

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

<p>IN THE MATTER OF:</p> <p>JPP Pork, Inc. Louisa County Facility #65499</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:center">NO. 2008-AFO-01</p>
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<p>TO: Steven D. Kundel, Registered Agent JPP Pork, Inc. 300 E. 2nd Street, Suite 300 Muscatine, Iowa 52761</p>	<p>Jerry Podaril, President JPP Pork, Inc. 18552 County Line Road Ainsworth, Iowa 52201</p>
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I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and JPP Pork, Inc (JPP Pork) for the purpose of resolving the issues surrounding a manure discharge at JPP Pork's facility and the resulting fish kill in an unnamed tributary of Short Creek. 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:
Mark Heiderscheit, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: (319) 653-2135

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to 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, Iowa Code Chapter 459, or 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.

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III. STATEMENT OF FACTS

1. Jerry Podaril operates JPP Pork, an animal feeding operation. The property the facility is located on is owned by Jerry and Betty Podaril. The facility is located at 18552 County Line Road in Ainsworth, Iowa (Section 6, T-75-N, R—W, Union Township, Louisa County). The facility consists of both open lots and confinement buildings. The confinement buildings have an animal unit capacity of 465 and the open lots have an animal unit capacity of 264.

2. On August 8, 2007, DNR Field Office 6 received a complaint regarding dead fish in Short Creek at 178th Street. On that same day, Mark Heiderscheit and Jim Sievers, DNR Field Office 6, investigated the complaint. Dead fish were observed at 178th Street, and the water was turbid due to the rain the previous evening. Field tests were conducted at this location and the results are as follows:

	pH	Ammonia	Temperature
Flowing Portion	7.7	0.6 mg/L	78 F
Pooled Area	8.0	0.3 mg/L	78 F

Mr. Heiderscheit walked downstream and did not observe any dead fish. Mr. Sievers and Mr. Heiderscheit also walked upstream from the original location and did not observe any fish and the water appeared to be clear.

3. Mr. Sievers and Mr. Heiderscheit continued upstream from the original location to the bridge on X Avenue. At this location, field samples were collected and Mr. Sievers observed a few dead fish. The field test indicated the ammonia level was 0.6 mg/L.

4. Mr. Sievers and Mr. Heiderscheit continued upstream to the bridge on County Road W66. At this location field samples indicated an ammonia level of >3.0 mg/L. Field tests from a field tile approximately 30 feet upstream of the bridge indicated an ammonia level of 0.6 mg/L.

5. Mr. Sievers and Mr. Heiderscheit continued upstream to the bridge on County Line Road. From this location, the JPP Pork facility could be observed. It was located approximately ¼ mile north of the creek. The field test from the east side of the bridge indicated an ammonia level of 0.4 mg/L, and the field test taken approximately 500 feet downstream indicated an ammonia level of 0.6 mg/L. A water source was observed 1/4-1/2 mile downstream. Below the confluence of the two streams, Mr. Sievers and Mr. Heiderscheit observed mats of brown-grayish algae. Field tests were taken upstream, at the confluence, and downstream. Laboratory samples were also collected. The field tests indicated the following:

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Location	pH	Ammonia	Temperature
Upstream	8.1	2.0 mg/L	84 F
Confluence	8.0	>3.0 mg/L	84 F
Downstream	7.9	>3.0 mg/L	84 F

The laboratory samples indicated the following:

Location	Fecal Coliform	Total Biochemical Oxygen Demand	Total Suspended Solids	Ammonia
Upstream	2,200,000/100 mL	6 mg/L	18 mg/L	1.1 mg/L
Confluence	8,600,000/100 mL	48 mg/L	91 mg/L	14 mg/L
Downstream	6,700,000/100 mL	39 mg/L	120 mg/L	5.2 mg/L

6. After the samples had been collected, Jerry Podaril arrived and asked what was going on. Mr. Podaril was informed the DNR was investigating a fish kill and that high ammonia levels had been observed. DNR personnel and Mr. Podaril went to the JPP Pork facility. Mr. Podaril stated he had been using sprinklers to keep the hogs cool and he thought the runoff from the sprinklers was causing the problem. He stated he would reduce to the flow of the sprinklers to slow the flow of the manure discharge. DNR personnel and Mr. Podaril also discussed the maintenance of the grass waterways and the cuts in them. Mr. Podaril stated there was a cut in the waterway and that it had been there for several years. DNR personnel informed Mr. Podaril that he would need to take immediate steps to stop the discharge. While Mr. Sievers spoke further with Mr. Podaril, Mr. Heiderscheit took photographs of the facility. Mr. Heiderscheit observed that the lots appeared to be clear with manure solids in the grass areas below the lots. A mixture of contaminated water and manure was observed flowing through the grass waterway. Mr. Heiderscheit noted there was a cut in the grass waterway that appeared to be one foot deep with smooth sides. Manure solids were also observed in the cut.

