

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

IN THE MATTER OF: Mitch and Rebecca Naeve Humboldt County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2024-WW- 21
--	---

TO Mitch and Rebecca Naeve
2006 West River Drive
Humboldt, IA 50548

I. SUMMARY

This administrative consent order (order) is entered into by Mitch and Rebecca Naeve and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to an illegal discharge to a water of the state. Mr. and Mrs. Naeve agree to pay an administrative penalty of \$1,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Carl Berg
IDNR Field Office No 2
2400 15th St SW
Mason City, Iowa 50401
Phone: 641-425-1591

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
6200 Park Ave. Ste
Des Moines, Iowa 50321
Phone: 515-444-8165

Payment of penalty to:

Iowa Department of Natural Resources
6200 Park Ave Ste 200
Des Moines, Iowa 50321

II. JURISDICTION

This order is issued pursuant to 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 I and the rules promulgated or permits issued pursuant

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

Mitch and Rebecca Naeve

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

Mitch and Rebecca Naeve neither admit nor deny the following statement of facts and enter into this agreement solely for the purposes of settlement:

1. Mitch and Rebecca Naeve (collectively referred to as Naeves) are the deed holders to the property located at 1856 Birch Ave, Bradgate, Iowa (site). At this location the Naeves operate a farm and they have a small area for bulk chemical storage.

2. At approximately 10:34 am on January 18, 2024, the Department received a call from Kyle Bissell, of Humboldt County Emergency Management, to report a fertilizer spill at the above address. Mr. Bissell stated that a valve was discovered partially open and the contents of a 5,000-gallon tank of 28% Nitrogen was released to a gravel lot behind a shop building. He also stated that there is a surface tile intake approximately 30 yards from the area of the release but it was snow covered and it was unclear if product had reached the intake.

a. Following receipt of this call, Department staff, went to the site to investigate. Once on site, Department staff met with Mr. Bissell and Blake Naeve, Mitch Naeve's son. Mitch Naeve was out of town. Department staff observed that the snow had been removed from the gravel lot. Blake Naeve stated that it appeared fertilizer spilled from the tank and migrated east towards the tile intake. That tile line drains to the southwest corner of the property and then flows north into a farm pond (Pond) owned by a neighbor. The contaminated soil and snow from the area was removed and piled on the north end of the property with a tractor about 40 yards from the tank and the tile intake. The Department instructed Blake Naeve to continue scraping up the contaminated gravel and soil. Department staff stated they would follow the tile drainage path to determine if any product entered the nearby tile intake.

b. Department staff went to the location of the tile intake in the road ditch. Once at this location they cleared snow covering the intake and noted a strong ammonia odor emanating from the tile intake. Next, Department staff followed the tile line to where it discharged upstream of the neighboring Pond, which is east of Birch Ave. At this location, there were three culverts but only one was discharging. Department staff estimated that approximately 15 gallons per minute were being discharged. At this location (Tile Discharge into Upper Pond; hereafter Tile Discharge) both field and laboratory samples were collected. The field sample indicated that ammonia was over the maximum range of 3.0 mg/l and the laboratory sample results are in Table 1.

c. Department staff proceeded to the residence of the property with the Pond. No one answered the door so Department staff left a voice mail with the owner. Department staff returned to the Naeve property and met with Blake and Jay Naeve. Department staff explained that the field test indicated that high strength ammonia water had been detected at the Tile Discharge and the possible scenarios of how the fertilizer entered the tile line. Eventually everyone concluded that the released fertilizer flowed under the snow and entered the tile intake on the Naeve property. Department staff recommended that the tile line be cut and all contaminated snow, soil, and gravel be monitored to prevent snowmelt or runoff from the contaminated materials entering a tile line.

