

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

IN THE MATTER OF:

SCHMIT PORK, L.C.

**Sioux County, Iowa
AFO #67631**

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 28

TO: David D. Schmit, Registered Agent
Schmit Pork, L.C.
1366 Fox Ridge Trail
Sioux City, Iowa 51104

Mike Schmit, Facility Contact
Schmit Pork, L.C.
4666 420th Street
Hospers, Iowa 51238

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Schmit Pork, L.C. (Schmit Pork) for the purpose of resolving violations of construction permit regulations. 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:

Brandon Miner, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall – 1900 North Grand
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: 515/210-3408

Payment of penalty to:

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

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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; 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

1. Schmit Pork owns an animal feeding operation located at 4666 420th Street, Hospers, Iowa (Section 13, Floyd Township, Sioux County). The facility consists of three confinement buildings with a capacity of 2,900 head (1,160 animal units) grow to finish swine. The first building was constructed in the 1970s, the second was constructed in 2001, and the final building was added in 2018.

2. On June 10, 2020, Brandon Miner, DNR Field Office 3 Environmental Specialist, conducted a routine inspection at Schmit Pork. During the inspection, Mr. Miner spoke to Mike Schmit with Schmit Pork. Mr. Schmit stated in 2018, the facility constructed the confinement building west of the 2001 1,200 head confinement building. The 2018 building was constructed approximately 1,135 feet from the 2001 confinement building and with the additional numbers from the 2018 building, the total number of animal units for the confinement feeding operation was greater than 1,000 animal units. Schmit Pork did not obtain a construction permit prior to the construction of the 2018 confinement building.

3. On August 3, 2020, DNR issued Mike Schmit with Schmit Pork a Notice of Violation letter for the construction permit violation observed during the inspection. The letter informed Mr. Schmit the matter was being referred for further enforcement.

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, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapters 65.

2. 567 IAC 65.7(1)"b"(2) requires that a confinement feeding operation shall obtain a construction permit prior to constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation if, after construction, installation or expansion, the animal unit capacity of the operation is 1,000 animal units or more. In 2018, when the additional

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confinement building was constructed and the animal unit capacity exceeded 1,000, Schmit Pork failed to obtain a construction permit. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Schmit Pork agrees to do the following:

1. Schmit Pork shall pay an administrative penalty in the amount of \$5,000.00 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 \$5,000.00. 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. Schmit Pork gained an economic benefit by avoiding the costs associated with submitting and obtaining a construction permit prior to the construction of the additional confinement building in 2018. It is estimated that Schmit Pork gained an economic benefit of at least \$1,000.00 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. Without first submitting the construction permit application DNR was

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not allowed to review the design and location of the confinement building. This review ensures that the interests of the citizens of Iowa in clean water are protected. Failure to obtain a construction permit prior to construction threatens the integrity of the animal feeding operation regulations. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Schmit Pork has a duty to know the regulations and to be aware that its actions are subject to the regulations. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Schmit Pork. For that reason, Schmit Pork waives the right to appeal this administrative consent order or any part thereof.

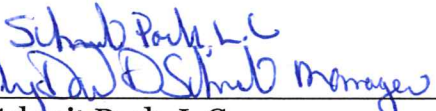
VIII. NONCOMPLIANCE

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 23rd day of
November, 2020.



Schmit Pork, L.C.

Dated this 14th day of
November, 2020.

Kelli Book, DNR Field Office 3, EPA, VIII.A.2