

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

IN THE MATTER OF:

**Brian Erickson dba Dutch Square
Farms, LLC**

Howard County Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO-39

TO: Brian Erickson
Dutch Square Farms, LLC
23968 166th Street
Preston, Minnesota 55965

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Erickson dba Dutch Square Farms, LLC (Dutch Square Farms) for the purpose of resolving water quality violations resulting from a manure release during the transportation of manure to an application field. This administrative consent order requires Brian Erickson dba Dutch Square Farms, LLC to: 1) submit an emergency plan for manure applicators and 2) pay a \$1,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Amber Sauser, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct, Suite 10
Manchester, Iowa 52057
Phone: 563-927-2640

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

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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 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. Dutch Square Farms¹ is a commercial manure service and Brian Erickson is a certified commercial manure applicator for Dutch Square Farms. Dutch Square Farms was hired to land apply manure from the Jamestown Sow Farm confinement facility, located at 3396 90th Street, Riceville, Iowa.

2. On August 3, 2022, DNR Field Office 1 received a call from the Howard County Sheriff's Office concerning a manure release from the Jamestown Sow Farm facility. The sheriff's office stated that the manure was being transported from the facility to the application field and the semi-trailer rolled into the ditch releasing manure. The sheriff's office provided DNR Field Office 1 with Brian Erickson's name as the responsible party.

3. Amber Sauser, DNR Field Office 1 environmental specialist senior, attempted to contact Mr. Erickson by telephone. Mr. Erickson returned Ms. Sauser's telephone call. He stated he had been hauling manure from the Jamestown Sow Farm facility and the semi-trailer overturned as he turned into the application field. Mr. Erickson stated he contacted an Iowa Select Farms representative to assist in the constructing berms in the road ditch to stop the flow of the manure. Mr. Erickson stated it was believed that 5,000 gallons of manure had been released into the road ditch. At the time of the call, Mr. Erickson did not mention any impacts water sources. Ms. Sauser instructed Mr. Erickson to keep the berms in place and to remove the impacted soil from the road ditch as soon as possible.

4. On August 4, 2022, Ms. Sauser met with Mr. Erickson and Iowa Select Farms representatives at the spill site. She informed Ms. Sauser that a pump was being used to pump the manure from the road ditch into a manure tank to later be land applied. Ms. Sauser conducted a field test of the water pooled near the culvert on the north side of 130th Street in the road ditch and noted the presence of ammonia and a manure odor. She also conducted a field test of the water pooled near the culvert of the south side of 130th Street in the road ditch and noted the presence of

¹ Dutch Square Farms, LLC is not a registered company in the State of Iowa and there is no registered agent on file with the Iowa Secretary of State's Office. A search of the Minnesota Secretary of State's database does not indicate that the Dutch Square Farms, LLC is a registered company in the State of Minnesota.

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ammonia, a manure odor, and live frogs. Ms. Sauser confirmed with Mr. Erickson and the Iowa Select Farms representatives that the soils would be excavated until ammonia could no longer be detected.

5. Ms. Sauser walked the grassed water way with an Iowa Select Farms representative approximately 500 feet south and noted heavy vegetation in the area. There was no pooled water or channeled water flowing. The area was wet and had a manure odor. Ms. Sauser informed the Iowa Select Farms representative that she would continue to check areas downstream. Ms. Sauser traveled downstream to the culvert on Addison Avenue prior to the stream entering the Wapsipinicon River. The field test did not indicate the presence of ammonia and no manure odor was noted.

6. Ms. Sauser returned to the spill site and walked the waterway south of 130th Street. Ms. Sauser observed an area downstream approximately 1,000 feet downstream with bed and bank. The field test indicated the presence of ammonia and the area had a manure odor. Ms. Sauser continued downstream approximately 2,500 feet and noted the presence of manure and a manure odor. Ms. Sauser returned to the group and stated that the water in the area should be pumped and land applied. Ms. Sauser then traveled approximately 3,000 feet south of 130th Street. A manure odor was noted and the field test indicated the presence of ammonia. The laboratory sample of the water indicated an ammonia nitrogen concentration of 72 mg/L. It was determined that the pumping would begin at this area. Ms. Sauser returned to the spill site and collected a laboratory sample at the culvert south of 130th Street. The results indicated an ammonia nitrogen concentration of 37 mg/L. Following the inspection, Ms. Sauser confirmed with Iowa Select Farms that the soil had been removed and the water pumped by the end of the day on August 4, 2022.

7. On August 17, 2022, DNR issued a Notice of Violation letter to Dutch Square Farms for the violations observed during the August investigation. The letter informed Dutch Square Farms that the matter would be referred for further evaluation and further enforcement may be pursued.

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 August 2022 investigation, DNR Field Office 1 noted that a manure release from overturned semi-

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trailer entered a tributary of the Wapsipinicon River. 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 August 2022 investigation, DNR Field Office 1 noted that a manure release from overturned semi-trailer entered a tributary of the Wapsipinicon River and caused elevated pollutant levels and a manure odor. 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 August 2022 investigation, DNR Field Office 1 noted that a manure release from overturned semi-trailer entered a tributary of the Wapsipinicon River and caused elevated pollutant levels and a manure odor. 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 Dutch Square Farms complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Brian Erickson dba Dutch Square Farms, LLC agrees to do the following:

1. Submit an updated emergency response plan signed by Dutch Square Farms' certified manure haulers to DNR Field Office 1 within 30 days of the date the Director signs this administrative consent order; and
2. Pay an administrative penalty in the amount of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

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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 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 \$1,000.00. 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.” The manure release was accidental and Dutch Square Farms realized 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 release of manure from overturned semi-trailer ultimately resulted in the degradation of water quality. The manure release threatens the integrity of the animal feeding operation regulations. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Dutch Farms has a duty to know the regulations and to be aware that its actions are subject to the regulations. The release was accidental and Dutch Farms took immediate steps to limit the impact of the release. Based on the information above, no amount is being assessed or this factor.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Brian Erickson dba Dutch Farms, LLC. For that reason, Brian Erickson dba Dutch Farms, LLC 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



BRIAN ERICKSON
DUTCH SQUARE FARMS, LLC

Dated this 1 day of
Dec., 2022.