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

Mitch and Rebecca Naeve

Department staff also recommended that additional material be scraped up and all contaminated materials should be land applied and stored in a manner to prevent future discharges.

d. Later in the day, Department staff reached the owner of the Pond and went back to investigate. Once on-site, Department met with the owner who stated that his pond was stocked with bluegill, bass, crappie, perch, and walleye. Department staff took field samples and laboratory samples at the location of the Pond and its discharge (Pond Discharge). Field samples indicated that ammonia was 1 mg/l. The laboratory sample results are in Table 1. The samples in the Pond were taken from an ice fishing hole in the approximate center of the pond. Following the collection of the Pond samples, Department staff walked to the confluence of the Pond outlet and a tributary to West Fork of the Des Moines River (Confluence). This tributary was iced over as well as the West Fork of the Des Moines River. Therefore, no samples were taken at these locations.

e. Department staff went back to the Naeve property and observed that the tile line had been cut and plugged to prevent further discharge. Jay Naeve confirmed that the tile line smelled like ammonia. Department staff stated that they would return the following day to conduct a follow up investigation.

**Table 1: Ammonia Nitrogen as N laboratory samples collected by the Department
January 18, 2024-March 29, 2024**

Date	Location					
	Tile Discharge (mg/l)	Upper Pond (mg/l)	Upper pond Outfall (mg/l)	Pond (mg/l)	Pond Discharge (mg/l)	Confluence (mg/l)
1/18/2024	300	N/A	N/A	0.52	0.22	N/A
1/19/2024	69	N/A	N/A	0.96	0.71	0.57
2/26/2024	1.5	69	170	20	26	N/A
3/6/2024	0.98	N/A	160	30	27	24
3/29/2024	0.31	0.40	0.47	N/A	0.69	N/A

3. On January 19, 2023, Department staff returned to the site to conduct a follow up investigation. During this investigation, Department staff took field tests and laboratory samples at the same locations as the prior day. All of the laboratory samples are in Table 1. The field test indicated the following: at the location of the Tile Discharge ammonia was 3.0 mg/l; at the location in the Pond ammonia was 2.0 mg/l; and at the location of the Pond Outlet ammonia was 1.7 mg/l. Next a hole was cut in ice at the location of the Confluence and ammonia was 1.2 mg/l.

After collection of these samples Department staff went back to the Naeve property. Blake Naeve confirmed that the valve was somehow opened and did not fail due to extreme cold temperatures. He also stated that he would remove the handles to their tanks to prevent similar incidents in the future.

4. On February 14, 2024, a Notice of Violation (NOV) was issued to the Naeves for the above-referenced violations. Included with this NOV was a summary of the relevant law.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

Mitch and Rebecca Naeve

5. On February 25, 2024, the Department received a complaint from the owner of the Pond discussed above. This complainant alleged that dead fish were visible on the surface of their Pond.

6. On February 26, 2024, the Department returned to the site to investigate. The Department began its investigation at the location of the Upper Pond, which is immediately downstream of the Tile Discharge. At this location both field and laboratory samples were collected. The field sample indicated that ammonia was over the maximum range of 3.0 mg/l and the laboratory sample results are in Table 1. Next, Department staff proceeded to the location of the Tile Discharge. At this location, Department staff estimated that approximately 15 gallons per minute were being discharged. The snow in the area had melted and the Upper Pond was no longer iced over. At this location Department staff met with the owner of the Pond and together they walked to the north bank of the Pond. At this location numerous dead crappies, perch, and bluegill were observed around the edges on the Pond. Live fish were also observed in the Pond. Duck weed was observed in the Pond as well as bright green filamentous algae. At the location of the Pond and the Pond Discharge both field tests and laboratory samples were taken. The field tests at both locations indicated that ammonia was over the maximum range of 3.0 mg/l and the laboratory sample results are in Table 1.

Next Department returned to the following locations: the Tile Discharge, Upper Pond, , Pond, and Pond Discharge to take laboratory samples and field samples. Field samples were taken at the location of the Upper Pond and Upper Pond Outfall and the results indicated that ammonia was over the maximum range of 3.0. The laboratory samples results are in Table 1. Also, five dead bull frogs were observed in the Upper Pond, no live aquatic organisms were observed and filamentous algae was observed developing on the edges of the Upper Pond.

