

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

**IN THE MATTER OF:**

Loren and Rhonda Van Zante

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2007-AFO- 27**

**TO: Loren and Rhonda Van Zante**  
16335 Monroe-Wapello Rd  
Eddyville,IA  
52553

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Rhonda and Loren Van Zante (the Van Zantes) and the Iowa Department of Natural Resources (DNR). The Van Zantes hereby agree to cease all illegal discharges to waters of the State, to contact an engineer and develop a plan of action. Once the plan of action has been implemented, the Van Zantes agree to submit a letter to the DNR signed by an engineer that certifies that the improvements meet design standards. Further, the Van Zantes agree to comply with Iowa's statutes and rules regarding the operation of an open feedlot and pay an administrative penalty of \$6,000.00.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Mark Heiderscheit  
IDNR Field Office #6  
1023 W. Madison.  
Washington, IA 52353  
Ph: 319/653-2135

**Legal Issues**

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

**Payment of penalty to:**

Iowa Department of Natural Resources  
Wallace Building  
502 E. 9<sup>th</sup> St.  
Des Moines, Iowa 50319-0034

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**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

**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 459A 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 hereby agree to the following statement of facts:

1. The Van Zantes, lease, own and/or operate an open feedlot operation located in Section 19, T-73-N, R-15-W (Columbia Township), Wapello County, Iowa. This property is locally known as 24087 Power Plant Rd, Eddyville, Iowa (24087 Power Plant). The land upon which the open feedlot is located is owned by Elmer Van Zante. This facility has a capacity of 110 head of cattle.

2. On March 30, 2004, a complaint regarding the Van Zantes' animal feeding operation was filed with DNR field office 6. This complaint alleged that the Van Zantes were pushing manure from their operation into a waterway on their property that drains directly into the Des Moines River.

3. On April 5, 2004, Kenneth Marsengill, an Environmental Specialist of the DNR, conducted an onsite investigation of the complaint. While on site, Mr. Marsengill observed stockpiled manure that had been pushed towards the east side of the Van Zantes' open feedlot and into an unnamed tributary of Palestine Creek. This tributary drains into another (larger) unnamed tributary of Palestine Creek and is down gradient of 24087 Power Plant.

4. Mr. Marsengill called Elmer Van Zante on April 6, 2004, and asked him to remove and retain solids from entering the unnamed tributary. During this phone call, Elmer Van Zante stated that he would begin immediately loading up the stockpiled manure into a manure spreader and properly land apply the manure.

5. On April 15, 2004, a progress visit was conducted by Mr. Marsengill. During this visit, it was observed that approximately 98% of the manure had been cleaned up from the unnamed tributary. Following this visit, Mr. Marsengill contacted Elmer Van Zante by phone. During this conversation Mr. Marsengill recommended, and Elmer Van Zante agreed, that additional cleanup of manure from the unnamed tributary was needed.

6. On May 25, 2004, a letter was sent to Elmer Van Zante reviewing the facts discussed in paragraphs 2-5.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

7. On August 18, 2006, the DNR received a complaint alleging that manure was being stockpiled at 24087 Power Plant. It was alleged that the stockpiled manure was being discharged into the unnamed tributary. Further, the complainant alleged that the pile of manure was approximately 25 feet wide and 23 inches deep.

8. On August 21, 2006, an investigation of 24087 Power Plant was conducted by Mark Heiderscheid, an Environmental Specialist of the DNR. During the inspection, the following was observed:

1. The facility sits on a ridge that slopes to the south and the north;
2. A large stockpile of manure solids was present on the east side of the lot;
3. The unnamed tributary was full of solids; and
4. There were small pools of water in the unnamed tributary near its confluence with the larger unnamed tributary.

Digital photos and water samples were taken by Mr. Heiderscheid to document the manure release. The water samples were sent to The University of Iowa Hygienic Laboratory for analysis. The results were as follows:

1. Total Biochemical Oxygen Demand (5 day): Concentration—350 mg/L;
2. Membrane Fecal Coliform: Concentration 100 mg/L—490000;
3. Total Suspended Solids: Concentration mg/L—4100; and
4. Ammonia Nitrogen as N: Concentration—66mg/L.

