

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

IN THE MATTER OF:

**CHAD EVEN**  
Facility #65432  
Black Hawk County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2016-AFO- 20

TO: Chad Even  
8319 Fox Road  
Jesup, Iowa 50648

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Chad Even for the purpose of resolving the failure to timely submit a complete Manure Management Plan (MMP) update and fees for 2016 for his animal feeding operation. 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:**

Tom McCarthy, Field Office 1  
Iowa Department of Natural Resources  
909 West Main Street, Suite 4  
Manchester, Iowa 52057  
Phone: 563/927-2640

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**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 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Chad Even owns an animal feeding operation located at 6633 Oxley Road, Cedar Falls, Iowa (Section 28, Fox Township, Black Hawk County, Iowa). The facility is a 2,400 head (960 animal units) swine wean to finish confinement operation. Mr. Even filed the original Iowa Phosphorus Index MMP for the facility in 2007. The annual MMP update deadline was established as July 1 of each calendar year. The compliance fee for the facility is \$144.00.

2. Mr. Even failed to submit the 2016 MMP update with Phosphorus Index and fee by July 1, 2016. On July 11, 2016, DNR issued a Notice of Violation letter to Mr. Even for failing to submit the 2016 MMP update and fee by July 1, 2016. The letter stated the MMP update with Phosphorus Index and fee must be submitted by August 1, 2016 in order to avoid further enforcement, including a possible monetary penalty. On August 8, 2016, DNR Field Office 1 personnel left a voice mail reminder with the facility contact, Jeff Rottinghaus. On August 10, 2016, Mr. Rottinghaus and Tom McCarthy, DNR Field Office 1 environmental specialist senior, spoke on the telephone. Mr. McCarthy reminded Mr. Rottinghaus that the MMP update with Phosphorus Index and fee had been due July 1, 2016 and that a monetary penalty may be assessed for the violations.

3. Mr. Even failed to submit the 2016 MMP update and fee by August 1, 2016. On August 17, 2016, DNR issued a Notice of Referral to Mr. Even for failing to timely submit the 2016 MMP update and fee. The letter informed Mr. Even that the matter would be referred for further enforcement. The MMP update with Phosphorus Index and fee was submitted on August 29, 2016, and has been approved by DNR.

4. Mr. Even failed to timely submit the MMP update and fees in 2010, 2011, 2012, 2013, and 2014. He was issued a Notice of Violation letter for each untimely submittal.

**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. The Commission has adopted such rules at 567 IAC Chapter 65.

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2. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to submit a complete updated MMP and compliance fees on an annual basis to the DNR. The updated plan must reflect all amendments made during the period of time since the previous MMP submission. The compliance fee is fifteen cents per animal unit. The 2016 MMP update and fee for Mr. Even were due July 1, 2016 and were not submitted until August 29, 2016. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

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

1. Mr. Even shall pay an administrative penalty in the amount of \$3,000.00 within 30 days from 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 \$3,000.00. 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 10.2(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 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Mr. Even's delay in failing to timely submit a complete MMP update and fee allowed Mr. Even to save time and money by deferring the payment of the compliance fee. It is estimated that Mr. Even gained an economic benefit of at least \$50.00 and that amount is assessed for this factor.

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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 MMP update is a crucial aspect of the DNR's animal feeding operation program. The MMP update confirms 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. Mr. Even's facility has a capacity of 960 animal units and environmental harm could occur if the manure is not applied properly. Therefore, \$1,450.00 is assessed for this factor.

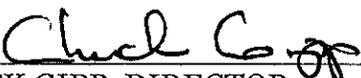
Culpability – Mr. Even has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Even has received seven Notice of Violation letters for failing to timely submit his annual MMP and fees. Mr. Even was issued a letter that informed him of a monetary penalty if the 2016 MMP update and fee were not submitted by August 1, 2016. The MMP update and fee were not submitted until August 29, 2016. Mr. Even was aware of the regulations yet failed to comply with the requirement by the deadline. Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Mr. Even. For that reason Mr. Even 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 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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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 20 day of  
November, 2016.

  
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CHAD EVEN

Dated this 20 day of  
Oct, 2016.

Facility #65432; Kelli Book; Field Office 1; EPA; VIII.C.2