

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

IN THE MATTER OF:

RJ PORK ENTERPRISE, LLC
Muscatine County

AFO #71917

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-08

TO: Ryan Jones
1251 Hawkeye Lane
West Liberty, Iowa 52776

William A. Tharp, Registered Agent
305 North Calhoun Street, Box 168
West Liberty, Iowa 52776

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and RJ Pork Enterprise, LLC (RJ Pork) for the purpose of resolving the failure to timely submit the complete original Manure Management Plan (MMP) and fees. This administrative consent order requires RJ Pork to pay an administrative penalty in the amount of \$3,000.00 and compliance fees for 2021, 2022, and 2023. 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:
Josh Sobaski, DNR Field Office 6
Iowa Department of Natural Resources
1023 W Madison Street
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

*Attw: Kelly
Brooks*

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 issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On March 21, 2022, DNR Field Office 6 received a complaint regarding the dead animal dumpster at the RJ Pork facility. The initial complaint was referred to the Iowa Department of Agriculture and Land Stewardship, but further investigation of the RJ Pork facility uncovered MMP issues. The RJ Pork facility was made up of two parcels of land and two confinement buildings, one parcel has a confinement building owned by RJ Pork and was constructed in 2017 with an animal unit capacity of 499.6 animal units. The other parcel has a confinement building owned by TBC Pork Enterprise, LLC (TBC Pork) constructed in 2020 with an animal unit capacity of 499.6 animal units. The two confinement buildings are within 150 feet of one another.

2. On March 28, 2022, DNR sent a letter to Ryan Jones with RJ Pork regarding status of the MMP for the facility located at 1906 HWY 6, Atalissa, Iowa. On May 20, 2022, DNR sent another letter to Ryan Jones regarding TBC Pork and how the facility relates to the RJ Pork facility. In response to this letter, Mr. Jones indicated that RJ Pork owns both parcels where the two confinement buildings are located and that he had 100% interest in both RJ Pork and TBC Pork.

3. On October 3, 2023, RJ Pork submitted the MMP and filing and indemnity fees for the RJ Pork and TBC Pork confinement buildings. The two buildings are considered one facility and are identified by DNR as RJ Pork.

4. On October 11, 2023, DNR issued a Notice of Violation letter to Mr. Jones. The letter explained that based on the ownership and adjacency of the two confinement buildings, the operation is considered one facility. The combined number of animals for both operations was 2,498 swine (999.2 animal units). The letter noted the violations and informed Mr. Jones the matter 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. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 16(1) requires that an owner of a confinement feeding operation must submit an original MMP if the facility is over 500 animal units within 60 days after acquiring the operation. The facility went over 500 animals

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units in 2020 when the second confinement building was constructed, thus requiring an MMP submission at the time of the expansion. The MMP was not submitted until October 3, 2023. The above-mentioned facts indicate a violation of this provision.

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 the facility is \$99.92. The indemnity fee is required to be submitted with the MMP. The facility went over 500 animal units in 2020 when the second confinement building was constructed, thus requiring an MMP and the filing fee and indemnity fee. The filing fee and indemnity fee were not submitted until October 3, 2023.

4. 567 IAC 65.16(3)"b" requires 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. The compliance fee for the facility is \$149.88. The facility went over 500 animal units in 2020; therefore, the facility should have submitted an MMP update and annual compliance fee for 2021, 2022, and 2023. To date those fees have not been submitted. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and RJ Pork agrees to do the following:

1. RJ Pork shall pay the 2021, 2022, and 2023 annual compliance fees of \$149.88 for each year (a total of \$449.64) within 30 days from the date the Director signs this administrative consent order and
2. RJ Pork shall pay an administrative penalty in the amount of \$3,000.00 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.

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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 \$3,000.00. 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." RJ Pork's failure to submit the MMP and fees allowed it to save time and money. It is estimated that RJ Pork has gained an economic benefit of at least \$100.00 and that amount 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. 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 RJ Pork facility has a capacity of 999 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$2,400.00 is assessed for this factor.

Culpability – RJ Pork 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. Therefore, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

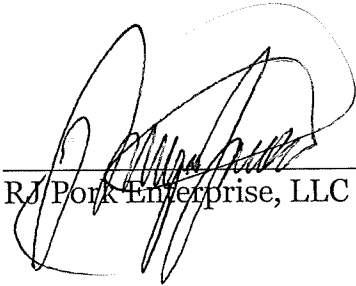
This administrative consent order is entered into knowingly and with the consent of RJ Pork. For that reason, RJ Pork waives the right to appeal this administrative consent order or any part thereof.

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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



RJ Pork Enterprise, LLC

Dated this 1/19 day of _____, 2024