

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

IN THE MATTER OF:

MAASSEN DAIRY, LLC

**Sioux County, Iowa
AFO #57177**

ADMINISTRATIVE CONSENT ORDER
NO. 2023-AFO-27

TO: Leroy Maassen, Registered Agent
Maassen Dairy, LLC
3194 470th Street
Maurice, Iowa 51036

Aaron Maassen
Maassen Dairy, LLC
4695 Harrison Avenue
Maurice, Iowa 51036

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Maassen Dairy, LLC (Maassen) for the purpose of resolving violations of the animal feeding operation construction permit regulations. This administrative consent order requires Maassen to pay a \$10,000.00 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:

Relating to technical requirements:

Lois Benson, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

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 459A 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. Maassen owns and operates an animal feeding operation located at 4733 Hickory Avenue; Maurice, Iowa (Section 15, Sherman Township, Sioux County). The facility houses 2,050 head of mature dairy cows. The cows are housed in a confinement free-stall barn and milked in a confined parlor.

2. On May 16, 2022, Maassen submitted a construction permit application for the construction of a confinement barn. The application noted that a manure digester would be added in the future. The construction permit for the barn was issued on July 1, 2022 and noted that if the digester was added that a permit amendment would need to be completed. Novilla RNG contracted with Maassen for the manure digester.

3. On May 20, 2023, Lois Benson, DNR Field Office 3 environmental specialist, was conducting an inspection at the Maassen facility. Ms. Benson noted that the construction of a manure digester was in process, but a construction permit had not been obtained. The construction permit amendment was issued on June 13, 2023.

4. On June 28, 2023, a Notice of Violation and Notice of Referral letter was issued for the construction permit violation. The letter informed Maassen that the construction permit violation was being referred for further enforcement.

5. On August 18, 2023, Jacob Simonsen, DNR Field Office 3 environmental specialist, conducted an inspection at the Maassen facility. Mr. Simonsen observed the construction and installation of the interconnecting manure piping from the facility that will ultimately transfer manure from another facility for the digester.

6. On October 11, 2023, a Notice of Violation and Notice of Referral letter was issued for the construction permit violation. The letter informed Maassen that the construction permit violation was being referred for further enforcement. To date the permit for the piping has not been issued.

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

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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 a site visit in May 2023, DNR Field Office 3 noted the construction of a manure digester had begun before the issuance of a construction permit. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.7(1)"b"(8) required that a construction permit is required prior to installing a permanent manure transfer piping system. During a site visit in August 2023, DNR Field Office 3 noted the construction and installation of the interconnecting manure piping from the Maassen facility that will ultimately transfer manure from another facility for the digester. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Maassen agrees to do the following:

1. Maassen shall pay an administrative penalty in the amount of \$10,000.00 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 \$10,000.00. 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

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benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Maassen gained an economic benefit by starting construction of the digester and the transfer manure piping prior to the issuance of construction permits. The facility was able to start construction on its own schedule rather than waiting for the issuance of construction permits. Starting construction earlier allows the facility to provide methane to Novilla RNG several months earlier than if the facility had waited for the construction permits. Based on the above-mentioned information, a minimal economic benefit of \$1,000.00 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. Starting the construction project before the construction permit was issued barred the DNR from reviewing the design and location of the construction project. This review ensures that the interests of the citizens of Iowa in clean water are protected. 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 the violation noted in Section IV, Paragraph 2 and \$3,000.00 is assessed for the violation noted in Section IV, Paragraph 3 for a total of \$6,000.00 assessed for this factor.

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



MAASSEN DAIRY, LLC

Dated this 4 day of
DECEMBER, 2023.