

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

IN THE MATTER OF:

PORK 360 EAST, INC.

Muscatine County
AFO #59731

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO- 11

TO: Stanley, Lande & Hunter, Registered Agent
Pork 360 East, Inc.
119 S. Sycamore Street, Suite 2000
Muscatine, Iowa 52761

Mike Deahr
Pork 360 East, Inc.
1148 Davis Avenue
West Liberty, Iowa 52776-9143

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Pork 360 East, Inc. (Pork 360) for the purpose of resolving a manure applicator certification violation. This administrative consent order requires Pork 360 to: ensure that all employees who handle, transport, and apply manure are properly certified and pay an administrative penalty in the amount of **\$3,000.00**.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Jon Ryk, DNR Field Office 6
Iowa Department of Natural Resources
1023 W Madison
Washington, Iowa 52353
Phone: 319/653-2135

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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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.

III. STATEMENT OF FACTS

1. Pork 360 owns and operates an animal feeding operation located at 1824 North Tipton Road, Muscatine (Section 16, Bloomington Township, Muscatine County). The facility has a capacity of 3,517 swine in nine confinement buildings with below-building pits for manure storage. Jacob Theobald is an employee of Pork 360 and is identified as a manure applicator for the facility.

2. On November 11, 2021, DNR Field Office 6 personnel investigated a manure spill on cropland near the Pork 360 facility. Mike Deahr, Pork 360 representative, stated that manure from the Pork 360 facility had been applied to the field. He indicated the applicator was Jacob Theobald.

3. A review of the manure certification database indicated that neither Mr. Deahr nor Mr. Theobald had current manure applicator certifications. Additionally, five additional manure applicators who worked for Pork 360 were not currently certified.

4. On November 19, 2021, DNR issued a Notice of Violation letter to Pork 360 for the applicator certification violation discovered on November 11, 2021. The letter informed Pork 360 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 6 investigation in November 2021, it was determined that Pork 360 employees applied manure without being certified. The above-mentioned facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders and Pork 360 agree to do the following:

1. Pork 360 shall ensure all employees at its facility are properly certified before handling, transporting, or applying manure in the future; and
2. Pork 360 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.” Pork 360 avoided the costs associated with ensuring its employees were properly certified to apply manure, including certification and education fees. Based on the above facts, the economic benefit Pork 360 was 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. Manure applicators are required to obtain training and certifications to ensure they are properly trained. The regulations are integral parts of the animal

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feeding operation program and a violation of the regulations threatens the integrity of the water quality program. Therefore, \$1,400.00 is assessed for this factor.

Culpability – Pork 360 has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. None of the Pork 360 employees were properly certified to handle, transport or apply manure. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Pork 360. For that reason, Pork 360 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

Robert D. Baker Prox
PORK 360 EAST, INC.

Dated this ____ day of
4-9, 2022