

IOW IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Loren Van Zante and Rhonda Van Zante	ADMINISTRATIVE CONSENT ORDER NO. 2007-AFO-26
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TO: Loren and Rhonda Van Zante
16335 Monroe-Wapello Rd
Eddyville, IA
52553

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Loren and Rhonda Van Zante (the Van Zantes) and the Iowa Department of Natural Resources (DNR). The Van Zantes hereby agree to comply with minimum manure control requirements which include maintaining a minimum of 24 inches of freeboard. Further, the Van Zantes agree to record the freeboard measurements on a weekly basis and submit the weekly records for each month to DNR Field Office 6 and to pay an administrative penalty of \$5,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Kurt Levelzow
IDNR Field Office #6
1023 W. Madison.
Washington, IA 52353
Ph: 319/63-2135

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

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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 1, or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties agree to the following statement of facts:

1. The Van Zantes, owns and operate an animal confinement located in Section 18, T73N, R15 W (Columbia Township), Wapello County, Iowa. This property is locally known as 16335 Monroe-Wapello Rd., Eddyville, Iowa (16335 Monroe). Manure is collected and stored in an earthen basin.

2. On October 23, 2006, DNR Field Office 6 received a complaint alleging that water in an unnamed tributary to the Des Moines River was red. Kurt Levetzow, an Environmental Specialist Senior with DNR Field Office #6, investigated the complaint and verified that the creek was tinted red. Mr. Levetzow took a sample of the water, and walked the creek upstream looking for the source. After walking upstream 300 yards, Mr. Levetzow found where the red tinted water was entering the creek bed (discharge point). Mr. Levetzow then walked out of the creek bed, through a section of a picked cornfield and found an earthen basin that was overflowing red tinted manure-laden water into an intermittent stream. The land owner was found to be the Van Zantes. To stop the leak Mr. Levetzow instructed Mr. Van Zante to put 3 tractor buckets of dirt on the earthen basin berm and another 3 loads of dirt at the edge of the cornfield to prevent contaminated water from reaching the stream. Mr. Levetzow documented this release through stream sampling and digital photos.

3. On October 24, 2006, Mr. Levetzow and Josh Sobaski of the DNR revisited the Van Zantes' farm. Mr. Van Zante and his son, Joshua Van Zante, were present. Mr. Levetzow took stream samples at the following locations: up gradient of the discharge point, at the discharge point and down gradient of the discharge point. These samples were sent to the University of Iowa Hygienic Laboratory for analysis. The results of the stream samples are as follows:

Upgradient Sample - GPS 290			
Sample collected	Concentration mg\L	Quantitation limit mg\L	
	* Concentration\100mL	* Quantitation limit 100\mL	
Total BOD	6	2	
Fecal Coliform	*120	*10	
TSS	8	1	
TVSS	5	1	

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Ammonia	0.26	0.05
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Discharge Point Sample - GPS 291			
Sample collected	Concentration mg/L * Concentration\100mL	Quantitation limit mg/L * Quantitation limit 100\mL	
10/24/06			
Total BOD	23	2	
Fecal Coliform	*<10	*10	
TSS	550	1	
TVSS	240	1	
Ammonia	13	0.05	

Downgradient Sample - GPS 292			
Sample collected	Concentration mg/L * Concentration\100mL	Quantitation limit mg/L * Quantitation limit 100\mL	
10/24/06			
Total BOD	29	2	
Fecal Coliform	*<10	*10	
TSS	180	1	
TVSS	140	1	
Ammonia	18	0.05	

Mr. Levetzow also instructed Mr. Van Zante to pump the basin down to achieve 24 inches of freeboard. By the end of the day, Mr. Van Zante stated that he had pumped down and land-applied at least 24 inches of the basin contents. Furthermore, permission was obtained from Don Sephenson of Cargill Inc. (Cargill) to construct a dam on Cargill's property. This pooled manure-laden water would be pumped after the creek bed was flushed with water.

4. On October 25, 2006, Mr. Levetzow met with Joshua Van Zante on Cargill's land where the dam was constructed. Throughout the day, Mr. Van Zante flushed 15,000-18,000 gallons of water down the creek bed.

