

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

BENJAMIN J. WAIGAND
UNION COUNTY, IOWA
ID #65898

**ADMINISTRATIVE CONSENT
ORDER**
NO. 2014-AFO- 24

TO: Benjamin J. Waigand
1824 Talmage Road
Thayer, IA 50254

BJW Pork, L.L.C
Benjamin Waigand, Registered
Agent
1824 Talmage Road
Thayer, IA 50251

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Benjamin J. Waigand and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, IA 50022
Ph: (712)243-1934
Fax: (712)243-6251

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark

II. JURISDICTION

This Order is issued pursuant to Iowa Code §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 §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. Benjamin J. Waigand neither admits nor denies the Statement of Facts and enters into this Order for settlement purposes.

2. Benjamin J. Waigand, doing business as BJW Pork, LLC, owns a swine confinement operation located in the NE¼ of the SW¼ of Section 20, T72N, R28W (Jones Township), Union County, Iowa. The operation has a capacity for 4,800 head (1,920 animal units) and utilizes deep below-building pits for manure storage.

3. On July 7, 2008, Construction Permit CP-A2008-135 (Permit) was issued to the Waigand operation, authorizing construction of one new confinement finishing barn. Condition 7(a) of this Permit requires manure produced by the operation to be injected or incorporated on the same date it is land applied. The cover letter accompanying the Permit stressed the need to read and be familiar with the Permit and expressly referred to condition 7 therein.

4. On June 25 and 26, 2013, Department Field Office #4 (FO4) staff investigated complaints that manure from the Waigand operation was being improperly land applied. FO4 staff observed that manure had been surface applied to an alfalfa field within 20 feet of a pond. Except for a strip of grass approximately ten feet wide along the bank of the pond, there was no permanent vegetation in the alfalfa field. The pond drained into a creek which ultimately drains into Thayer Lake. Manure runoff into the pond was not observed and field analysis of water in the pond did not reveal the presence of ammonia which would have indicated manure pollution. Mr. Waigand stated that his manure pits were full and needed to be pumped down, and he did not realize he was prohibited from surface manure application. Tim Van Eaton applied the manure for Mr. Waigand; FO4 staff later determined that Mr. Van Eaton's certification as a commercial manure applicator expired on March 1, 2013 and had not been renewed at the time of the manure application for Mr. Waigand. Mr. Waigand explained that all of the bills and correspondence from Mr. Van Eaton included the commercial manure service certification number so he was not aware that Mr. Van Eaton was not certified.

IV. CONCLUSIONS OF LAW

1. Benjamin J. Waigand neither admits nor denies the Conclusions of Law and enters into this Order for settlement purposes.

2. Iowa Code §459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations. The Commission has done so at 567 IAC Chapter 65.

3. Iowa Code §459.314(2) and 567 IAC 65.3(3)"g" prohibit application of manure within 200 feet of a designated area unless: the manure is injected or incorporated on the same date as the manure was land-applied, or an area of permanent vegetation cover exists for 50 feet surrounding the designated area. "Designated area" is defined in Iowa Code §459.102(21) to include a "water source." Iowa Code §459.102(60) defines "water source" as, among other things, "a lake...reservoir...or other body of water...except lakes or ponds without outlet to which only one landowner is riparian." The above-referenced pond is water source, the manure was not injected or incorporated and a 50 foot permanent vegetation area surrounding the pond did not exist. Therefore, the foregoing facts establish that these provisions were violated.

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4. 567 IAC 65.7(10) requires a person who constructs a confinement feeding operation structure pursuant to a construction permit to comply with all terms and conditions of the construction permit. The foregoing facts establish that Mr. Waigand violated Condition 7(a) of the Permit by not incorporating or injecting manure on the same date it was land applied.

5. 567 IAC 65.3(6) requires a confinement feeding operation that is required to submit a manure management plan to use a certified commercial manure service for land application of manure. The foregoing facts establish that Mr. Waigand violated this requirement.

V. ORDER

THEREFORE, the Department hereby orders and Benjamin J. Waigand consents to do the following:

1. Comply with all manure application and construction permit requirements.
2. Pay an administrative penalty of \$5,000.00 in accordance with the following payment plan:
 - \$2,500.00 due within 30 days of the date the Director signs this Order.
 - \$2,500.00 due April 1, 2015.

If any of the payments are not received by the due date, the remaining balance shall be due immediately.

VI. PENALTY

1. Iowa Code §§455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.

2. Iowa Code §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; 567 IAC Chapter 10. Pursuant to these provisions the Department 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. The administrative penalty is determined as follows:

a. Economic Benefit. By merely surface applying the manure Mr. Waigand saved the cost of injecting or incorporating the manure. While this benefit cannot be precisely determined, it is estimated to be at least \$1,000.00 and that amount is assessed for this factor.

b. Gravity of the Violation. 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 Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Applying manure too close to the pond threatened water quality and failure to comply with the construction permit threatens the integrity of the regulatory program. Therefore, \$1,500 for each of the two violations, for a total of \$3,000.00, is assessed for this factor.

c. Culpability. In addition to Mr. Waigand's duty to be informed of animal feeding operation requirements, the cover letter accompanying Construction Permit CP-A2008-135 stressed the need to read and be familiar with the Permit and expressly referred to condition 7 therein. Therefore, \$1,000 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Benjamin J. Waigand. By signature to this Order, all rights to appeal this Order or any part thereof are waived by Benjamin J. Waigand.

VIII. NONCOMPLIANCE

Compliance with section V. ORDER 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 §455B.191.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4th day of
December, 2014.



BENJAMIN J. WAIGAND

Dated this 24 day of
November, 2014.

Field Office 4(Alison Manz); Randy Clark; Ken Hassenius; EPA; VIII. D.2.b, D.4