

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

IN THE MATTER OF:

CHAD EVEN

**Black Hawk County, Iowa
AFO #71634**

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO-22

TO: Chad Even
8319 Fox Road
Jesup, Iowa 50648

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Chad Even for the purpose of resolving violations of the animal feeding operations regulations. This administrative consent order requires Mr. Even to: 1) pay past annual manure management plan (MMP) fees and 2) pay an administrative penalty in the amount of \$3,000.00. 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:

Brian Jergenson, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct, Suite 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

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State Treasurer-DNR

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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

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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. Chad Even owns and operates an animal feeding operation located at 4316 Mc Stay Road; Jesup, Iowa (Section 13, Poyner Township, Black Hawk County). The facility consists of three confinement buildings with a capacity of 1,200 grow to finish swine and 500 beef (980 animal units). In 2012, the facility expanded from 480 animal units to 780 animal units when a cattle barn was converted to a confinement structure. In 2017, an additional 200 head cattle barn was converted to a confinement structure, raising the animal unit capacity of the facility to 980 animal units. Mr. Even purchased this facility from Harold Even in 2019; Harold Even did not have an MMP for the facility. The facility also has an open feedlot with a capacity for 100 beef cattle.

2. In February 2021, Brian Jergenson, DNR Field Office 1 environmental specialist senior, conducted an inspection at Mr. Even's facility. During the inspection, it was determined that the facility had an animal unit capacity of 980 animal units. Neither a Construction Design Statement (CDS) nor an MMP had been submitted for the facility.

3. On February 4, 2021, DNR issued Mr. Even a Notice of Violation letter for the violations observed during the inspection. Mr. Even was required to submit a complete original MMP by April 15, 2021. The MMP and fees were submitted and approved in April 2021. Mr. Even also submitted proof that the confinement structures were sited in accordance with requirements.

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 65.16(1)"b" requires that an owner of a confinement feeding operation, other than a small animal feeding operation, to submit an original MMP and updated MMPs when the confinement feeding operation is constructed or expanded after May 31, 1985, regardless of if the confinement feeding operation is required to have a construction permit. A small animal feeding operation is defined as an animal feeding operation with an animal unit capacity of 500 or fewer animal units. Mr. Even's facility has an animal unit capacity of 980 and the MMP should have been in place when Mr. Even became the owner in 2019 and did not have an MMP in place until April 2021. The above-mentioned facts indicate a violation of

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this provision.

3. 567 IAC 65.17(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR an MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP. The MMP should have been in place when Mr. Even became the owner in 2019 and the filing fee was not submitted until April 2021. 567 IAC 65.16(6) require all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Mr. Even's indemnity fee is \$98.00. The indemnity fee is required to be submitted with the MMP. The MMP should have been in place when Mr. Even became the owner in 2019 and the indemnity fee was not submitted until April 2021

4. 567 IAC 65.16(3)"b" requires 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 the previous MMP submission. The compliance fee is fifteen cents per animal unit. The compliance fee for Mr. Even's facility is \$147.00. Mr. Even has owned the facility since 2019 and should have submitted an MMP update and annual compliance fee for 2020 and 2021. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Chad Even agrees to do the following:

1. Mr. Even shall pay the compliance fees for 2020 and 2021 in the amount of \$294.00 with the submission of the MMP to DNR Field Office 1; and
2. Mr. Even shall pay an administrative penalty in the amount of \$3,000.00 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

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administrative penalty of \$3,000.00. 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.” Mr. Even delayed the costs associated with developing and submitting an MMP for the animal feeding operation. The delayed costs include the preparation costs for the MMP, the payment of the filing fee, indemnity fee, and compliance fees. It is estimated that Mr. Even 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 administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP is a crucial aspect of the DNR’s animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. Mr. Even’s facility has a capacity of 980 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,900.00 is assessed for this factor.

Culpability – Mr. Even has a duty to know the regulations and to be aware that his actions are subject to the regulations. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

VIII. NONCOMPLIANCE

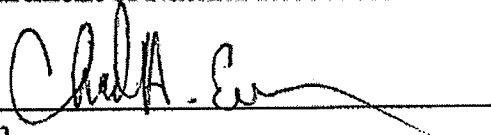
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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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

Chad Even



Dated this 7th day of
October, 2021.

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