7. On March 2, 2024, the Department received another complaint from the owner of the Pond alleging live fish were observed struggling near the pond surface and there were additional dead fish. Following the receipt of this complaint, on March 4, 2024, the Department called the Pond owner to discuss it.

8. On March 6, 2024, the Department returned to the Pond to investigate. The Department went to the locations of the Tile Discharge. At this location, a field test was taken which indicated that ammonia was 0.8 mg/l. Next, the Department took field samples at the locations of the Upper Pond and the Upper Pond Outfall. The field samples indicated that ammonia was over the maximum range of 3.0 mg/l. The result of the laboratory samples taken are in Table 1.

Next, Department staff proceeded to the Pond. The Department observed several dead fish (i.e. crappie and perch). No live fish were observed. Field samples and laboratory samples were taken at the locations of the Pond and Pond Discharge. Field tests at both locations indicated that ammonia was over the maximum range of 3.0 mg/l. The laboratory sample results are in Table 1.

Department staff then proceeded downstream to the location of the Confluence. While walking the Department observed several locations with bright green filamentous algae. At the location of the Confluence both laboratory and field samples were taken. The field samples indicated that ammonia was over the maximum range of 3.0 mg/l. The laboratory samples results are in Table 1.

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

Mitch and Rebecca Naeve

9. On March 29, 2024, Department staff returned to the site to investigate. During the month of March, the area had received about an inch of rain. Once on site, Department staff observed that the flow from Tile Discharge to the Upper Pond had increased at a rate approximately five times the flow observed during other site visits. Field samples were taken and the results are as follows: at the location of the Tile Discharge ammonia was .3 mg/l; at the location of the Upper Pond ammonia was .5 mg/l; at the location of the Upper Pond Outfall ammonia was .4 mg/l; and at the location of the Pond Discharge ammonia was .5 mg/l. Laboratory samples were also taken at some locations and the results are in Table 1. A valve in the bottom of the pond had been opened and the pond had essentially been drained.

IV. CONCLUSIONS OF LAW

Mitch and Rebecca Naeve neither admit nor deny the following conclusions of law and enter into this agreement solely for the purposes of settlement:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision of law.
2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards. The Commission has done so at 567 IAC Chapters 60 through 65.
3. 567 IAC 61.3(2)“c” and “e” state:
 - c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectional color, odor or other aesthetically objectional conditions. [and]
 - e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate noncompliance with these provisions of law.

V. ORDER

THEREFORE, the Department orders, and Mitch and Rebecca Naeve consent to do, the following:

1. Cease all illegal discharges to waters of the state; and
2. Pay an administrative penalty of \$1,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

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

Mitch and Rebecca Naeve

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the 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 Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** 567 IAC chapter 10 requires that the Department 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.” At this time as an effort to settle the matter the Department is not assessing a penalty for economic benefit.

b. **Gravity of the Violation.** 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 the type of violation. As indicated above, substantial civil penalties are authorized by statute. The discharge of 28% nitrogen fertilizer to a water of the state resulted in a significant amount of a pollutant entering a water of the state. Pollution of Iowa’s waterways is a serious problem. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Therefore, the amount of \$500.00 is assessed for this factor.

c. **Culpability.** Mitch and Rebecca Naeve are engaged in the business of farming which includes the bulk storage of chemicals. The storage of chemicals is very serious and when doing so there is an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

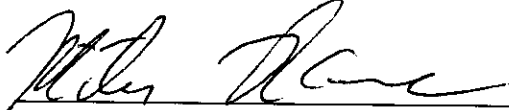
Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Mitch and Rebecca Naeve. By signing this order, all rights to appeal this order are waived by Mitch and Rebecca Naeve.

VIII. NONCOMPLIANCE

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

Mitch and Rebecca Naeve

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Mitch Naeve

Dated this 24 day of 2024



Rebecca Naeve

Dated this 24 day of 2024

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

FO 2, Carrie Schoenebaum- Legal Services Bureau

72194 10/25/24 PM 301

72194 10/25/24 PM 302