9. On August 24, 2006, a Notice of Violation (NOV) was sent to the Van Zantes. This NOV required the Van Zantes to do the following:

1. Comply with all requirements contained in 567 IAC Chapter 65 regarding animal feeding operation;
2. Prevent further discharges of manure from this and/or any other feedlot which the Van Zantes own;
3. Remove solids from the unnamed tributary by September 29, 2006;
4. Properly land-apply the stockpile of manure by September 29, 2006;

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

5. Contact a private engineer, ISU extension office or Natural Resources Conservation Service engineer (NRCS) to perform an assessment of the Van Zantes' operation and to develop a manure control structure that complies with the open feedlot regulations;
6. Submit in writing to the DNR by the close of business, October 15, 2006, the results of the assessment and a plan of action as to when the improvements will be implemented;
7. Once the improvements have been completed submit a letter from the engineer stating that the work has been completed and meets design standards;
8. Properly dispose of all farm waste in accordance with the solid waste rules;
9. Do not burn or bury waste unless allowed by a specific exemption or variance in accordance with Iowa Administrative Rules; and
10. Ensure compliance with all other applicable rules and regulations pertaining to the operation of this animal feeding operation.

A copy of the relevant Iowa Administrative Rules was enclosed with this NOV. To date the Van Zantes have not complied with any of the above requests.

10. On September 6, 2006, the water sample lab results, referenced in paragraph 8 were sent to the Van Zantes.

11. On October 19, 2006, Mr. Heiderscheid returned to the Van Zantes' open feedlot. While there he observed and photographed the following:

1. Run off from the feedlot going down the hill towards the unnamed tributary;
2. It appeared that a small portion of the stockpiled manure had been removed, however, some stockpiled manure remained;
3. The unnamed tributary had not been cleaned out; and
4. The only liquid present was coming off the feedlot.

12. On November 21, 2006, the Van Zantes were sent an NOV regarding the violations at the open feedlot. This NOV informed the Van Zantes of the relevant Iowa Administrative Rules relating to operation of an open feedlot.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

13. On December 14, 2006, the Van Zantes were sent an NOV regarding the above discussed open feedlot violations. This NOV reminded the Van Zantes to comply with the relevant open feedlot rules. This NOV also informed the Van Zantes that as of the October 19, 2006, visit by Mr. Heiderscheid it appeared that the feedlot had not been properly cleaned up and that the DNR had still not received the engineering evaluation which was required to be submitted by the August 24, 2006, NOV.

14. On March 13, 2007, an anonymous complaint was received by DNR field office 6. This complaint alleged that manure was running off the Van Zantes' open lot at 24087 Power Plant.

15. On March 29, 2007, Mr. Heiderscheid and Jim Sievers, an Environmental Specialist Senior of the DNR, conducted a complaint investigation at 24087 Power Plant Road. At the time of the investigation, Loren and Josh Van Zante (Loren's son) were present. While on site Mr. Heiderscheid and Mr. Sievers observed the following:

1. A large stockpile of manure solids on the east side of the lot;
2. A berm around the stockpile to contain the manure from flowing towards the unnamed tributary;
3. Solids from the feedlot and stockpile appeared to have flowed SE to the unnamed tributary on the south side of the lot;
4. Runoff from the hog pen into the unnamed tributary;
5. Manure solids from the hog pen in the unnamed tributary;
6. The unnamed tributary was full of solids; and
7. Small pools of water in the unnamed tributary near its confluence with the larger unnamed tributary.

16. On March 29, 2007, an NOV was sent to the Van Zantes. This NOV discussed what Mr. Heiderscheid and Mr. Sievers observed during the complaint investigation. It also required the Van Zantes to take the following corrective action:

1. Prevent further discharges of manure from this and/or any other feedlots owned by the Van Zantes;
2. Remove solids from the unnamed tributary;
3. Properly land-apply the stockpile of manure;

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

4. Contact a private engineer, ISU extension office or NRCS engineer to perform an assessment of the entire operation and to develop a manure control structure that complies with the open feedlot regulations;
5. Submit in writing to the DNR by the close of business, on October 15, 2006, the results of the assessment and a plan of action as to when the improvements will be implemented;
6. Once the improvements have been completed submit a letter from the engineer stating that the work has been completed and that it meets design standards; and
7. Ensure compliance with all other applicable rules and regulations pertaining to the operation of animal feeding operations.

17. The Wapello County Soil Survey indicates that the area in which the Van Zantes' open feedlot is located slopes between 2 and 14 percent. Based on Mr. Heiderscheit's observation, the slope of the Van Zantes' open feedlot is estimated to be greater than 3 percent.

