

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

IN THE MATTER OF:

JT ENTERPRISES, LTD

AFO Facility ID 66543

Mitchell County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2020-AFO- 32

TO: JT Enterprises, LTD, dba Johnson Brothers  
c/o Tim Johnson  
304 North Washington Street  
Carpenter, Iowa 50426

**I. SUMMARY**

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and JT Enterprises, LTD, (Johnson Brothers) for the purpose of resolving the violations of animal feeding operation regulations at Johnson Brothers' animal feeding operation in Mitchell County, Iowa. This Order requires Johnson Brothers to pay an administrative penalty in the amount of \$10,000.00 and to comply with the terms of Section V of this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

Sheila Bly  
DNR Field Office 2  
2300 15th St. SW  
Mason City, Iowa 50401  
641-424-4073

**Relating to legal requirements:**

Noah Poppelreiter, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515-669-8752

**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 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

**RECEIVED**

**DEC 02 2020**

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JT ENTERPRISES, LTD

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. Johnson Brothers owns and operates an animal feeding operation located at 304 North Washington Street, Carpenter, Iowa (Facility).
2. From at least January 2016 until September 2019, the Facility housed 708 feeder calves, for a total animal unit capacity of 708 animal units.
3. Based on geological data available to the Department, the Facility is located in an area of Iowa that contains karst terrain.
4. On January 21, 2016, DNR Field Office 2 received a complaint that Johnson Brothers was land applying manure onto snow. DNR environmental specialist senior Jeremy Klatt investigated the complaint and found credible evidence of violations of various laws and rules, including failing to submit a manure management plan (MMP) prior to the land application of manure.
5. On February 2, 2016, the DNR issued a Notice of Violation (NOV) to Tim Johnson addressing the violations observed on January 21, 2016.
6. On April 1, 2016, Johnson Brothers submitted an MMP for the Facility. On the MMP's attached cover letter, prepared by Three Rivers Ag Consulting (Three Rivers), Johnson Brothers asserted that the Facility did not have enough capacity to store manure through the winter months. The letter also stated Tim Johnson was consulting with engineers and builders to design and construct an additional manure storage structure. Lastly, the letter stated a construction design statement (CDS) would be submitted prior to construction.
7. On April 4, 2016, DNR Field Office 2 sent a letter to Johnson Brothers reminding them of the requirements under law and rule, including minimum construction design standards, the requirement to submit a CDS, and the requirement to obtain a construction approval letter from the DNR prior to the construction of any additional manure storage structure.
8. DNR Field Office 2 never received a CDS or a request for a construction approval letter for any manure storage at the Facility.
9. On April 17, 2019, DNR environmental specialist Sheila Kenny conducted a routine inspection of the Facility. Ms. Kenny observed a new formed manure storage structure at the Facility (Structure).

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JT ENTERPRISES, LTD

10. Over the next several months, DNR Field Office staff discussed the construction of the Structure with Tim Johnson.

11. Mr. Johnson acknowledged constructing the Structure without submitting required information and applications and without proper approval from the Department.

12. In addition, Mr. Johnson acknowledged the Structure was located in karst terrain and had not been built to the construction standards of 567 IAC 65.15(14) "c" and/or Iowa Code section 459.307.

13. During these discussions, Mr. Johnson failed to provide any documentation on the construction of the Structure.

14. On September 23, 2019, Three Rivers submitted a letter on Johnson Brothers' behalf stating the Facility was reducing its animal unit capacity to 480 animal units.

**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 chapter 65.

2. 567 IAC 65.7(7) requires a confinement feeding operation obtain a construction approval letter from the DNR prior to constructing a formed manure storage structure, unless the operation is a small animal feeding operation (SAFO) or is required to obtain a construction permit pursuant to rule 567 IAC 65.7(1). The Facility was not a SAFO at the time of construction of the new manure storage structure, nor was the Facility required to obtain a construction permit. Johnson Brothers constructed the Structure without first obtaining a construction approval letter. The facts of this case demonstrate a violation of 567 IAC 65.7(7).

3. 567 IAC 65.9(3) requires that, at least 30 days prior to constructing a formed manure storage structure, a confinement feeding operation which is required to obtain a construction approval letter must submit to the DNR a professional engineer design certification or a construction design statement pursuant to rule 567 IAC 65.9(6), alluvial soils information or applicable declaratory order, karst terrain determination pursuant to rule 567 IAC 65.9(5), a valid MMP, information that shows the intended location of the proposed structure, information showing any ownership interest of animal feeding operations within 2,500 feet of the proposed structure, and documentation showing the board of supervisors or auditor of the county has received a copy of the MMP. Johnson Brothers constructed the Structure without first submitting any of these documents. The facts of this case demonstrate a violation of 567 IAC 65.9(3).

