

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

<p>IN THE MATTER OF:</p> <p>GJL REAL ESTATE, LLC</p> <p>AFO #64878 Butler County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 2020-AFO- 24</p>
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TO: Doug Gross, Registered Agent
GJL Real Estate, LLC
666 Grand Avenue
Des Moines, Iowa 50309

Chad Halvorson, Site Manager
GJL Real Estate, LLC
331 Third Street, NW
Waucoma, Iowa 52171

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Scott and GJL Real Estate, LLC (GJL Real Estate) for the purpose of resolving Nutrient Management Plan (NMP) violations at the GJL Real Estate open feedlot. This administrative consent order requires GJL Real Estate to do the following: 1) submit a complete NMP for the facility and 2) pay an administrative penalty in the amount of \$3,000.00. 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:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th Street, SW
Mason City, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

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

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III, Part 1; Iowa Code chapter 459A 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. The GJL Real Estate feedlot is a 4,800 head swine (1,920 animal units) partially covered animal feeding operation located at 17442 HWY 3, Allison, Iowa (Section 32, West Point Township, Butler County). Per the Butler County Assessor, in July 2016, Gold Standard Farms, LLC purchased the facility and in July 2017, GJL Real Estate took over the facility through a reorganization/merger.

2. In August 2016, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, visited the facility and noted that there were no animals at the facility. Mr. Klatt contacted a representative for Gold Standard Farm, LLC who stated that the site might be converted to a swine open feedlot. Mr. Klatt recommended that the DNR be contacted once the decision was made to discuss the regulatory requirements.

3. In April 2020, Mr. Klatt contacted Chad Halvorson, the facility's site manager, to discuss the status of the facility. Mr. Halvorson stated that the facility was a partially covered animal feeding operation with 4,800 head of finisher hogs.

4. In May 2020, DNR issued GJL Real Estate a Notice of Violation for not having an approved NMP for the facility.

5. In June 2020, upon request, the facility submitted application records indicating that manure originating from the facility had been applied in 2016, 2017, 2018, and 2019.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 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 65.112 states that an owner of an open feedlot operation which had an animal unit capacity of 1,000 animal units or more shall develop and implement an NMP meeting the requirements of the rules. The GJL Real Estate facility has an animal unit capacity of 1,920, but has not submitted NMP to the DNR. The above-mentioned facts indicate a violation of this provision.

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3. 567 IAC 65.112(3) states that a person shall not remove manure, process wastewater or open feedlot effluent from an open feedlot operation structure which is part of an open feedlot operation for which an NMP is required, unless the DNR approves an NMP for the operation. GJL Real Estate has not had an NMP since taking ownership of the facility in July 2017 and has land applied manure from the facility in 2017, 2018, and 2019 without an approved NMP. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and GJL Real Estate agrees to do the following:

1. GJL Real Estate shall develop and submit an NMP to the DNR within 30 days of the date the Director signs this administrative consent order. GJL Real Estate shall maintain the NMP and update it as needed and shall submit a complete copy of the NMP to the DNR every five years; and
2. GJL Real Estate shall pay a \$3,000.00 administrative penalty 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 \$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.” GJL Real Estate gained an economic benefit by delaying the costs associated with developing and avoiding the costs of maintaining an NMP since at least 2017. Developing and maintaining an

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NMP includes soil testing, manure testing, calculating erosion loss and phosphorus index values, calculating application rates, submitting a public notice, submitting the NMP to the DNR, maintaining records to demonstrate compliance with the NMP, and modifying the NMP whenever there are changes. A reasonable estimate of the delayed and avoided costs is at least \$500.00 and that amount is 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. NMPs are required to ensure that appropriate application rates are calculated and utilized for land application of all manure at large open feedlot facilities. Failure to develop and follow an NMP and not maintaining appropriate records prohibits the DNR from ensuring that proper land application has occurred. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$1,500.00 is assessed for this factor.

Culpability – GJL Real Estate 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. GJL Real Estate has multiple facilities in the state of Iowa and are aware of the reporting requirements. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of GJL Real Estate. For that reason, GJL Real Estate 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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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resource

Dated this 25th day of
August, 2020.

 CFO

GJL REAL ESTATE, LLC

Dated this 14 day of
August, 2020.

Kelli Book, DNR Field Office 2, EPA, VIII