5. On October 26, 2006, it rained all day. On October 27, 2006, Mr. Levetzow went back to the location of the dam on Cargill's property. At this time there was no pooled water/manure (from flushing/rainwater accumulation). Mr. Levetzow also walked the stream bed up gradient, toward the Mr. Van Zante's land. Along the way, Mr. Levetzow took field samples of the water with an ammonia Hach Kit and a high range Vacuette Kit. On Cargill's land the ammonia was nearly undetectable. On the northern edge of the land neighboring the Van Zante property, ammonia was between 0 and 0.7 ppm. On the southern edge of Allgood's land which is 50 yards from Van Zante's fence, ammonia was between 0 and 1.6 ppm.

6. Following this investigation, on November 21, 2006, the Van Zantes were sent a Notice of Violation (NOV). This NOV informed the Van Zantes of the DNR rules which apply to an animal feeding operation. This NOV also required the Van Zantes to maintain at least 24 inches of freeboard.

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7. On December 7, 2006, Mr. Levetzow and Brent Early of the DNR conducted a follow up investigation at 16335 Monroc. This investigation revealed that 24 inches of freeboard was not being maintained.

8. On December 14, 2006, the DNR sent the Van Zantes an NOV for failure to maintain 24 inches of freeboard.

9. On March 23, 2007, Mr. Levetzow and Bert Noll, an Environmental Specialist with the DNR, conducted a follow up visit at 16335 Monroc. Mr. Levetzow and Mr. Noll observed that the mandatory 24 inches of freeboard was not being maintained. In fact, it appeared that only 3 inches of freeboard was present. Mr. Van Zante was not home at the time of the inspection, however his wife was and she told Mr. Levetzow and Mr. Noll that her husband and her son were at his father's farm. Mr. Levetzow and Mr. Noll went there to speak with Mr. Van Zante. Upon arriving at the farm, Mr. Levetzow explained to Mr. Van Zante what he had observed and that he was concerned because the basin was close to running over which would result in another manure spill. Mr. Van Zante explained that he was dealing with bad weather and that he could not keep the basin pumped down due to the weather.

10. On March 27, 2007, an NOV was sent to the Van Zantes regarding the March 23, 2007, inspection. This NOV informed the Van Zantes that he is required to keep 24 inches of freeboard and that 567 IAC 65.2 (3) "b" requires that manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the DNR. A permit has not been issued for this facility therefore, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission to adopt rules establishing water quality and discharge standards, relating to the operation and construction of animal feeding operations and the conditions under which the DNR shall issue permits to such operations, and relating to the disposal of manure resulting from animal feeding operations, among other things. The Commission has done so at 567 IAC Chapters 60-65. Chapter 65, in particular, relates to animal feeding operations.

3. Iowa Code section 459.103 requires the Environmental Protection Commission to adopt rules related to the construction or operation of animal feeding operations,

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including minimum manure control requirements. The Commission has done so at 567 IAC Chapter 65.

4. Iowa Code subsection 459.311(1) and 567 IAC 65.2(3), require that all manure produced in a confinement feeding operation be retained between periods of waste disposal and prohibit the discharge of manure into a water of the State or into a tile line that discharges to water of the State. 567 IAC 65.2(3) also requires that manure be removed from manure control facilities as necessary to prevent overflow or discharge; that manure be removed from lagoons and earthen manure storage basins as necessary to maintain a minimum of two feet of freeboard in the structure; and that manure be removed as needed prior to periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors) in order to assure that adequate capacity exists in the manure storage facilities. 567 IAC 65.2(7) requires manure to be removed from control facilities and applied to land so as to not allow surface or ground water pollution. The above facts disclose violation of one or more of these statutory and rule provisions.

5. 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 above facts indicate a violation of one or more of these criteria.

6. 567 IAC 65.2 states that "[w]ater pollution control facilities shall be constructed and maintained to meet the minimum manure control requirements stated in subrules 65.2(1) to 65.2(8) of this rule." The above stated facts show noncompliance with this provision.

