

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**MIKE WENGER dba WENGER
PORK LLC**
Winnebago County

ADMINISTRATIVE ORDER
NO. 2024-AFO-04

AFO #58514 and #58515

TO: Mike Wenger
Wenger Pork LLC
956 W Avenue
Grand Junction IA 50107

I. SUMMARY

This administrative order (Order) requires Mike Wenger dba Wenger Pork LLC (Mr. Wenger) to comply with the provision in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th St 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

Appeal and 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 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 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.

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III. STATEMENT OF FACTS

1. Mr. Wenger owns an animal feeding operation located at 38322 160th Avenue, Leland, Iowa (Section 10, Forest Township, Winnebago County). The facility has a capacity of 4,160 swine wean to finish (1,664 animal units). Mr. Wenger also owns an animal feeding operation located at 16913 390th Street, Leland, Iowa (Section 10, Forest Township, Winnebago County). The facility has a capacity of 4,160 swine wean to finish (1,664 animal units). The Winnebago County Assessor's Office indicates that Mr. Wenger purchased the two facilities from Glen Christensen on December 15, 2022.

2. On April 18, 2023, a representative from Christensen Farms contacted DNR Field Office 2 and indicated that Mr. Wenger purchased the two facilities in December 2022. Jeremy Klatt, DNR Field Office 2 environmental specialist senior, spoke to Mr. Wenger and explained that new owners must submit an original MMP within 60 days of acquiring an operation.

3. On April 21, 2023, DNR issued a Notice of Violation letter to Mr. Wenger for MMP violations and letter required that the MMPs be submitted no later than June 1, 2023. The letter informed Mr. Wenger if the MMPs and fees were not submitted by June 1, 2023, the violations may be referred for further enforcement.

4. On June 5, 2023, DNR Field Office 2 spoke with Mr. Wenger and informed him he had missed the June 1 submittal date. Mr. Wenger stated Advanced Crop Management was working on the MMPs.

5. On June 9, 2023, a representative from Advanced Crop Management contacted DNR Field Office 2 and stated that Advanced Crop Management was working with Mr. Wenger on the MMPs, but that the company was not receiving the information it needed from Mr. Wenger. On October 3, 2023, the original MMPs and fees were submitted to the DNR.

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. 567 IAC 16(1)"e" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Woodbury County Assessor's Office indicates the sale of the facilities occurred on December 15, 2022, making the original MMPs due February 20, 2023; however, the original MMPs and fees were not submitted until October 3, 2023. The above-mentioned facts indicate violations of this provision.

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3. 567 IAC 65.17(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR an MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP. To date, the filing fee for the facilities has not been received. 567 IAC 65.16(6) require all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. The indemnity fee for each of the facilities is \$166.40. The indemnity fee is required to be submitted with the MMP. The Woodbury County Assessor's Office indicates the sale of the facilities occurred on December 15, 2022, making the original MMPs due February 20, 2023; however, the fees were not submitted until October 3, 2023.

V. ORDER

THEREFORE, the DNR orders Mr. Wenger to do the following:

1. Mr. Wenger shall pay an administrative penalty in the amount of \$4,000.00 within 60 days from the date the Director signs this 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 Order with an administrative penalty of \$4,000.00. 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." Wenger's failure to submit two complete MMPs and fees allowed it to save time and money. It is estimated that Wenger has gained an economic benefit of at least \$100.00 and that amount is 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. The MMP is a crucial aspect of the DNR’s animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. The two Wenger facilities have a combined capacity of 3,328 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,900.00 is assessed for this factor.

Culpability – Wenger has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. The field office notified Wenger of the MMP requirements and the original MMPs and fees were submitted eight months after the required date. Therefore, \$2,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this 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