

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

IN THE MATTER OF:

EICHELBERGER FARMS, INC.
Washington County

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-24

AFO #60194

TO: Eichelberger Farms, Inc.
408 North Way Drive
Wayland, Iowa 52654

Amy Johnson, Registered Agent
666 Grand Avenue, Suite 200
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Eichelberger Farms, Inc. (Eichelberger Farms) for the purpose of resolving the failure to timely submit a complete original Manure Management Plan (MMP) and fees upon the purchase of an animal feeding operation located in Washington County. This administrative consent order requires Eichelberger Farms to do pay an administrative penalty in the amount of \$3,000.00. 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:

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

Relating to legal requirements:

Kelli Book
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Payment of penalty to:

Director
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

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

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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

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

1. Eichelberger Farms owns an animal feeding operation located at 3205 Coppock Road, Washington, Iowa. The facility is a swine confinement operation with a capacity of 2,904 head (1,640 sow and litter; 1,264 gestation) (1,161.60 animal units). Eichelberger Farms purchased the facility from Jerome W. Vittetoe Pork LTD on January 17, 2024.

2. The MMP update for the facility was due on May 1, 2024 and during a compliance review of the site, DNR Field Office 6 discovered that the facility had been sold in January. On May 10, 2024, DNR issued a Notice of Violation letter to Eichelberger Farms for failing to submit an original MMP and associated fees within 60 days of purchase. The original MMP and associated fees should have been submitted by March 18, 2024. The letter informed Eichelberger Farms the original MMP and associated fees must be submitted and that the matter may be referred for further enforcement. The MMP and fees were not submitted until June 28, 2024.

IV. CONCLUSIONS OF LAW

Eichelberger Farms neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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 65.110(1)"d" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Washington County Assessor's Office indicates the sale of the facility occurred on January 17, 2024, making the original MMP due March 18, 2024. The MMP was not submitted until June 28, 2024. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.111(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.110(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. The filing fee was not

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submitted until June 28, 2024. 567 IAC 65.110(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 was \$116.16 and was not submitted until June 28, 2024.

V. ORDER

THEREFORE, the DNR orders and Eichelberger Farms agrees to do the following:

1. Eichelberger Farms shall pay a \$3,000.00 administrative penalty 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.

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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Eichelberger Farms has delayed submitting a complete MMP and fees. The facility delayed the costs associated with consulting fees to develop an MMP and delayed the payment of the associated fees. Through the delayed costs, it is estimated that Eichelberger Farms 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

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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. Environmental harm is likely to occur if the manure is not applied properly. Therefore, \$2,400.00 is assessed for this factor.

Culpability – Eichelberger Farms 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 Eichelberger Farms. For that reason, Eichelberger Farms 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



Eichelberger Farms, Inc.

Dated this 12th day of
July, 2024