

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

IN THE MATTER OF:

**JON GINGERICH**

Iowa County Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2023-AFO-11

**TO:** Jon Gingerich  
3266 F-52 Trail  
Parnell, Iowa 52325

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jon Gingerich for the purpose of resolving water quality violations resulting from a manure release during land application of manure and uncertified manure application. This administrative consent order requires Jon Gingerich to: 1) develop and submit a Standard Operating Procedure for land application of manure; 2) ensure that all manure applicators are properly certified; and 3) pay an \$2,000.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

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

**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

**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

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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. Jon Gingerich owns and operates two animal feeding operations in Iowa County. Windy Prairie Farms, LLC is a 2,400 head swine finishing confinement feeding operation located at 3335 290<sup>th</sup> Street; Parnell, Iowa (Section 1, Greene Township, Iowa County). Jon Gingerich Farm is a 2,480 head swine finishing confinement feeding operation located at 3266 F-52 Trail; Parnell, Iowa (Section 2, Greene Township, Iowa County). Mr. Gingerich land applies manure from the two facilities to farm ground,

2. On December 7, 2022, Mr. Gingerich contacted DNR Field Office 6 to report a manure release that occurred during manure application. Mr. Gingerich explained that approximately 1,000 gallons of manure was released the previous evening when the manure wagon got stuck and manure flowed from the wagon. Mr. Gingerich estimated that a quarter of the manure went into the road ditch but had not reached a water of the state. The field office instructed Mr. Gingerich to remove the manure from the road ditch.

3. Later in the day, Terry Jones, DNR Field Office 6 environmental specialist senior, visited the Gingerich facility. When Mr. Jones arrived, he noted that Mr. Gingerich was removing the impacted soil from the road ditch and stockpiling the material in the application field. Mr. Gingerich stated he would be done removing the impacted soil by the end of the day. Mr. Jones inspected the tile riser and culvert in the road ditch and confirmed that there was no release to the tile or culvert.

4. On December 8, 2022, Mr. Gingerich contacted Mr. Jones to report that all the impacted soil had been removed from the road ditch. Mr. Jones informed Mr. Gingerich that a review of the DNR's manure applicator certification database showed that Mr. Gingerich manure applicator certification had expired on December 21, 2021. On December 9, 2022, Mr. Gingerich renewed his manure applicator certification.

5. On December 14, 2022, DNR issued a Notice of Violation letter to Mr. Gingerich for the violations associated with the manure release and the manure applicator certification. The letter included a violation for failing to report the release within 6 hours of becoming aware of the release. The letter also informed Mr. Gingerich that the matter was being referred for further enforcement.

6. On January 3, 2023, Mr. Gingerich submitted the written incident report indicating he did not become aware of the manure release until the morning

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of December 7, 2022, when he reported the release to the DNR. Based on this information, Mr. Jones informed Mr. Gingerich that further enforcement would not include the failure to report the release in a timely manner.

**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. During the November 2022 investigation, DNR Field Office 6 confirmed that manure from Mr. Gingerich's facility was released to the road ditch. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.3(6) states that a confinement feeding operation required to submit an MMP to the DNR must use a certified commercial manure service for land application of manure and an operation that applies its own manure must comply with certification requirements in 567 IAC 65.19. 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 November 2022 investigation, it was determined that Mr. Gingerich was not certified to apply manure. The above-mentioned facts indicate a violation of this provision.

4. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Mr. Gingerich complies with the provisions listed in Paragraphs 1 and 2, Section V Order of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Jon Gingerich agrees to do the following:

1. Develop and submit a Standard Operating Procedure documenting the land application procedures, including equipment inspections, employee training, and notification procedures. The Standard Operating Procedure shall be submitted to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order and implemented immediately upon approval by DNR Field Office 6;
2. Ensure that land application of manure from the Gingerich facilities is either conducted by a certified commercial manure applicator or that Mr. Gingerich is a certified confinement manure applicator; and

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3. Pay an administrative penalty in the amount of \$2,000.00 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. 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 \$2,000.00. 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.” The manure release was accidental and Mr. Gingerich realized little to no economic benefit. Based on this information, no economic benefit is being assessed.

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. Applying manure without the proper training and certification increases the risk a manure related discharge during application. The manure applicator certification and manure containment requirements are integral parts of the animal feeding operation programs and violations of the regulations threaten the integrity of the animal feeding operation regulations. Based on the information above, \$1,500.00 is assessed for this factor.

Culpability – Mr. Gingerich has a duty to know the regulations and to be aware that his actions are subject to the regulations. The release was accidental and

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Mr. Gingerich took immediate steps to limit the impact of the release. Mr. Gingerich became certified as soon as he was notified that his certification had expired. Based on this information, \$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 Jon Gingerich. For that reason, the Mr. Gingerich 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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

  
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JON GINGERICH

Dated this 30 day of  
March, 2023.