

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

<p>IN THE MATTER OF:</p> <p>CAT-NIP RIDGE MANURE APPLICATION, INC.</p> <p>Davis County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2023-AFO- 17</p>
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TO: Bradley T. Bell, Registered Agent
Cat-Nip Ridge Manure Application, Inc.
25350 245th Street
Lone Tree, Iowa 52739

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cat-Nip Ridge Manure Application, Inc. (Cat-Nip Ridge) for the purpose of resolving water quality violations resulting from a manure release during land application in Davis County, Iowa. This administrative consent order requires Cat-Nip Ridge to ensure that all handling, transferring, and land application of manure is done in a manner that does not result in a manure release to a water of the state and to pay an administrative penalty and Supplemental Environmental Project the amount of \$8,000.00. 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:

Ryan Stouder
DNR Field Office 6
1023 W Madison
Washington, Iowa 52353
Phone: 319/653-2135

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

Cat-Nip Ridge neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Cat-Nip Ridge is a licensed commercial manure service and Brad Bell is the service's representative. Cat-Nip Ridge was hired by Woodford Creek Farms, LLC to land apply manure from its animal feeding operation located at 21160 280th Street; Bloomfield, Iowa.

2. On October 21, 2021, DNR Field Office 6 received a telephone call from Martha Steding, who at the time was a representative of Seaboard Foods of Iowa, LLC who operates and manages the animal feeding operation on behalf of Woodford Creek Farms. Ms. Steding stated water only flowed from a field tile during land application. She did not mention a manure release and at no point informed DNR of an actual manure release. On October 22, 2021, Ryan Stouder, DNR Field Office 6 environmental specialist senior, traveled to the field in question. Mr. Stouder observed a small puddle of suspected manure laden water near a patch of willow trees. The puddle had a flow, originating from a tile and manure flowing off the nearby crop field. The flow continued across the road and through a small culvert.

3. Mr. Stouder viewed the field where the manure application took place. He noted that direct injection of manure had been attempted, but manure solids and liquids had filled in the injection area and flowed away from the disc marks. Mr. Stouder also observed several pools of standing manure in lower spots of the fields. Manure was applied over the top a tile intake, approximately 100 yards from where the field tile was discharging from. Mr. Stouder walked the perimeter of the areas where manure had been applied. He noted that there were several spots where manure was applied close to the edge and the manure flowed to the grass buffer and beyond.

4. Mr. Stouder continued downgradient about 150 feet to a small creek. He noted a manure odor and brown color in the water. The discolored water continued as Mr. Stouder travel downstream toward the South Wyaconda River. Mr. Stouder followed the creek for approximately one mile, several small creeks flowed into the creek, which increased the water volume and velocity in the creek. Mr.

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Stouder conducted field tests and collected water samples for laboratory analysis as he traveled the impacted areas. The field test and laboratory sample results are noted below:

Field Test Results

Sample Location	Ammonia (mg/L)	Dissolved Oxygen
Tile/Field Discharge	>3.0	0-2
Culvert	>3.0	1-2
Creek	>3.0	1-2
Mixing Zone	>3.0	3
Downstream of Mixing Zone	2.8	3-4
South Wyaconda River	0.6	8-10

Laboratory Sample Results

Sample Location	Ammonia (mg/L)	BOD (mg/L)	TSS (mg/L)	E.Coli (MPN/100 mL)
Field Discharge	10	10	16	54,000
Culvert	25	21	65	240,000
Creek	100	>22	88	1,200,000
Mixing Zone	110	>130	1,240	2,400,000

5. Mr. Stouder contacted Ms. Steding regarding the investigation and told her that manure was released from the application field and traveled to the South Wyaconda River. Ms. Steding indicated that Cat-Nip Ridge conducted the manure application with a drag hose and direct injection. Mr. Stouder requested the land application records. Mr. Stouder advised Ms. Steding that the manure would need to be incorporated to reduce additional manure from being released. Ms. Steding informed Mr. Stouder that Cat-Nip Ridge had removed its equipment from the site and likely would not return to the application field. She stated she would try to contact the application field owner to see if they would incorporate the manure into the field. Mr. Stouder also left a message for Mr. Bell to return to the field and incorporate the manure.

6. On October 25, 2021, Mr. Stouder contacted Mr. Bell with Cat-Nip Ridge and requested a copy of the manure application records and any written instructions Seaboard provided Cat-Nip Ridge. On October 26, 2021, Mr. Bell emailed the records to Mr. Stouder. The records indicated that Cat-Nip Ridge averaged 24,221 gallons of manure per acre, covering 64.6 acres for a total 1,564,712 gallons of manure applied. The written manure management plan prepared by Seaboard planned for the application of 61,744 gallons of manure per acre in accordance with the facility's manure management plan.

