

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

IN THE MATTER OF:

GENOSOURCE, LLC

**Benton County, Iowa
AFO #61209**

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO- 16

TO: Mark E. Butz, Registered Agent
Genosource, LLC
402 1st Ave SE Ste B
Mt. Vernon, Iowa 52314

David Halverson, Facility Contact
Genosource, LLC
405 W Merle Hibbs Blvd
Marshalltown, Iowa 50158

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Genosource, LLC (Genosource) 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:

Chris Gelner, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct., Ste. 10
Manchester, Iowa 52057
Phone: 563-927-2640

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 III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GENOSOURCE, LLC

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. Genosource owns and operates an animal feeding operation located at 2188 78th Street, Blairstown, Iowa (Section 25, Leroy Township, Benton County). The facility is a dairy confinement operation with a permitted capacity of 1,100 of immature dairy cattle and 2,850 mature dairy cattle (5,090 animal units).

2. Manure Management Plans were submitted for Genosource and Excalibur Pumping. The two operations appeared to be adjacent to one another; on January 21, 2021, DNR Field Office 1 sent a Letter of Inquiry regarding the ownership and management status of the two operations. The documentation submitted by Genosource indicated that the two operations were under common ownership and were less than 2,500 feet apart. The two operations were considered one facility by the DNR. The facility currently housed 750 immature dairy cattle and 3,650 manure dairy cattle (5,860 animal units).

3. On February 4, 2021, DNR issued a Notice of Violation letter to Genosource for failing to obtain a construction permit prior to the increase in animal units and change in animal type. The letter required Genosource to submit a construction permit application with a master matrix and a Manure Management Plan and applicable fees for the expansion by March 5, 2021. The letter also included the construction permit requirements.

4. On March 18, 2021, Genosource submitted a construction permit application to expand existing freestall confinement barns and to construct a sand settling structure and digester. The proposed expansion would house 750 immature dairy cattle and 3,950 manure dairy cattle (6,280 animal units).

5. On March 30, 2021, Chris Gelner, DNR Field Office 1 environmental specialist, conducted a site survey at Genosource as part of the construction permit application review process. Mr. Gelner noted that construction activities has started at the facility prior to the issuance of the construction permit. During the site survey Mr. Gelner observed the proposed expansion on the south two buildings had already been completed (concrete floors and walls, timber walls and roof, steel roof and siding, fans and stalls) and work on the other buildings was well underway (not complete but in varying stages of construction).

6. On April 2, 2021, DNR issued a Notice of Violation letter to Genosource for beginning construction prior to the issuance of a construction permit. The letter informed Genosource that the matter was being referred for further enforcement.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GENOSOURCE, LLC

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(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. In April 2021, DNR Field Office 1 noted that construction activities had begun at the Genosource facility prior to the facility obtaining a construction permit. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Genosource agrees to do the following:

1. Genosource shall comply with the construction permit and shall make any modifications if the approved construction permit is different than what was submitted or what has already been constructed; and
2. Genosource 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GENOSOURCE, LLC

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.” Genosource gained an economic benefit by beginning construction on its schedule rather than waiting for proper approval. It is estimated that Genosource 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 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 – Genosource has a duty to know the regulations and to be aware that its actions are subject to the regulations. The construction permit requirements were sent to the facility in February 2021. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

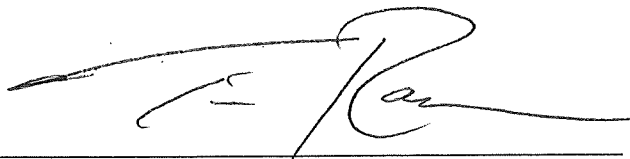
This administrative consent order is entered into knowingly and with the consent of Genosource. For that reason, Genosource waives the right to appeal this administrative consent order or any part thereof.

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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GENOSOURCE, LLC

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



Genosource, LLC

Dated this 12 day of
July, 2021.

Kelli Book, DNR Field Office 1, VIII.A.2