

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

IN THE MATTER OF:

**DALLAS PORK, LLC and GIFT
PORK, LLC**

Dallas County Iowa
AFO ID# 65901 and 69573

ADMINISTRATIVE CONSENT ORDER
NO. 2023-AFO-06

TO: Tiffany Manning, Registered Agent
Dallas Pork, LLC and Gift Pork, LLC
3307 Ashworth Road
Waukee, Iowa 50263

Robert Manning, Facility Operator
Dallas Pork, LLC and Gift Pork, LLC
31329 Ashworth Road
Waukee, Iowa 50263

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dallas Pork, LLC (Dallas Pork) and Gift Pork, LLC (Gift Pork) for the purpose of resolving violations resulting from a manure release at each of the two facilities. This administrative consent order requires Dallas Pork and Gift Pork to: 1) develop and submit a Standard Operating Procedure for the land application of manure; 2) notify the DNR of any future manure releases in accordance with 567 IAC 65.2(9); and 3) pay a \$3,500.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dennis Thielen, DNR Field Office 5
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/250-1798

Relating to legal requirements:

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; 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

Mr. Manning neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Dallas Pork is an animal feeding operation located at 12037 150th Street, Dawson, Iowa (Section 16, Dallas Township, Dallas County). The facility has two confinement buildings with deep pit concrete manure storage structures and a capacity of 7,440 swine. Gift Pork is an animal feeding operation located at 21439 D Avenue, Linden, Iowa (Section 21, Lincoln Township, Dallas County). The facility has two confinement buildings with deep pit concrete manure storage structures and a capacity of 2,490 swine. Both facilities are operated by Robert Manning.

2. On November 3, 2022, DNR Field Office 5 received a report of a manure spill from Gift Pork. It was reported that approximately 1,500 gallons of manure had been released. It was reported that a honey wagon rolled into Swan Lake Branch. At the time of the spill, the creek bed was dry and there was no flowing water at the spill location. Mr. Manning was transporting manure from the facility to a field for application and while turning into the field the wagon rolled over spill manure into the dry creek bed.

3. On November 4, 2022, Dennis Thielen, environmental specialist senior DNR Field Office 5 traveled to the spill location and noted that manure impacted Swan Lake Branch but the creek was dry with no flowing water. Mr. Manning excavated manure from the creek and used 5,000 gallons of water to flush the culvert to remove residual manure from inside of the culvert. The water was then pumped from the creek bed. Mr. Thielen told Mr. Manning to continue flushing the culvert to ensure that all manure was removed.

4. On November 8, 2022, DNR issued a Notice of Violation to Gift Pork and Mr. Manning for the violations noted as a result of the November 3 manure release. The letter informed Mr. Manning the violation was being referred for further enforcement.

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5. On November 12, 2022, during the transfer of manure from the storage structure to the application equipment by an employee, manure was spilled on the ground and traveled to the road and ditch. This occurred late in the evening on a weekend. On November 13, 2022, DNR received a complaint regarding a manure spill at the Dallas Pork facility. On November 13, 2022, Anthony Bigger, environmental specialist DNR Field Office 5, investigated the spill at Dallas Pork. Mr. Bigger noted a significant amount of manure was spilled on the ground at the facility and on the road, in a ditch, and a field near the facility.

6. On November 14, 2022, Mr. Thielen visited the Dallas Pork facility and the spill site at the road and ditch. Mr. Manning was on site and used corn stalks to soak up the manure pooling on the ground at the facility. Mr. Manning was instructed to continue to use the corn stalks to soak up the manure and to incorporate the manure in the field. DNR Field Office 5 personnel returned to the location on November 15, 2022, and noted the remaining pooled manure was still evident at the facility. At the request of the DNR, Mr. Manning took all necessary measures to remediate the manure spill.

7. On November 16, 2022, DNR issued a Notice of Violation to Dallas Pork and Mr. Manning for the violations noted as a result of the November 12 manure release. The letter informed Mr. Manning the violation was being 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.

2. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of application. DNR Field Office 5 noted that Dallas Pork and Gift Pork, two facilities operated by Mr. Manning, had manure releases during the process of land application in November 2022. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.2(9) states that a person storing, handling, transporting, or land applying manure from a confinement feeding operation who becomes aware of a release shall notify DNR of the occurrence of the release as soon as possible but not later than six hours after the onset or discovery of the release. Mr. Manning failed to notify the DNR of the manure release that occurred at the Dallas Pork facility in November 2022. The above-mentioned facts indicate a violation of this provision.

V. ORDER

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

1. Develop and submit a Standard Operating Procedure for the land application of manure, including equipment checks, employee training, and reporting requirements for all facilities operated by Mr. Manning. The Standard Operating Procedure shall be submitted to DNR Field Office 5 within 30 days of the date the Director signs this administrative consent order and implemented immediately upon approval from DNR Field Office 5;
2. Notify the DNR of any future manure releases within six hours of the release in accordance with 567 IAC 65.2(9); and
3. Pay an administrative penalty in the amount of \$3,500.00 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. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air 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 \$3,500.00. 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.” Dallas Pork and Gift Pork did not receive an economic benefit as a result of either spill; therefore, no economic benefit is being 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. In November 2022, manure was allowed to be released from two facilities operated by Mr. Manning and had the potential to cause environmental harm if not properly contained and reported. Additionally, Mr. Manning failed to report the second spill. Both actions prohibited the DNR from being able to review the situation and the plan to ensure that proper land application could occur. The manure releases and failure to report a spill threaten the integrity of the animal feeding operation regulations. Based on the above-mentioned facts, \$2,000.00 is assessed for this factor.

Culpability – Dallas Pork and Gift Pork have a duty to know the regulations and to be aware that their actions are subject to the regulations. These two facilities, operated by Mr. Manning, each had releases in the same month and Mr. Manning failed to report one of the releases. Based on the above-mentioned information, \$1,500.00 is assessed for this factor.

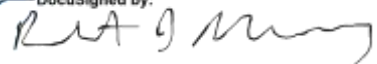
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dallas Pork and Gift Pork. For that reason, Dallas Pork and Gift Pork waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

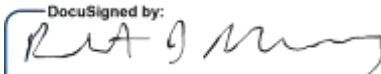
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties 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

DocuSigned by:

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DALLAS PORK, LLC

Dated this ⁸ _____ day of
March _____, 2023.

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DocuSigned by:

522A5BACF37E4D4
GIFT PORK, LLC

Dated this ⁸ day of
March, 2023.