

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

IN THE MATTER OF:

Garrelts Livestock Feeders, LLP
Palo Alto County Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 27

AFO #62566

TO: Matt Garrelts
3928 425th Street
Ayrshire, Iowa 50515

David Garrelts
103 North Superior
Emmetsburg, Iowa 50536

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Garrelts Livestock Feeders, LLP (Garrelts Livestock) for the purpose of resolving the failure to timely submit the Manure Management Plan (MMP) fee for 2019 for an animal feeding operation located in Palo Alto County, Iowa. This administrative consent order requires Garrelts Livestock to pay an administrative penalty in the amount of \$2,000.00. 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:

Londa Witte, Field Office 3
Iowa Department of Natural Resources
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-9572

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GARRELTS LIVESTOCK FEEDERS, LLP

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. Garrelts Livestock owns and operates an animal feeding operation located at 4314 390th Avenue, Ayrshire, Iowa (Section 25, Silver Lake Township, Palo Alto County)¹. The facility is a 5,600 head (2,240 animal units) swine confinement operation. The annual MMP update deadline was established as November 1 of each calendar year and the annual compliance fee for the facility is \$336.00.

2. The MMP update and fee for 2019 was due November 1, 2019. On October 15, 2019, Jon Miller, Advanced Crop Management, submitted the 2019 MMP update for Garrelts Livestock electronically. The submittal did not include the annual compliance fee of \$336.00.

3. In January 2020, DNR Field Office 3 spoke to Mr. Miller and informed him the annual compliance fee had not been submitted. Mr. Miller stated he would contact Mr. Garrelts and remind him to submit the compliance fee. In January 2020, DNR Field Office 3 made several attempts to contact Mr. Garrelts by telephone.

4. On February 4, 2020, DNR issued a Notice of Referral for Garrelts Livestock's failure to submit the annual compliance fee. The letter informed Garrelts Livestock that the matter was being referred for further enforcement. The fee was submitted on February 13, 2020.

IV. 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.

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 fee on an annual basis to the DNR. The updated plan must reflect all amendments made during the period of time since

¹ The Palo Alto County Assessor's Office lists D J Garrelts & Co., Inc. as the owner of the property where the facility is located. However, Garrelts Livestock Feeder, LLP is listed as the owner on documents submitted to the DNR.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GARRELTS LIVESTOCK FEEDERS, LLP

the previous MMP submission. The compliance fee is fifteen cents per animal unit. The 2019 MMP update and fee was due November 1, 2019. The fee was not submitted until February 13, 2020. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Garrelts Livestock agrees to do the following:

1. Garrelts Livestock shall pay an administrative penalty in the amount of \$2,000.00 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 \$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.” Garrelts Livestock’s delay in timely submitting the annual compliance fee allowed the facility to save time and money. It is estimated that Garrelts Livestock gained an economic benefit of at least \$100.00 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GARRELTS LIVESTOCK FEEDERS, LLP

administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP compliance fees are crucial to the budget of the animal feeding program. Failing to timely submit the MMP annual compliance fee threatens the integrity of the animal feeding operation regulations. Additionally, DNR has expended a large amount of staff time working with Garrelts Livestock to timely submit the MMP annual compliance fee. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Garrelts Livestock 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. DNR Field Office 3 has made attempts to collect the annual compliance fee and informed Garrelts Livestock that the matter would be referred for further enforcement if the annual compliance fee were not submitted. Garrelts Livestock was aware of the regulations yet failed to comply with the requirement until February 2020. Therefore, \$900.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Garrelts Livestock. For that reason, Garrelts Livestock 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.



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 27th day of
October, 2020.



GARRELTS LIVESTOCK FEEDERS, LLP

Dated this 2 day of
October, 2020.

Kelli Book; Field Office 3; EPA; VIII.C.2