

DEC 16 2024

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

IN THE MATTER OF:

**PETER JUNIOR HOOGLAND dba
HIGHLAND DAIRY**

Sioux County
AFO #59250

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-36

TO: Peter Junior Hoogland
2982 470th Street
Maurice, Iowa 51036

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Peter Junior Hoogland dba Highland Dairy for the purpose of resolving violation of the animal feeding operation manure management plan and construction permit regulations. This administrative consent order requires Mr. Hoogland to pay a \$10,000.00 administrative penalty. 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:

Daniel Morse, Field Office 3
Iowa Department of Natural Resources
1900 N Grand, Gateway North, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

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

Payment of penalty to:

Director of the Iowa DNR
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

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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. Peter Junior Hoogland owns and operates a combined animal feeding operation known as Highland Dairy. The facility is located at 3267 460th Street, Maurice, Iowa (Section 10, Sherman Township, Sioux County). The facility has a total capacity of 2,150 head of dairy cattle (2,810 animal units) in confinement buildings and open feedlots. In confinement, the facility has a capacity of 1,500 head of mature dairy cattle (2,100 animal units) and 200 head of immature dairy cattle (200 animal units). In open feedlot, the facility has a capacity of 150 head of mature dairy cattle (210 animal units) and 300 head of immature dairy cattle (300 animal units). The facility will be transferring manure to and from a Novilla RNG digester located at the Maassen and Sons animal feeding operation through a pipeline located south of the facility approximately 3/4 of a mile. The Sioux County Assessor's Office stated that Hoogland purchased the facility from Roorda Dairy in November 2019.¹

2. On May 2, 2024, Mr. Hoogland submitted a construction permit application for the construction of the manure transfer pipeline and a new nutrient management plan (NMP); the NMP had a manure management plan (MMP) for the confinement portion of the facility imbedded within the NMP. On May 22, 2024, Daniel Morse, DNR Field Office 3 environmental specialist, conducted a site survey at the Hoogland facility to verify the separation distances and to discuss the requirements with Mr. Hoogland. Mr. Morse noted that the pipeline had already been constructed. The pipeline was connected to the main pipeline to the digester, but had not been connected to the manure separation structure at the facility. Mr. Morse also spoke with Jared Williams with Novilla RNG. Mr. Williams confirmed that construction of the pipeline took place between November 14-20, 2023.

3. On June 3, 2024, DNR issued a Notice of Violation letter to Mr. Hoogland for failing to submit the NMP within 60 days of new ownership as well as the construction of the pipeline prior to the issuance of a construction permit. The letter informed Mr. Hoogland that the matter was being referred for further enforcement.

4. On June 24, 2024, the construction permit for the pipeline was issued for Highland Dairy.

¹ During the DNR Field Office 3 investigation in May 2024, Mr. Hoogland stated he purchased the facility on November 1, 2023.

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IV. CONCLUSIONS OF LAW

1. 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.

2. 567 IAC 65.103(1)"i" requires that a construction permit is required prior to installing a permanent manure transfer piping system. During the site visit in May 2024, DNR Field Office 3 noted that the construction of the manure transfer pipeline had been completed prior to the issuance of a construction permit. The digester company confirmed that construction of the pipeline had been completed in November 2023. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.110(1)"d"" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Sioux County Assessor's Office stated that Hoogland purchased the facility from Roorda Dairy in November 2019 and Mr. Hoogland stated he took over ownership of the facility on November 1, 2023; however, the NMP with MMP information was not submitted until May 2024. Regardless of the date of ownership transfer, the MMP was not submitted within 60 days of new ownership. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Hoogland agrees to do the following:

1. 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.

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

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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.” Mr. Hoogland gained an economic benefit by completing construction prior to the construction being issued. He was able to start processing manure earlier than he would have if he had waited for the issuance of the construction permit to begin construction. Additionally, Mr. Hoogland gained an economic benefit by delaying the costs associated with developing an original MMP within 60 days of purchase. Based on the above-mentioned factors, \$3,000.00 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. When a facility constructs manure transfer piping prior to obtaining a construction permit, it bars the DNR from reviewing the design and location of the construction project. These actions circumvent the protections put in place by the rule requirements and threatens the integrity of the animal feeding operation regulations. Additionally, the MMP is a crucial aspect of the DNR’s animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. Therefore, \$3,500.00 is assessed for this factor.

Culpability – Mr. Hoogland has a duty to know the regulations and to be aware that his actions are subject to the regulations. Therefore, \$3,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Peter Junior Hoogland. For that reason, Mr. Hoogland 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

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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



PETER JUNIOR HOOGLAND

Dated this 11th day of
December, 2024