

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

IN THE MATTER OF:

MEADOWVALE DAIRY, LLC

**Sioux County, Iowa
AFO #62015**

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO-21

TO: Natalie Ysselstein, Registered Agent
Meadowvale Dairy, LLC
1724 290th Street
Rock Valley, Iowa 51247

Sjerp Ysselstein, Facility Contact
Meadowvale Dairy, LLC
1760 300th Street
Rock Valley, Iowa 51247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Meadowvale Dairy, LLC (Meadowvale) for the purpose of resolving a violation of the animal feeding operation construction permit regulations. This administrative consent order requires Meadowvale to comply with the animal feeding operation construction permit regulations in the future and to pay a \$5,000.00 administrative penalty. 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:

Don Cunningham, Field Office 3
Iowa Department of Natural Resources
1900 N Grand, Gateway North, 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

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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. Meadowvale owns and operates an animal feeding operation located in the east half of Section 18, Sioux Township, Sioux County. The facility is currently undergoing an expansion that includes converting from a combined open lot and confinement facility to a fully confined facility with the capacity to house up to 14,500 head of mature dairy cattle in total confinement.

2. On June 4, 2021, Pro Ag Engineering, Inc., Meadowvale's consultant, submitted a construction permit application for an earthen liquid manure storage basin, a mechanical sand separation system, and an anerobic digester to DNR on behalf of Meadowvale Dairy. An amended Manure Management Plan was submitted on July 30, 2021.

3. On September 2, 2021, Don Cunningham, DNR Field Office 3 environmental specialist, conducted a pre-construction site survey at the Meadowvale facility. During the visit, Mr. Cunningham met with Sjerp Ysselstein, Meadowvale representative, and Andy Scholting, Nutrient Advisors. Mr. Ysselstein informed Mr. Cunningham that construction started in June 2021 and approximately 75% of the project had already been completed. Mr. Ysselstein stated construction started prior to obtaining the construction permit so that the project could be completed before the end of the year.

4. On October 8, 2021, DNR issued a Notice of Violation letter to Meadowvale for the construction permit violation observed during DNR Field Office 3's September visit to the facility. The letter informed Meadowvale the matter was being referred for further enforcement.

5. On October 8, 2021, DNR issued the construction permit to Meadowvale for the construction project.

IV. CONCLUSIONS OF LAW

1. 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.

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2. 567 IAC 65.7(1)"b"(2) requires that a confinement feeding operation shall obtain a construction permit prior to constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation. During the pre-construction survey in September 2021, DNR Field Office 3 noted that construction activities had begun at the Meadowvale facility and that the project was 75% complete. The above-mentioned facts indicate a violation of this provision.

V. ORDER

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

1. Meadowvale shall comply with the construction permit regulations in the future; and
2. Meadowvale shall pay an administrative penalty in the amount of \$5,000.00 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 administrative penalty of \$5,000.00. 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." Meadowvale gained an economic benefit by beginning construction on its schedule rather than waiting for proper approval. It is estimated that Meadowvale gained an economic benefit of at least \$1,000.00 and that amount is assessed for this factor.

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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. Starting the construction project before the construction permit was issued barred the DNR from reviewing the design and location the construction project. This review ensures that the interests of the citizens of Iowa in clean water are protected. Failure to obtain a construction permit prior to construction threatens the integrity of the animal feeding operation regulations. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Meadowvale has a duty to know the regulations and to be aware that its actions are subject to the regulations. Mr. Ysselstein was aware on the construction permitting requirements but chose to start construction without a construction permit in order to complete the project before the end of the year. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

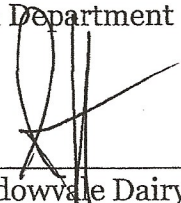
VIII. NONCOMPLIANCE

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.



Digitally signed by Kayla Lyon
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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



Meadowvale Dairy, LLC

4th
Dated this _____ day of
July, 2022.

Kelli Book, DNR Field Office 3, VIII.A.2