

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

<p>IN THE MATTER OF:</p> <p><b>TEN HOEVE DAIRY, LLC</b></p> <p>Butler County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2024-AFO-31</p>
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**TO:** ten Hoeve Dairy, LLC  
18313 Butler Avenue  
Waverly, Iowa 50677-9639

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and ten Hoeve Dairy, LLC for the purpose of resolving construction permit, water quality, and manure applicator violations in connection with the ten Hoeve Dairy facility in Butler County. This administrative consent order requires ten Hoeve Dairy, LLC to: 1) submit a professional engineer statement and 2) pay a \$7,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jeremy Klatt, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**

Kelli Book, Attorney  
Iowa Department of Natural Resources  
6200 Park Avenue, Suite 200  
Des Moines, Iowa 50321  
Phone: 515/210-3408

**Payment of penalty to:**

Director  
Iowa Department of Natural Resources  
6200 Park Avenue, Suite 200  
Des Moines, Iowa 50321

**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**

ten Hoeve Dairy, LLC neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. ten Hoeve Dairy, LLC owns and operates a dairy confinement feeding operation with a capacity for 649 milking cows and 90 calves. The facility is located at 18313 Butler Avenue, Waverly, Iowa (Section 13, Butler Township, Butler County). The first confinement building and formed manure storage structure were constructed in 2006 and did not require a construction permit or manure management plan because of the size of the facility. In 2006 and 2009, the facility was expanded and in 2015, ten Hoeve Dairy, LLC submitted a Notice of Self-Audit indicating the facility had expanded and needed a manure management plan. The manure management plan was submitted and approved in 2015.

2. On April 18, 2023, DNR Field Office 2 received a complaint alleging that manure from the ten Hoeve facility was discharging to a neighboring field. Jeremy Klatt, DNR Field Office 2 environmental specialist senior, conducted an inspection on the day the complaint was received. Mr. Klatt noted that a new confinement building had been constructed on the south end of the facility. Following the inspection, Mr. ten Hoeve informed Mr. Klatt that the building was constructed in 2022 and did not increase the number of animals on site, but providing extra space for the existing calves. Mr. Klatt observed that the east manure storage structure had recently over flowed and the manure had flowed along the confinement building, but had not left the property.

3. Mr. Klatt noted that the two manure storage structures had less than one foot of freeboard. Mr. Klatt inspected the sand settling and stockpile areas on the west end of the property. He observed that sand and manure solids had flowed from the property to a neighboring field. Mr. Klatt also inspected two large feed bunkers located in the northeast corner of the facility. He noted large areas of dead grass and an erosion channel between the feed storage area and a surface intake. There was no leachate discharging to the intake; however, Mr. Klatt noted ponded leachate in the flow path of previous runoff events. Mr. Klatt conducted a field test on the leachate, which indicated a high ammonia concentration. Mr. Klatt located the tile outfall for the intake, and black sludge and sewage fungus was noted below the outfall. The field test of the flow from the tile indicated an ammonia concentration of 3 ppm. Mr. Klatt collected laboratory samples of the water that showed an ammonia concentration of 4.0 ppm and a biochemical oxygen demand concentration of 59 ppm. Mr. Klatt noted that the tiles fed an eroded channel that flowed north and he observed the adverse impact on the receiving stream.

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4. Mr. Klatt also observed the composting area. Mr. ten Hoeve stated that he started composting mortalities on site several years prior. Mr. Klatt noted exposed carcasses on the pile. Mr. ten Hoeve stated he had not applied any of the compost since he began composting mortalities. Mr. Klatt also observed a burn pile on the property that contained prohibited trade waste, including tarps and pallets.

5. A review of the manure management plan indicated that the calf manure was being handled as liquid manure; but Mr. ten Hoeve said the manure was being handled as dry manure. Additionally, the manure application records failed to include the factors used to calculate the application rates and there were no statement of intent documents indicating how much commercial nitrogen fertilizer was planned for each application field. Mr. ten Hoeve stated that the liquid manure from the site was land applied by Midwest Manure Management, a commercial manure service and the dry manure was land applied by Mr. ten Hoeve's son who was not certified.

6. On April 21, 2023, Mr. Klatt returned to the facility for a follow up inspection. During the inspection, Mr. Klatt noted that the manure storage structures were close to the maximum freeboard. Mr. ten Hoeve stated after the April 18 inspection that manure was land applied, but then it rained and manure application was halted. During this inspection, Mr. ten Hoeve explained that he recently constructed the berm in the sand settling area due to a neighbor's concern about runoff. Mr. Klatt noted discolored standing water in the sand storage area and reminded Mr. ten Hoeve that all manure must be contained between periods of application.