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JT ENTERPRISES, LTD

4. Prior to construction of a confinement feeding operation structure, a person planning to construct the proposed structure shall determine whether the proposed structure will be located in karst terrain, pursuant to 567 IAC 65.9(5). If the structure is not located in karst terrain, the person shall provide the Department a map or a statement from a qualified individual pursuant to 567 IAC 65.9(5)"a". If the proposed structure is in karst terrain, the person shall provide the Department with the information required in 567 IAC 65.9(5)"b" and shall construct all formed manure structures at non-SAFOs in accordance with 567 IAC 65.15(14)"c" or Iowa Code section 459.307. Johnson Brothers constructed the Structure without first making a karst determination. In addition, Johnson Brothers constructed the Structure out of compliance with 567 IAC 65.15(14)"c" and/or Iowa Code section 459.307. The facts of this case demonstrate a violation of 567 IAC 65.9(5).

**V. ORDER**

THEREFORE, the DNR orders and Johnson Brothers agrees to the following:

1. Johnson Brothers shall operate the Facility and all other animal feeding operations under its control in compliance with all applicable DNR rules and regulations; and
2. Johnson Brothers shall operate the Facility as a SAFO, shall not populate the Facility at an animal unit capacity in excess of 499 animal units, except as allowed below, and shall take reasonable steps approved by DNR Field Office 2 to show the Facility cannot be populated at an animal unit capacity in excess of 499 animal units; and
3. In the event Johnson Brothers intend to operate the Facility at an animal unit capacity of more than 499 animal units, Johnson Brothers shall notify DNR Field Office 2 of the intent to populate the Facility above 499 animal units; shall develop a plan of action to bring the Facility and the Structure into compliance with all applicable law; shall submit the plan of action to DNR Field Office 2 for approval; and shall populate the Facility above 499 animal units only after written approval from DNR Field Office 2; and
4. Johnson Brothers, through a licensed professional engineer, shall conduct an investigation of the groundwater level around the Structure and implement a groundwater lowering system to lower the groundwater if necessary; and
5. If groundwater lowering is determined to be necessary after an investigation, for a period of two years Johnson Brothers shall be required to:
  - a. Visually monitor on a weekly basis whether water is present in the groundwater lowering system; and
  - b. Report the results of the visual monitoring to DNR Field Office 2 by mail or by email on a quarterly basis (with the first quarter starting January 1, 2021); and

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JT ENTERPRISES, LTD

- c. If water is present in the system and not more than once per calendar quarter (with the first quarter starting January 1, 2021), submit a water sample to a certified laboratory for testing for NH<sub>3</sub>-N, NO<sub>3</sub>-N, chloride, and E. Coli, and report the results of testing to DNR Field Office 2 by mail or email; and
6. After two years, the Department may choose to modify, continue, or discontinue the monitoring and/or sampling in paragraph 5, above, after notifying Johnson Brothers in writing of the change; and
7. Johnson Brothers shall pay an administrative penalty in the amount of \$10,000 pursuant to the following payment plan:
  - a. \$2,500.00 by January 1, 2021
  - b. \$2,500.00 by April 1, 2021
  - c. \$2,500.00 by July 1, 2021
  - d. \$2,500.00 by September 1, 2021

Payment shall be considered received by the DNR on the day it is postmarked. If the DNR has not received a payment on the day it is due, the DNR shall notify Johnson Brothers in writing of its failure to pay. If Johnson Brothers has not paid the required payment within five (5) days of receiving the notice, payment in full of the remaining amount of the penalty shall be due within 30 days of the notice. Nothing in this plan shall prevent Johnson Brothers from making additional payments toward the penalty amount, but the DNR shall not consider any additional payments a reduction of the payment owed pursuant to the above plan.

## VI. PENALTY

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 \$10,000.00. 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.” After consideration of construction and monitoring costs in this situation, a penalty of \$4,000.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JT ENTERPRISES, LTD

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. Construction application and permitting form a key piece of the foundation of the animal feeding operation program. When an operation fails to comply with the application and permitting process, the Department is denied the opportunity to ensure the construction adequately protects the environment and human health. This failure is particularly concerning when manure storage structures are constructed in karst terrain, as improper construction can have long-term impact on groundwater in these regions. Johnson Brothers' failure to follow the application and permitting rules caused programmatic harm. In addition, Johnson Brothers' failure to comply with construction requirements for manure storage structures built in karst terrain causes programmatic harm and potential environmental harm. A penalty of \$3,000 is assessed for this factor.

Culpability – Johnson Brothers has a duty to follow the applicable laws and regulations when constructing manure storage structures at the Facility. Department staff informed Johnson Brothers and Three Rivers of the application, permitting, and construction requirements for building the Structure at the Facility, yet Johnson Brothers failed to comply with these requirements. A penalty of \$3,000 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Johnson Brothers. Johnson Brothers therefore waives its right to appeal this Order or any part thereof.

[This space is intentionally blank.]

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JT ENTERPRISES, LTD

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this 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 10th day of  
December, 2020.

  
\_\_\_\_\_  
for JT ENTERPRISES, LTD

<sup>24</sup>  
Dated this 11~~24~~ day of  
Nov, 2020.

Noah Poppelreiter, DNR Field Office 2, EPA, VIII.A.2