7. 567 IAC 65.2(9) requires that

[a] release, as defined in rule 65.1(455B), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure in compliance with these rules.

a. Notification. 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 at (515)281-8694. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the spill involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.2(9)"c."

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The above stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the DNR hereby orders and the Van Zantes consent to do the following:

1. Retain all wastes produced in confinement units between periods of waste disposal; remove wastes as necessary to prevent overflow or discharge and to maintain a minimum freeboard of two feet, and dispose of the removed wastes on land in a manner which will not cause pollution. Discharge of pollutants to a water of the State, directly or indirectly, is prohibited.
2. Comply with all requirements contained in 567 IAC Chapter 65 regarding animal feeding operations.
3. The Van Zantes shall record the freeboard measurements on a weekly basis and submit the weekly records for each month to DNR Field Office 6. The records for each month shall be submitted by the 15th day of the following month and shall be submitted to Kurt Levetzow at 1023 W. Madison, Washington, IA 52353.
4. A penalty of \$5,000.00 shall be paid to the DNR in accordance to the following payment plan:
 - \$250.00 due no later than September 30, 2007;
 - \$250.00 due no later than October 30, 2007;
 - \$250.00 due no later than November 30, 2007;
 - \$250.00 due no later than December 30, 2007;
 - \$250.00 due no later than January 30, 2008;
 - \$250.00 due no later than February 30, 2008;
 - \$250.00 due no later than March 30, 2008;
 - \$250.00 due no later than April 30, 2008;
 - \$250.00 due no later than May 30, 2008;
 - \$250.00 due no later than June 30, 2008;
 - \$250.00 due no later than July 30, 2008;
 - \$250.00 due no later than August 30, 2008;
 - \$250.00 due no later than September 30, 2008;
 - \$250.00 due no later than October 30, 2008;
 - \$250.00 due no later than November 30, 2008;
 - \$250.00 due no later than December 30, 2008;
 - \$250.00 due no later than January 30, 2009;
 - \$250.00 due no later than February 28, 2009;
 - \$250.00 due no later than March 30, 2009; and
 - \$250.00 due no later than April 30, 2009.

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If any of the above payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code section 455B.109 authorizes the Environmental Protection 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; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the DNR has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. The Van Zantes saved time and money by not complying with Iowa's laws, including but not limited to the removal of manure from the manure storage structures in order to maintain two feet of freeboard and to prevent a discharge to waters of the State. It is estimated that these savings are at least \$1,000.00. Therefore, \$1,000.00 is assessed for this factor.

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 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. This matter involves actual impact to water quality, which was exacerbated by the failure to report the release. Multiple rule or statutory provisions were violated including failure to maintain the required freeboard, failure to retain manure, failure to report a release, discharge to water of the State, and violation of water quality standards. The violations threaten the integrity of the water quality program. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the four above-cited violations. However, in view of the maximum administrative penalty and the Culpability factor, below, \$3,000.00 is assessed for this factor.

c. Culpability. The Van Zantes failed to contain the manure from the confined feeding operation. Further, the Van Zantse twice failed to comply with freeboard requirements despite specific directions from DNR staff concerning this requirement. For these reasons, \$1,000.00 per day could be assessed for this factor for each of the above-cited violations. However, in view of the maximum administrative penalty and the Gravity factor, above, \$1,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

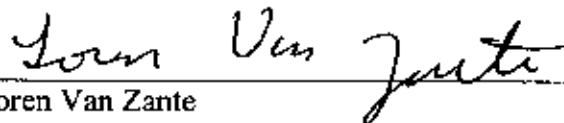
Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of the Van Zantes. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The DNR reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this Order as well as any subsequent violations if the Order is violated.


Rhonda Van Zante

Dated this 5 day of
September 2007.


Loren Van Zante

Dated this 5 day of
September, 2007.


RICHARD A. LEOPOLD DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11 day of
September, 2007.

EPA, Field Office 6, Carrie Schoenebaum; Kurt Levetzow, VIII D. 1 (a) 2 (a) 3 (a).