

JUN 13 2022

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>CRAIG BENJEGERDES Worth County Iowa</p> <p>AFO #60189</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2022-AFO- 17</p>
--	--

TO: Craig Benjegerdes
3526 Mallard Avenue
Manly, Iowa 50456

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Craig Benjegerdes for the purpose of resolving violations relating to over application of manure and repeated failures to timely submit Manure Management Plan (MMP) updates and fees for an animal feeding operation located in Worth County, Iowa. This administrative consent order requires Mr. Benjegerdes to pay an administrative penalty in the amount of \$4,500.00. 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: **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, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CRAIG BENJEGERDES

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. Craig Benjegerdes owns and operates an animal feeding operation located at 3526 Mallard Avenue; Manly, Iowa (Section 25, Danville Township, Worth County). The facility consists of confinement buildings housing 2,900 wean to finish swine (1,160 animal units).

2. On November 16, 2021, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, conducted a routine inspection of Mr. Benjegerdes' facility and the facility's manure application records. The records indicated that manure was applied above the maximum allowable rate in the MMP for the crop years of 2017, 2018, 2019, 2020, and 2021. The maximum rate listed in the facility's MMP was 3,485 gallons/acre of manure for the below building pit and 7,600 gallons/acre of manure for the basin. The records indicated that the manure applicator was instructed to apply at a rate of 4,000 gallons/acre of manure from the below building pit for crop years 2017, 2018, 2019, 2020, and 2021. The records also indicated that the manure applicator was instructed to apply at a rate of 10,000 gallons/acre of manure for the basin for each of the years reviewed, except one year where the application rate was 8,000 gallons/acre. Additionally, Mr. Benjegerdes indicated that he routinely applies about 50 pounds of commercial nitrogen fertilizer per acre on the fields that receive manure. The commercial fertilizer was not accounted for in the facility's MMP. The combination of applying more manure than allowed and adding additional commercial fertilizer resulted in substantial over application of nitrogen in the crop years of 2017, 2018, 2019, 2020, and 2021.

3. On December 17, 2021, DNR issued a Notice of Violation letter to Mr. Benjegerdes for the over application of manure violations discovered during the review of the manure application records. The letter informed Mr. Benjegerdes the matter was being referred for further enforcement.

4. The annual MMP update deadline for Mr. Benjegerdes' facility was established as June 1 of each calendar year and the annual compliance fee for the facility is \$174.00. Mr. Benjegerdes failed to timely submit the annual MMP updates and fees by June 1 for the following years: 2011, 2012, 2014, 2015, 2016, 2018, 2019, and 2020. Facilities are required to submit complete Phosphorus Index MMPs every four years. Mr. Benjegerdes failed to timely submit the complete Phosphorus Index MMPs and fees by June 1 for the following years: 2013 and 2017.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CRAIG BENJEGERDES

5. DNR issued Notice of Violation letters in 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 for the untimely submittals of the complete Phosphorus Index MMPs and the annual MMP updates and associated 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. 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. 567 IAC 65.17(17)"d" states that the phosphorus index is valid if the soil phosphorus concentration data is less than four years old. Mr. Benjegerdes failed to timely submit the Phosphorus Index MMPs and fees for 2013 and 2017. Mr. Benjegerdes failed to timely submit the annual MMP updates and fees for 2011, 2012, 2014, 2015, 2016, 2018, 2019, and 2020. The above-mentioned facts indicate multiple violations of this provision.

3. 567 IAC 65.17(1) prohibits manure application in excess of the nitrogen use levels necessary to obtain optimum crop yields. DNR Field Office 2 reviewed the manure application records for Mr. Benjegerdes' facility in November 2021 and discovered that manure was over applied from the rates listed in the facility's MMP and due to the over application and the use of commercial fertilizer nitrogen was applied above the levels necessary to obtain optimum crop yields for crop years 2017, 2018, 2019, 2020, and 2021. The above-mentioned facts indicate multiple violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Benjegerdes agrees to do the following:

1. Mr. Benjegerdes shall apply manure at rates consistent with the facility's MMP;
- * 2. Mr. Benjegerdes shall submit an update MMP that reflects the application of commercial nitrogen with the next MMP update due June 1, 2022;

NO UPDATE NEEDED
NO COMMERCIAL NITROGEN IN 2022
ADDED TO MANURE APPLIED FIELDS.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CRAIG BENJEGERDES

3. Mr. Benjegerdes shall sample the manure at the facility on an annual basis either prior to application or during the application for a period of 4 years from the date of the date the Director signs this administrative consent order; and
4. Mr. Benjegerdes shall pay an administrative penalty in the amount of \$4,500.00 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 \$4,500.00. 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. Benjegerdes over applied manure for at least five years which reduced the amount of land manure was applied to and therefore likely reduced application costs. Mr. Benjegerdes gained a minimal economic benefit from the over application of the manure; therefore, \$100.00 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. 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. Applying more nitrogen than allowed by the MMP likely increased the amount of nitrogen leaving the field in surface runoff and subsurface drainage entering waters of the state. As indicated above, substantial civil penalties are authorized by statute. Additionally, Mr. Benjegerdes’ repeated delay in timely submitting the Phosphorus Index MMPs, MMP annual updates, and fees threaten

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CRAIG BENJEGERDES

the integrity of the animal feeding operation regulations. Therefore, \$1,400.00 is assessed for this factor.

Culpability – Mr. Benjegerdes 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. Benjegerdes knew or should have known that the rates that were being land applied exceeded the amount allowed by the facility's MMP. Mr. Benjegerdes also should have been aware that the commercial fertilizer must be accounted for in the facility's MMP. Additionally, Mr. Benjegerdes failed to timely submit the annual MMP updates and fees for numerous years. He aware of the regulations yet has repeatedly failed to comply with the requirements by the deadline. Therefore, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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


CRAIG BENJEGERDES

Dated this 7 day of
JUNE, 2022.