in depth with the digester.

8. It was noted by the DNR that Mr. Van Maanen failed to submit the construction certification prior to manure being added to the digester. On February 11, 2022, DNR issued a Notice of Violation letter to Mr. Van Maanen for failing to submit the construction certification. The letter required Mr. Van Maanen

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determine the cause of the leak in the digester and notify the DNR as to how the leak was repaired.

9. On February 23, 2022, DNR issued a Notice of Violation letter to Mr. Van Maanen for the discharge violations observed during the February investigation. The letter informed Mr. Van Maanen that the matter would be referred for further formal enforcement.

10. Following the release, Gevo and Mr. Van Maanen worked to determine the cause of the release and to correct the cause. Gevo and Mr. Van Maanen communicated the work with DNR Field Office 3 through the review process. Through this review process, it was determined the release was likely caused by one or more control joints that had not been properly sealed. The area around the control joints were cleaned; a backer rod was installed and all surfaces of the digester were treated with Thoikol 5050 Primer. Facility personnel will continue to regularly monitor the digester and perimeter drain tile.

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. During the February 2022 investigation, DNR Field Office 3 noted that the manure released from the digester entered Lizard Creek. 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. During the February 2022 investigation, DNR Field Office 3 noted that the manure released from the digester entered Lizard Creek. 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.

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5. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to a water of the state. During the February 2022 investigation, DNR Field Office 3 noted that the manure released from the digester entered Lizard Creek. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.7(10) states that a person who constructs, modifies, or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit. During the DNR Field Office 3 investigation, it was determined that Mr. Van Maanen failed to comply with the construction permit that had been issued for the digester. Manure had been added to the digester and no construction certification had been submitted to the DNR. The above-mentioned facts indicate a violation of this provision.

7. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Van Maanen complies with the provisions listed in Paragraphs 10, Section III Statement of Facts of this administrative consent order and continue to monitor the digester and perimeter tile.

V. ORDER

THEREFORE, the DNR orders and Mr. Van Maanen agrees to do the following:

1. Mr. Van Maanen shall comply with all provisions of the construction permit for the digester system at the facility; and
2. Mr. Van Maanen shall pay an administrative penalty in the amount of \$10,000.00 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,

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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 \$10,000.00. 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.” Mr. Van Maanen gained an economic benefit by not properly applying the manure that was released. It is estimated the cost of manure application is one cent per gallon to land apply the manure and it was estimated that 376,000 gallons of manure had been released. It is estimated that Mr. Van Maanen gained an economic benefit of at least \$3,500.00 and that amount 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 the matter. The manure release from the digester ultimately resulted in the degradation of water quality and causing an elevated pollutant level. The manure release threatens the integrity of the animal feeding operation regulations. Therefore, \$3,000.00 is assessed for the violations noted in Paragraphs 2 and 3, Section IV Conclusions of Law; \$1,000.00 is assessed for the violations noted in Paragraph 5, Section IV Conclusions of Law; and \$1,000.00 is assessed for the violations noted in Paragraph 6, Section IV Conclusions of Law for a total amount of \$5,000.00 assessed for the Gravity portion of this administrative consent order.

Culpability – Mr. Van Maanen has a duty to know the regulations and to be aware that his actions are subject to the regulations. When the liquid was first added to the digester, it was noted that the level dropped by five feet. No investigation to the cause was done at the time and then more liquid was added to the digester. Based on the information above, \$1,500.00 is being assessed.

VII. WAIVER OF APPEAL RIGHTS


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

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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



Terry Van Maanen

Dated this 30 day of
June, 2022.