7. On August 9, 2007, Mr. Podaril contacted DNR Field Office 6 and informed the field office that he had sold off hogs and contacted the Natural Resources Conservation Services (NRCS). The NRCS would not provide a short-term solution to Mr. Podaril, but rather suggested Mr. Podaril contact the DNR to find out what the DNR wanted installed. Mr. Heiderscheit informed Mr. Podaril of several options.

8. On August 14, 2007, Notice of Violation letters were sent to Jerry Podaril and to Betty Podaril. The letter cited the violations observed on August 8, 2007 by the DNR. The letter listed several requirements for the Podarils to do to prevent further manure discharges from the JPP Pork facility. On August 21, 2007, Steven Kundel, attorney for JPP Pork, contacted the DNR to discuss the requirements. The requirements were explained to Mr. Kundel who indicated that Mr. Podaril was working with a contractor toward permanent improvements at the facility.

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9. The fish kill evaluation by the DNR Fisheries personnel concluded that 118 fish valued at \$41.08 were killed. The cost of performing this evaluation was \$116.08. The total fish kill assessment totals \$157.26.

10. JPP Pork has contacted the NRCS office for assistance. The Podarils are taking steps to prevent manure runoff from the facility in the future. On October 10, 2007, the Podarils submitted the NRCS engineering evaluation, and NRCS submitted an additional evaluation on October 29, 2007.

IV. CONCLUSIONS OF LAW

1. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The discharge of manure from the JPP Pork facility to Short Creek is a violation of this provision in that it was acutely toxic to fish and it created objectionable colors.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. A permit has not been issued for this facility and DNR Field Office 6 found evidence of the discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

3. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC Chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge at the JPP Pork facility.

V. ORDER

THEREFORE, it is hereby ordered and JPP Pork agrees to do the following:

1. JPP Pork shall prevent manure, liquids or solids, from this facility and/or from any other facility it owns or operates in the state of Iowa;
2. JPP Pork shall ensure that manure is periodically removed from the open lots and the grass waterways;
3. JPP Pork shall ensure that the grass waterways are properly maintained;

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4. JPP Pork shall submit a written plan of action to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order;
5. If the open lots are discontinued, DNR Field Office 6 must be notified;
6. JPP Pork shall pay restitution in the amount of \$157.26 within 30 days of the date the Director signs this administrative consent order; and
7. JPP Pork shall pay a penalty of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191, and Iowa Code section 459A.502, authorize 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 Environmental Protection Commission (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 these rules, 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. The administrative penalty assessed by this administrative consent order is \$3,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure has allowed JPP Pork to save time and money. By failing to properly contain the manure and failing to implement best management practices, JPP Pork has gained an economic benefit. Therefore, \$250.00 is assessed for this factor

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 DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to Short Creek, including dead fish. It was estimated that over 100 fish were killed. The water quality violations threaten the integrity of the water quality program. Based on the above considerations, \$1,750.00 is assessed for this factor.

Culpability – JPP 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. JPP Pork has contacted the county NRSC office for assistance to prevent future runoff from this facility

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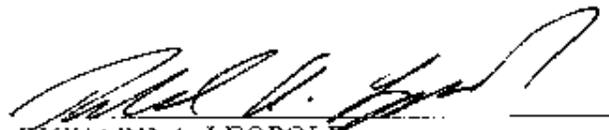
and is taking steps to control manure runoff. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

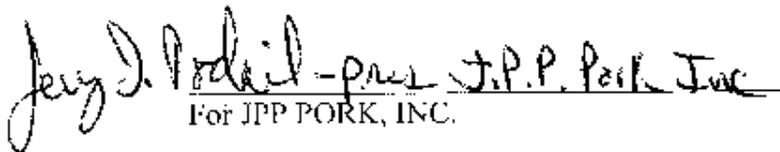
VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



RICHARD A. LEOPOLD
Iowa Department of Natural Resources

Dated this 9 day of
Jan, 2008.



Jerry D. Podail - pres. J.P.P. Pork Inc.
For JPP PORK, INC.

Dated this 27 day of
_____, 2007.

#65499; Kelli Book; Field Office 6; Kenneth Hesselius; Gene Tinker; EPA; VIII.D.1.a, VIII.D.1.b, and VIII.D.3.a