7. On May 16, 2023, DNR issued a Notice of Violation letter to Mr. ten Hoeve for the violations discovered during the April 2023 investigations. The letter informed Mr. ten Hoeve that the violations were being referred for further enforcement, which would include a monetary penalty.

8. Following the inspections and Notice of Violation letter, ten Hoeve Dairy, LLC removed the tile intake to ensure there be no runoff from the silage area to the tile line.

#### **IV. CONCLUSIONS OF LAW**

ten Hoeve Dairy 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.

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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 April 2023 investigation, DNR Field Office 2 noted that process wastewater from the silage area was entering a water of the state. 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 April 2023 investigation, DNR Field Office 2 noted that the release of the process wastewater to the creek caused elevated pollutant levels. 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 65.100(1) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of application. During the April 2023 investigation, DNR Field Office 2 noted that a manure release when manure overflowed two manure storage structures at the facility. The above-mentioned facts indicate violations of this provision.

6. 567 IAC 65.112(1) states that a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. During the April 2023 investigation, it was determined that an uncertified applicator had applied the dry manure from the facility. The above-mentioned facts indicate violations of these provisions.

7. 567 IAC 65.104(2) states a confinement feeding operation that is required to obtain a construction approval letter, but that is not required to obtain a construction permit, shall file with a construction approval request with the department, at least 30 days prior to the date the proposed construction is scheduled to begin. During the April 2023 investigation, it was noted a new confinement feeding structure had been constructed in 2022 without first obtaining a construction approval letter. The above-mentioned facts indicate a violation of this provision.

8. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if ten Hoeve Dairy, LLC complies with the provisions listed in Paragraph 1, Section V Order of this administrative consent order.

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**V. ORDER**

THEREFORE, the DNR orders and ten Hoeve Dairy, LLC agrees to do the following:

1. Submit a statement from a professional engineer that the improvements, including but not limited to the berm construction and removal of the tile intake, are adequate to control all process wastewater from the operation. The statement shall be submitted to DNR within 30 days of the date the Director signs this administrative consent order; and
2. Pay an administrative penalty in the amount of \$7,000.00 in accordance with this following provisions.

\$875.00 due November 15, 2024  
15, 2025

\$875.00 due November  
15, 2025

In lieu of the payment of the remainder of the penalty, conduct a Supplemental Environmental Project (SEP). The SEP shall consist of two payments to the Butler County Conservation Board. ten Hoeve Dairy, LLC shall make a payment of \$2,625.00 by November 15, 2024 to the Butler County Conservation Board and a payment of \$2,625.00 by November 15, 2025 to the Butler County Conservation Board. Once the SEP payments have been made, ten Hoeve Dairy, LLC shall submit receipts of the payments to Kelli Book, attorney for the DNR.

**VI. PENALTY**

ten Hoeve Dairy, LLC 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. 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

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administrative penalty of \$7,000.00. 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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” ten Hoeve Dairy, LLC gained an economic benefit by not installing proper controls to contain the process wastewater from the facility. He was able to delay the cost of designed, constructing and installing the proper controls. He was able to gain an economic benefit by using an uncertified manure applicator to land apply the dry manure at the facility. Based on the above facts, the economic benefit by ten Hoeve Dairy, LLC received was at least \$1,000.00 and that amount is 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 process wastewater from the ten Hoeve facility ultimately resulted in the degradation of water quality. Based on observations from the investigation, it was evident that the release had been occurring for an extended period of time. Additionally, applying manure without the proper training and certification increases the risk a manure related discharge during application and applying manure to a field not included in the MMP prevents the DNR from evaluating the field to determine if the manure was applied at appropriate rates. Failure to submit the construction plans prior to the construction prohibits the DNR from properly evaluating the construction design to ensure that it meets construction requirements and separation distances. The noted regulations in this administrative consent order are integral parts of the animal feeding operation programs and violations of the regulations threaten the integrity of the animal feeding operation regulations. Based on the information above, \$3,000.00 is assessed for this factor.

Culpability –ten Hoeve Dairy, LLC has a duty to know the regulations and to be aware that his actions are subject to the regulations. Based on the information above, \$3,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of ten Hoeve Dairy, LLC. For that reason, the ten Hoeve Dairy, LLC 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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources



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ten HOEVE DAIRY, LLC by GERBEN TEN HOEVE

Dated this 25 day of October, 2024.