

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

IN THE MATTER OF: OPAL EGGS LP Franklin County, Iowa AFO #58822	ADMINISTRATIVE CONSENT ORDER NO. 2022-AFO-16
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TO: Dane Kolkmeier
Opal Eggs LP
16194 Hwy 59
Neosho, Missouri 64850

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Opal Eggs LP (Opal Eggs) for the purpose of resolving a violation of the animal feeding operation construction permit regulations. This administrative consent order requires Opal Eggs to pay a \$6,000.00 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:

<u>Relating to technical requirements:</u> Daniel Watterson, Field Office 2 Iowa Department of Natural Resources 2300 15 th St SW Mason City, Iowa 50401 Phone: 641/424-4073	<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
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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

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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 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. Opal Eggs owns and operates an animal feeding operation located at 1166 Hardin Road; Iowa Falls, Iowa (Section 35, Lee Township, Franklin County). The facility has over 500,000 layer chickens in six confinement production buildings. The facility also has a manure storage building and a feed mill. Opal Eggs purchased the facility in May 2018.

2. The chicken litter stored at the facility has been historically wet with approximately 70% moisture content due to an issue with the drinking water system for the chickens. This made the application of the litter difficult. On September 8, 2021, Tim Smith with Farm Nutrients, 200A contractor for Opal Eggs, contacted DNR Field Office 2 with questions about adding more water to the chicken litter and injecting the liquid manure. DNR Field Office 2 left a telephone message for Mr. Smith informing him that the facility should talk to the Iowa Department of Agriculture and Land Stewardship (IDALS) to discuss the 200A requirements or if the facility intends to use the liquid manure to submit a manure management plan to the DNR. The phone message indicated if the changes were going to be made, the DNR would need more information regarding the manure storage structure.

3. On November 8, 2021, Daniel Waterson, DNR Field Office 2 environmental specialist, conducted an inspection at the Opal Eggs facility. Mr. Waterson inspected the manure storage structure and noted that the loadout doors had been closed off with a berm and the dry chicken litter was mixed with the wastewater to create a liquid manure. It is uncertain as to when the change occurred.

4. On December 13, 2021, DNR issued a Notice of Violation letter to Opal Eggs for the violations observed during the inspection. The letter explained that closing the loadout doors and constructing the berms to contain the liquid manure resulted in a liquid manure storage structure being constructed without a construction permit. The letter also informed the facility that the original construction permit for the manure storage structure was for dry manure storage and the addition of the liquid manure did not meet the construction standards of the previous permit. The facility was required to submit a Plan of Action by January 31, 2022 explaining how the facility planned to manage the chicken litter. The letter informed Opal Eggs that the violations were being referred for further enforcement.

5. On January 14, 2022, Opal Eggs submitted letter to DNR Field Office 2 stating that water would no longer be mixed with the chicken litter.

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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. During the field office inspection in November, it was noted that Opal Eggs closed off the loadout doors with a berm and the dry chicken litter was mixed with the wastewater to create a liquid manure storage structure. A construction permit was not obtained prior to constructing the liquid manure storage structure. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.7(1) states a person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit. Condition 6a of Opal Eggs' existing construction permit stated the manure would be sold under an IDALS 200A license and surface applied. Condition 8 of the existing construction stated that dilution water shall not be added to the manure storage building. During the field office inspection November, it was noted that dry chicken litter was mixed with the waster water to create a liquid manure. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Opal Eggs agrees to do the following:

1. Opal Eggs shall pay an administrative penalty in the amount of \$6,000.00 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

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the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$6,000.00. 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.” Opal Eggs gained an economic benefit by constructing a liquid manure storage structure without first obtaining a construction permit. The facility was able to avoid engineering and permitting costs. It is estimated that Opal Eggs 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. Starting the construction project before the construction permit was issued barred the DNR from reviewing the design and location the construction project. This review ensures that the interests of the citizens of Iowa in clean water are protected. Additionally, the existing manure storage structure had been designed to store dry chicken litter and the construction of a liquid manure storage structure created a possible environmental threat. Failure to obtain a construction permit prior to construction threatens the integrity of the animal feeding operation regulations. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Opal Eggs has a duty to know the regulations and to be aware that its actions are subject to the regulations. 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 Opal Eggs. For that reason, Opal Eggs 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

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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

Dane Kolbmeier
Opal Eggs LP

Dated this 3rd day of
June, 2022.