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7. On October 28, 2021, Mr. Stouder returned to the impacted area and collected a laboratory sample from the creek. The results were as follows: ammonia 3.6 mg/L, BOD 15 mg/L, TSS 30 mg/L, and 4,600 MPN/100 mL. The elevated pollutants indicated that no actions had been taken by Cat-Nip Ridge to stop or cleanup the manure release.

8. On November 4, 2021, a Notice of Violation letter was issued to Woodford and Cat-Nip Ridge for the water quality violations observed during the October investigation. The letter indicated the matter was being referred for further enforcement.

9. On December 8, 2021, Cat-Nip Ridge submitted a written report regarding the manure release. The report did not state that Cat-Nip Ridge had conducted any cleanup activities as a result of the manure release. The report included actions Cat-Nip Ridge will implement following this incident. The plan included the following language: "Cat-Nip Ridge is implementing procedures for manure applicators to properly locate and document field tile intakes, continue to apply at or below amounts set out in the manure management plan, to observe the field for potential land runoff, and to observe any tile outlets for potential discharges both periodically during manure application and when application is completed and before leaving the field. If any runoff or discharge is observed, application will immediately cease and steps will be taken to stop the runoff including field tillage, berms in surface runoff areas, plugging of tile outlets, and pumping any contaminated water from water bodies for spreading onto crop land where runoff will not be an issue."

10. In 2019, Cat-Nip Ridge and DNR entered into Administrative Consent Order No. 2019-AFO-15 to address water quality violations that occurred during Cat-Nip Ridge's land application to a field located in Louisa County, Iowa. The order required Cat-Nip Ridge to develop and implement a Standard Operation Procedure detailing proper procedures for transfer and application of manure.

IV. CONCLUSIONS OF LAW

Cat-Nip Ridge neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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. DNR Field Office 6 noted that

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manure from land application entered an unnamed tributary of South Wyaconda 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. The manure release created elevated pollutants in the water. 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.

5. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure 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 waters of the state. DNR Field Office 6 observed manure originating from the Woodford facility entered an unnamed tributary of the Wyaconda River. At no point did Cat-Nip Ridge take any actions to cleanup or stop the release to the unnamed tributary. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.2(9) requires a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. Ms. Steding contacted DNR Field Office 6 regarding a water issued during application but did not state there was a manure release. Ms. Steding did not believe there was a manure release and was concerned that the tile was only running when there was land application. At no point, did Cat-Nip Ridge contact DNR to notify of the actual manure release. The above-mentioned facts indicate a violation of this provision.

7. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-6, Section IV [Conclusions of Law] will occur again if Cat-Nip Ridge implements the plan outlined in Paragraph 9, Section III [Statement of Facts] and in Paragraph 1, Section V [Order] of the administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Cat-Nip Ridge agrees to do the following:

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1. Cat-Nip Ridge shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;
2. Cat-Nip Ridge shall pay an administrative penalty in the amount of \$8,000.00. \$2,000.00 shall be paid to the DNR within 30 days of the date the Director signs this administrative consent order.

In lieu of the payment of the remainder penalty, Cat-Nip Ridge shall conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Davis County Conservation Board. Cat-Nip Ridge shall make a payment of \$6,000.00 to the Davis County Conservation Board within 30 days of the date the Director signs this administrative consent order. Once the SEP payment has been made, Cat-Nip Ridge shall submit a receipt of payment to Kelli Book, attorney for the DNR.

VI. PENALTY

Cat-Nip Ridge neither admits nor denies the provisions and statements in this Penalty section and enters into this administrative consent order for settlement purposes only.

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 \$8,000.00. 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.” Cat-Nip Ridge avoided the costs associated with proper cleanup of the manure including time and transportation

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costs. It is estimated that Cat-Nip Ridge gained an economic benefit of at least \$2,500.00 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 release of manure resulted in elevated pollutant and violations of the animal feeding operation regulations. The violations threaten the integrity of the animal feeding operation regulations. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Cat-Nip Ridge have a duty to know the regulations and to be aware that its actions are subject to the regulations. At no point did Cat-Nip take any actions to cleanup or stop the release of manure upon being notified by the Department to do so. Additionally, this is the second discharge during land application by Cat-Nip Ridge since 2019. Based on the information above, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Cat-Nip Ridge. For that reason, Cat-Nip Ridge waive 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 manure release on or about October 21, 2021 that is the subject of this administrative consent order and 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

Cat-Nip Ridge Manure APP FVE
Bradley H. Hill

CAT-NIP RIDGE MANURE APPLICATION, INC.

Dated this 19th day of
June, 2023