

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

IN THE MATTER OF:

NATE ZUIDERVEEN

Sioux County Iowa
AFO #60565

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO- 26

TO: Nate Zuiderveen
4626 490th Street
Granville IA 51022

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Nate Zuiderveen for the purpose of resolving water quality violations from a manure discharge at Mr. Zuiderveen's animal feeding operation in Sioux County. This administrative consent order requires Mr. Zuiderveen to: 1) develop and implement a Standard Operating Procedure for the operation of the facility and 2) pay a \$10,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jennifer Christian, 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

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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATE ZUIDERVEEN

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. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. Nate Zuiderveen owns and operates a confinement animal feeding operation known as Black Soil Dairy. The facility is located at 4626 490th Street; Granville, Iowa (Section 24, East Orange Township, Sioux County) and has an animal capacity of 3,000 head of mature dairy cattle and 300 head of immature dairy cattle. The facility has three earthen manure storage basins.

2. On March 14, 2022, Mr. Zuiderveen contacted Jennifer Christian, DNR Field Office 3 environmental specialist senior, to report a manure release from Black Soil Dairy to a tributary of Deep Creek. Mr. Zuiderveen explained that the manure flume system beneath one of the free stall confinement barns became plugged on the evening of March 11, 2022. The manure beneath the floor flooded a portion of the barn and flowed outside of the barn through a crack in the wall. The manure flowed to a clean water tile intake near the barn to a subsurface tile and then into two tile intakes. The tile discharged the manure to the tributary of Deep Creek. Mr. Zuiderveen was out of town when the system failure occurred. He explained his employees thought the tile intakes the manure were entering were tied into the manure storage system. When Mr. Zuiderveen arrived at the facility on March 14, 2022, he created an earthen basin to capture the manure, plugged the two tile intakes, and flushed the tile with clean water.

3. Ms. Christian and Daniel Morse, DNR Field Office 3 environmental specialist, traveled to the facility to meet with Mr. Zuiderveen and his consultants from Nutrient Advisers. The field office personnel observed where the tiles discharged to the tributary. They observed manure in the water. The field office personnel continued their investigation downstream collecting water samples for approximately five miles. Due to the time of the year, ice was present in a majority of the tributary except near road bridges. They did not observe any dead fish, but the field tests indicated elevated levels of ammonia. The results of the laboratory samples are as follows:

Location	Laboratory Sample – E.Coli ([MPN]/100mL)	Laboratory Sample – Ammonia (mg/L)	Laboratory Sample – BOD (mg/L)
Upstream of the Discharge Point	10	0.15	4
Discharge Point	1,100	0.74	5
Marsh Avenue	79,000	0.56	>240

IOWA DEPARTMENT OF NATURAL RESOURCES
 ADMINISTRATIVE CONSENT ORDER
 ISSUED TO: NATE ZUIDERVEEN

(downstream)			
510 th Street (downstream)	410,000	150	860

4. On March 15, 2022, the field office personnel continued their investigation. They observed dead and dying fish in the areas of the tributary not covered with ice. The field tests indicated continued elevated level of ammonia. The field office personnel contact the DNR Fisheries Bureau. The DNR Fisheries Bureau was unable to conduct an official fish kill count due to the ice. Ms. Christian also contacted Mr. Zuiderveen and explained that there was a fish kill. Mr. Zuiderveen offered to dam the tributary and to hire a certified commercial manure applicator to pump the manure laden water from the tributary and to land apply it.

5. On March 16 and 17, 2022, the certified commercial manure applicator continued pumping and land applying the manure laden water from the tributary. On March 17, 2022, the DNR Fisheries Bureau personnel returned to the area; however, conditions were unfavorable and an official fish kill count could not be conducted.

6. On March 23, 2022, DNR issued a Notice of Violation letter to Mr. Zuiderveen for the violations observed during the March investigation. The letter informed Mr. Zuiderveen that the matter would be referred for further formal enforcement.

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 March 2022 investigation, DNR Field Office 3 confirmed that manure from Mr. Zuiderveen's facility entered a tributary of Deep 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 March 2022 investigation, DNR Field Office 3 noted that a manure release from Mr. Zuiderveen's facility to the tributary of Deep Creek was toxic to animal life and resulted in elevated pollutant

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATE ZUIDERVEEN

levels. The above-mentioned facts indicate violations of the general water quality criteria.

4. 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.

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 March 2022 investigation, DNR Field Office 3 confirmed that manure from Mr. Zuiderveen's facility entered a tributary of Deep Creek. The above-mentioned facts indicate a violation of this provision.

6. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Zuiderveen complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Nate Zuiderveen agrees to do the following:

1. Mr. Zuiderveen shall submit a written plan with Standard Operating Procedures for operation of the facility; including but not limited to routine monitoring of the tile intakes. The plan shall also include specific procedures for employee training for manure monitoring and reporting. The Standard Operating Procedures shall be submitted to DNR Field Office 3 for approval within 30 days of the date the Director signs this administrative consent order. Mr. Zuiderveen shall immediately implement the Standard Operating Procedures upon approval by DNR Field Office 3; and
2. Mr. Zuiderveen 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. Iowa Code section 455B.146 authorizes the assessment of

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATE ZUIDERVEEN

civil penalties of up to \$10,000.00 per day of violation for the air 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 \$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. Zuiderveen gained little to no economic benefit; therefore, no 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 discharge of manure from the facility resulted in the degradation of water quality, through elevated pollutant levels and dead fish. The manure discharge threatens the integrity of the animal feeding operation regulations. Therefore, \$3,000.00 is assessed for the violations noted in Paragraph 2, Section IV Conclusions of Law; \$3,000.00 is assessed for the violations noted in Paragraph 3, Section IV Conclusions of Law; and \$3,000.00 is assessed for the violations noted in Paragraph 5, Section IV Conclusions of Law for a total amount of \$9,000.00 assessed for the Gravity portion of this administrative consent order.

Culpability – Mr. Zuiderveen has a duty to know the regulations and to be aware that his actions are subject to the regulations. Based on the information above, \$1,000.00 is being assessed.

VII. WAIVER OF APPEAL RIGHTS

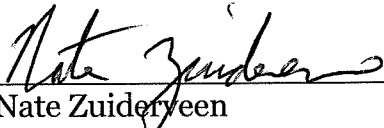
This administrative consent order is entered into knowingly and with the consent of Mr. Zuiderveen. For that reason, Mr. Zuiderveen waives the right to appeal this administrative consent order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATE ZUIDERVEEN

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



Nate Zuiderveen

Dated this 19th day of
September, 2022.