

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

LARRELL DEJONG

Facility ID # 58904
Dubuque County, Iowa

ADMINISTRATIVE ORDER
NO. 2021-AFO-09

TO: Larrell DeJong
25501 Willow Lane
New Prauge, Minnesota 56071

I. SUMMARY

This administrative order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Brandon Miner, DNR Field Office 3
Iowa Department of Natural Resources
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
Phone: 712-262-4177

Relating to legal requirements:

Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

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 and of Iowa Code chapter 459; 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.

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III. STATEMENT OF FACTS

Prior Notices of Violation

1. Between 2012 and the 2019, the Department has issued Mr. DeJong twenty-five Notices of Violation. These include notices for failures to submit manure management plans, failure to properly dispose of dead animals, failure to properly maintain manure application records, and constructing manure structures and increasing animal units without obtaining a permit.

Current Violation

2. Mr. DeJong owns and operates an animal feeding operation located at 5155 310th St, Cylinder, Iowa (Facility). The Facility consists of a confinement building that utilize a formed, unroofed manure storage structure (Structure) to store manure. The Facility has a maximum animal unit capacity of 3,840 head of grow to finish swine (1,536 animal units).

3. On July 6, 2016, the DNR issued Mr. DeJong a Notice of Violation for a failure to maintain manure application records at the Facility.

4. On May 31, 2019, the DNR received an anonymous complaint that manure was outside the Structure.

5. On June 12, 2019, DNR Field Office 3 environmental specialist Brandon Miner visited the Facility to investigate the complaint. Mr. Miner observed manure near the top of the earthen berm surrounding the Structure, with a freeboard level in the Structure of less than one foot.

6. On June 20, 2019, Mr. Miner and Mr. DeJong spoke over the telephone. Mr. Miner discussed removing manure from the Structure to avoid future retention problems. Mr. De Jong believed that manure had been removed from the Structure and directed Mr. Miner to contact the Facility's on-site supervisor. Mr. Miner attempted to contact the supervisor by telephone and left him a message, but the supervisor never returned Mr. Miner's telephone call.

7. On June 24, 2019, Mr. Miner conducted a follow-up investigation of the Facility. Mr. Miner observed manure overflowing the top of the Structure.

8. On July 1, 2019, the DNR issued a Notice of Violation letter to Mr. DeJong detailing the violations and the associated regulations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and

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minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(3) requires the retention of all manure produced at a confinement feeding operation in between periods of land application. During the June 24, 2019, field office investigation, Mr. Miner observed that manure overflowed from the Structure. The facts of this case indicate a violation of this rule.

3. 567 IAC 65.2(3)"b" requires the removal of manure as necessary to maintain a minimum of one foot of freeboard in unroofed, formed manure structures. During the June 12, 2019, field office investigation, Mr. Miner observed a freeboard level less than one foot. During the June 24, 2019, field office investigation, Mr. Miner observed manure overflowed from the Structure. The facts of this case indicate a violation of this rule.

4. DNR has determined that there is no likelihood that the violations cited in this Order will recur if the Mr. DeJong implements the requirements set forth in Paragraphs 1-2, Section V of this Order.

V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. DeJong shall operate and maintain the Facility and all other animal feeding operations under his control in compliance with all applicable DNR rules and regulations;

2. Within 60 days of the date the Director signs this Order, Mr. DeJong shall develop a plan of action to prevent all future releases of manure from the Structure and shall submit the plan to DNR Field Office 3 for approval. Within 90 days of the date the Director signs this order, Mr. DeJong shall implement the plan of action.

3. Mr. DeJong shall pay an administrative penalty in the amount of \$4,000.00 within 60 days of the date the Director signs this Order.

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 this Order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

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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.” Mr. DeJong failed to ensure the proper retention of manure from the Structure. This failure resulted in delayed costs from planning, construction, maintenance, and monitoring, saving Mr. DeJong overhead costs. Therefore, \$500.00 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. There were multiple violations in this case. Operating the Facility in this manner threatens the integrity of the animal feeding operation program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. DeJong has a duty to follow the applicable laws and regulations while storing manure. Mr. DeJong knew of the potential for the discharge of manure, but did not take adequate steps to prevent releases until a later date. Mr. DeJong has been issued multiple prior Notices of Violation, demonstrating a penalty is necessary to ensure compliance in the future. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

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VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this 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 or Iowa Code section 459.603.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of
_____, 2021

Noah Poppelreiter, DNR Field Office 3, EPA, VIII.D.2