IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **PARKS FINISHING J3, LLC** **AFO #67232** **Fremont County, Iowa**	ADMINISTRATIVE CONSENT ORDER NO. 2015-AFO- 26

TO: Parks Finishing J3, LLC
c/o Michael Blaser, Registered Agent
666 Grand Avenue, Suite 2000
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Parks Finishing J3, LLC (Parks Finishing) for the purpose of resolving manure application field violations. 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:
Alison Manz, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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

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

III. STATEMENT OF FACTS

Parks Finishing neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Parks Finishing is an animal feeding operation located at 2202 230th Street, Percival, Iowa (NW 1/4 of the NW 1/4 of Section 15, Sidney Township, Fremont County). The facility consists of one confinement building with a building pit for manure storage. The confinement building houses 2,496 head of hogs (998.40 animal units).

2. On November 23, 2014, DNR Field Office 4 received a call from the spill line regarding a manure spill in Fremont County. During the investigation, Ms. Manz discovered that Steve Huegerich dba Twilight Services (Twilight Services) was hired by Parks Finishing to apply manure from its facility to several fields in the area. It was determined that Twilight Services violated manure separation distance requirements and failed to ensure all of its manure applicators were properly certified.

3. On November 24, 2014, Ms. Manz spoke to Shane McFarland, certified manure applicator with Twilight Services. Mr. McFarland indicated the application rates on the corn and bean fields were 5,500 gallons per acre and the application rates on the alfalfa and pasture ground was 6,000 gallons per acre. Ms. Manz determined that the application fields were not in the Manure Management Plan (MMP) for the Parks Finishing facility.

4. On November 26, 2014, Ms. Manz emailed Parks Finishing's consultant, Twin Lakes Environmental Services, requesting the soil samples, RUSLE2, Phosphorus-Index (P-Index) and MMP information for the fields where manure was land applied but not in the MMP. Becky Sexton with Twin Lakes Environmental Services stated she would submit the information by the following day. On December 2, 2014, a representative of Twin Lakes Environmental Services sent an email to Ms. Manz stating that Ms. Sexton was on vacation but that the company was working on Parks Finishing and that everything would be ready for Ms. Sexton to do the RUSLE2 when she returned. On December 3, 2014, Ms. Manz received an email from Ms. Sexton stating she was on vacation but was waiting for the mapping to be finalized for Parks Finishing.

5. On December 11, 2014, DNR issued a Notice of Violation letter to Parks Finishing for the violations discovered during the November investigation. On December 13, 2014 Ms. Sexton emailed Ms. Manz and stated that the Notice of Violation letter was sent in error because the fields had been included in the facility's

MMP. Ms. Sexton stated she would email a new copy of the MMP because the field office must not have received the documents needed. Ms. Manz responded that the MMP on file with DNR Field Office 4 did not include any of the application fields. Ms. Sexton responded and stated that the fields had been added to the MMP in the Fall of 2014 prior to the application in question.

6. On December 17, 2014, Ms. Manz received an email from Ms. Sexton inquiring as to if the field office had received the updated MMP. On December 18, 2014, Ms. Manz conducted a file review of all of the Parks Finishing facilities in Fremont County to determine if the application fields were included in one of the other facilities' MMP. Ms. Manz noted that one of the fields was in the MMP for Parks Finishing J4 and another one of the fields was in the MMP for Parks Finishing J9. Ms. Manz responded to Ms. Sexton and informed her that the MMP for the Parks Finishing J3 facility does not include any of the fields in question and none of the updates received since the original MMP was submitted for the facility in 2012 included any of the fields in question. Ms. Sexton stated she would email the complete MMP to Ms. Manz later in the day.

7. On December 23, 2014, Ms. Sexton emailed Ms. Manz the updated information for the Parks Finishing J3 facility. On January 22, 2015, Ms. Manz reviewed the information. This information included soil samples, RUSLE2, P-Index and the MMP summary form for each of the fields in question. Ms. Manz noted that three of the fields had a P-Index greater than 10, indicating manure should not have been applied to those fields.

IV. CONCLUSIONS OF LAW

Parks Finishing neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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 65.17(1)"a" states that a confinement feeding operation that is required to submit a MMP to the DNR shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. 567 IAC 65.17(17)"f"(4) further states that manure shall not be applied on a field with a rating greater than 5 and less than or equal to 15 until practices are adopted which reduce the phosphorus index to at least the medium risk category. In November 2014, DNR Field Office 4 observed manure from the Parks Finishing facility applied to three fields with a rating greater than 10. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Parks Finishing agrees to do the following:

1. Parks Finishing shall submit a new MMP with correct information to DNR Field Office 4 for the J3 facility within 30 days of the date the Director signs this administrative consent order. The MMP must also clearly state that manure application is not to take place on fields with a P-Index of greater than 5;

2. Due to the close proximity to the J3 facility of another facility owned by Parks Finishing J4, LLC, and without any precedential effect, Parks Finishing J4, LLC has agreed to review its MMP for the J4 facility to assure it is accurate. A signed statement verifying that the review was completed must be submitted to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order. If any of the information in the MMP for J4 is inaccurate, Parks Finishing J4, LLC has agreed to submit an updated MMP to DNR Field Office 4 within 60 days of the date the Director signs this administrative consent order;

3. Parks Finishing must assure that the certified manure applicator receives written instructions prior to any manure application from the Parks Finishing facility; and

4. Parks Finishing shall pay an administrative penalty in the amount of $2,000.00 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 $2,000.00. 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." Parks Finishing gained an economic benefit from applying to at least three application fields where the rules prohibit manure application. Parks Finishing avoided the costs associated with the need to find other acceptable application fields for manure application. Based on the above-factors, $500.00 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. One of the main purposes of the RUSLE2 and the P-Index is to ensure that runoff is controlled and water quality is not threatened. Parks Finishing's failure to land apply manure on suitable ground and ground with a P-Index rating of less than 5 created a potential threat to water quality. This violation is of a kind that may threaten the integrity of the water quality program. Therefore, $1,300.00 is assessed for this factor.

Culpability – Parks Finishing has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, $200.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Parks Finishing. For that reason Parks Finishing 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PARKS FINISHING J3, LLC

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 14th day of September, 2015.

Parks Finishing J3, LLC

Dated this 31 day of AUGUST, 2015.

AFO #67232; Kelli Book, Field Office #4, EPA, VIII.D.2.b