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

The parties 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 459A.104 requires the Environmental Protection Commission to adopt rules related to the construction or operation of open feedlot operations. The Commission has done so at 567 IAC Chapter 65, Division II.
3. 567 IAC 65.101(9) requires that
  - [a] release, as defined in rule 65.100 (455B,459,459A), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids in compliance with these rules, or to precipitation- or snowmelt-induced runoff from open feedlots in compliance with the minimum control requirements set forth in this rule.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

a. Notification. A person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot 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 release involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.101(9)"c."

The above stated facts show noncompliance with this provision.

4. 567 IAC 65.103(4) states that

[i]f departmental evaluation determines that any of the conditions listed in paragraph 65.103(4)"a," "b," or "c" exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the State and the operation is not providing the applicable minimum level of manure control as specified in rule 65.101(459A);

b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the State; or

c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.

Based on the above stated facts the DNR concludes that one or more the foregoing conditions exist and the Van Zantes are hereby notified that they are required to carry out the remedial measures specified in V. Order, paragraphs 1-4, below.

5. Iowa Code section 459A.401(1) and 567 IAC 65.101(1) require that each open feedlot operation remove all settleable solids from open feedlot effluent prior to discharge into a water of the State. The foregoing facts establish that these provisions were violated.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

6. Iowa Code section 459A.403 states in part:

A person may stockpile solids, subject to all of the following:

1. a. The person shall not stockpile the solids within the following distances:

(1) Four hundred feet from a designated area other than a high-quality water resource.

...

d. The person shall not stockpile solids on land having a slope of more than three percent unless methods, structures, or practices are implemented to contain the stockpiled solids, including but not limited to using hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

The above stated facts show noncompliance with this provision.

7. 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.

## **V. ORDER**

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

1. In accordance with Iowa Code section 459A.410 and 567 IAC 65.101(6), properly land-apply the stockpile of manure within 30 days of the Director signing this Order.

2. No later than September 17, 2007, contact a private engineer, Iowa State University extension office or a NRCS engineer to conduct an engineer assessment and create a plan of action.

3. No later than October 30, 2007, submit in writing to DNR field office 6 the results of the engineer assessment and a plan of action as to when the improvements will be implemented. The plan of action will be reviewed by the DNR to determine if the timeframe to implement the improvements is acceptable.

4. Once the improvements have been completed submit a letter from the engineer certifying that the work has been completed and meets design standards.

5. Comply with all requirements contained in 567 IAC Chapter 65 regarding animal feeding operations.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

6. A penalty of \$6,000.00 shall be paid to the DNR in accordance to the following payment plan:

- \$300.00 due no later than September 30, 2007;
- \$300.00 due no later than October 30, 2007;
- \$300.00 due no later than November 30, 2007;
- \$300.00 due no later than December 30, 2007;
- \$300.00 due no later than January 30, 2008;
- \$300.00 due no later than February 28, 2008;
- \$300.00 due no later than March 30, 2008;
- \$300.00 due no later than April 30, 2008;
- \$300.00 due no later than May 30, 2008;
- \$300.00 due no later than June 30, 2008;
- \$300.00 due no later than July 30, 2008;
- \$300.00 due no later than August 30, 2008;
- \$300.00 due no later than September 30, 2008;
- \$300.00 due no later than October 30, 2008;
- \$300.00 due no later than November 30, 2008;
- \$300.00 due no later than December 30, 2008;
- \$300.00 due no later than January 30, 2009;
- \$300.00 due no later than February 28, 2009;
- \$300.00 due no later than March 30, 2009; and
- \$300.00 due no later than April 30, 2009.

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 sections 455B.191 and 459A.502 authorize 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 law, including but not limited to land applying the stockpiled manure. It is

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante**

estimated that these savings are at least \$500.00. Therefore, \$500.00 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 prevent and report the recurrence of the discharge. Multiple rule or statutory provisions were violated on at least two days including discharge to water of the State, failure to maintain the minimum manure controls, 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 above-cited violations. Therefore, \$3,000.00 is assessed for this factor.

c. Culpability. The Van Zantes have failed to take measures to properly contain runoff from the open lot and properly handle the stockpiles of manure. Moreover, after receiving the first NOV regarding the violation the Van Zantes did not take any steps to comply with what was asked of them in the NOV. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the above-cited violations. Therefore, \$2,500.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Loren and Rhonda Van Zante

**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 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.

Rhonda Van Zante  
Rhonda Van Zante

Dated this 5 day of  
September, 2007.

Loren Van Zante  
Loren Van Zante

Dated this 5 day of  
September, 2007.

Richard A. Leopold  
RICHARD A. LEOPOLD DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11 day of  
September, 2007.

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