

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

<p>IN THE MATTER OF:</p> <p>JASON WIEBERS</p> <p>Crawford County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2022-AFO-0809</p>
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TO: Jason Wiebers
1927 D Avenue
Schleswig, Iowa 51461

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jason Wiebers for the purpose of resolving a manure applicator certification violation. This administrative consent order requires Mr. Wiebers to: be properly certified prior to applying manure and pay an administrative penalty in the amount of \$3,000.00.

Questions regarding this administrative consent order should be directed to:

<p><u>Relating to technical requirements:</u> Alison Manz, DNR Field Office 4 Iowa Department of Natural Resources 1401 Sunnyside Lane Atlantic, Iowa 50022 Phone: 712/243-1934</p>	<p><u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Wallace State Office Building 502 East Ninth Street Des Moines, Iowa 50319-0034 Phone: 515/210-3408</p>
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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 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JASON WIEBERS

III. STATEMENT OF FACTS

1. Jason Wiebers owns and operates two animal feeding operations located in Crawford County. The Jason Weibers Highway Farm facility (Facility No. 69580) has a capacity of 2,480 grow to finish hogs (992 animal units). The facility has a below building manure storage pit. The Jason Wiebers facility (Facility No. 58158) has a capacity of 3,150 grow to finish hogs (1,260 animal units). The facility has a below building manure storage pit.

2. On November 17, 2021, Alison Manz, DNR Field Office 4 environmental specialist senior, conducted a routine inspection while Mr. Wiebers was pumping and applying manure from Facility No. 69580. Mr. Wiebers acknowledged he was not a certified manure applicator. He also stated that he pumped and applied manure from Facility No. 58158 within the previous week.

3. A review of the manure certification database indicated that Mr. Wiebers previous manure applicator certification expired on March 1, 2021.

4. On November 19, 2021, DNR issued a Notice of Violation letter to Mr. Wiebers for the applicator certification violation observed on November 17, 2021. The letter informed Mr. Wiebers the matter would be referred for further enforcement.

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.

4. 567 IAC 65.19(1) states that a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. During the DNR Field Office 4 inspection in November 2021, it was determined Mr. Wiebers pumped and applied manure from two of his animal feeding operation facilities without being certified. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Jason Wiebers agree to do the following:

1. Jason Wiebers shall be properly certified before handling, transporting, or applying manure in the future; and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JASON WIEBERS

2. Jason Wiebers 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 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. Wiebers avoided the costs associated with being properly certified to apply manure from his facilities, including certification and education fees. Based on the above facts, the economic benefit Mr. Wiebers was at least \$125.00 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. Manure applicators are required to obtain training and certifications to ensure they are properly trained. The regulations are integral parts of the animal feeding operation program and a violation of the regulations threatens the integrity of the water quality program. Therefore, \$1,375.00 is assessed for this factor.

Culpability – Mr. Wiebers 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. Mr. Wiebers was aware of the fact he was not certified when he pumped and applied manure from his facilities. Therefore, \$1,500.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JASON WIEBERS

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Wiebers. For that reason, Mr. Wiebers waive 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



JASON WIEBERS

Dated this 17 day of
April, 2022