

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

IN THE MATTER OF:

**JACOB GEISLER dba JDG PORK
ENTERPRISES, L.C.**
Webster County Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO-

AFO #65494

TO: Jacob Geisler
5421 Clemens Blvd
Ames IA 50014

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jacob Geisler dba JDG Pork Enterprises, L.C. for the purpose of resolving the failure to timely submit the Manure Management Plan (MMP) update and fees for 2021 for an animal feeding operation located in Webster County, Iowa. This administrative consent order requires Mr. Geisler to pay a \$2,000.00 administrative penalty. 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: **Relating to legal requirements:**

Jeremy Klatt
DNR Field Office 2
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

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,

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Division III, Part 1 or 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. Jacob Geisler dba JDG Pork Enterprises, L.C.,¹ owns and operates an animal feeding operation located at 1660 375th Street; Gowrie, Iowa (Section 19, Lost Grove Township, Webster County). The confinement operation has two confinement buildings and houses 4,400 swine (1,760 animal units). An original Phosphorus Index MMP for the facility was submitted in 2012. The annual MMP update deadline was established as October 1 of each calendar year and the annual compliance fee for the facility is \$264.00.

2. The 2021 MMP update and fee for the JDG Pork facility were due October 1, 2021. The update and fee were not submitted by October 1, 2021. On October 11, 2021, DNR issued a Notice of Violation letter for the late 2021 MMP update and fee. The letter informed Mr. Geisler that failure to timely submit the MMP update and fee would result in further enforcement, including a monetary penalty. The letter also informed Mr. Geisler that repeated failure to timely submit the MMP update and fee would result in further enforcement. The MMP update and fee was not submitted until November 4, 2021.

3. Mr. Geisler and JDG Pork have a history of late MMP update and fee submittals. Mr. Geisler and JDG Pork received Notice of Violation letters in 2014, 2015, 2016, 2018, 2019, and 2020 for untimely submittals of the MMP updates and fees.

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. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require 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.

¹ JDG Pork Enterprises, L.C. is listed as the owner of the facility on the Webster County Assessor's website. However, the Iowa Secretary of State administratively dissolved JDG Pork Enterprises, L.C. on September 7, 2021.

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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 2021 MMP update and fee were due October 1, 2021 and were not submitted until November 4, 2021. Additionally, MMP updates and fees were submitted late in 2014, 2015, 2016, 2018, 2019, and 2020. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Jacob Geisler dba JDG Pork Enterprises, L.C. agrees to do the following:

1. Jacob Geisler dba JDG Pork Enterprises, L.C. shall pay an administrative penalty in the amount of \$2,000.00 within 30 days from 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 \$2,000.00. 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." Jacob Geisler dba JDG Pork Enterprises, L.C.'s failure to timely submit the 2021 MMP update and fee has allowed the facility to save time and money. It is estimated Jacob Geisler dba JDG Pork Enterprises, L.C. gained an economic benefit of at least \$100.00 and that amount is assessed for this factor.

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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. The JDG Pork facility has a capacity of 1,770 animal units and environmental harm is likely to occur if the manure is not applied properly. The JDG Pork facility has a history of late MMP update submittals. Failing to timely submit the MMP update and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Jacob Geisler dba JDG Pork Enterprises, L.C. has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The JDG Pork facility has a history of late MMP update submittals. Therefore, \$900.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Jacob Geisler dba JDG Pork Enterprises, L.C. For that reason, Jacob Geisler dba JDG Pork Enterprises, L.C. 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

Jacob Geisler dba JDG Pork Enterprises, L.C.

Dated this 1st day of
December, 2021.

Kelli Book; Field Office 2; VIII.C.2