IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **J. WARD FARMS, L.L.C.** Facility #63402 Worth County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-AFO- 06

TO: Jeff Ward
J. Ward Farms, L.L.C.
52697 Valley View Circle
Mankato, Minnesota 56003

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and J. Ward Farms, L.L.C. (J. Ward Farms) for the purpose of resolving J. Ward Farms' failure to timely submit a Manure Management Plan (MMP) update and fee. 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:
Eric Wiklund, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to Legal Requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

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 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. J. Ward Farms owns and operates a 4,160 head (1,604 animal units) grow to finish hog confinement facility. The facility is located at 812 485th Street, Northwood, Iowa (SW ¼ of the NW ¼ of Section 20, Hartland Township, Worth County, Iowa). J. Ward Farms is required to submit an updated MMP and compliance fee each year for the facility. J. Ward Farms' original MMP was submitted on October 18, 2004.

2. The MMP update and compliance fees for 2009 for the J. Ward Farms' facility were due on October 1, 2009. DNR Field Office 2 sent a reminder notice to J. Ward Farms on May 12, 2009. On October 14, 2009, DNR Field Office 2 sent a Notice of Violation letter to J. Ward Farms. On December 3, 2009, DNR Field Office 2 sent a Notice of Referral to J. Ward Farms. On January 6, 2010, Jeff Ward contacted DNR Field Office 2 and stated the MMP update would be filed soon. The MMP update and compliance fee were submitted on March 17, 2010. On March 23, 2010, DNR issued Administrative Order No. 2010-AFO-15. The order was issued for J. Ward Farms' failure to timely submit the MMP update and compliance fee for 2009. The order included a $3,000.00 penalty, due within 60 days of receipt of the order. The order was received March 30, 2010, making the penalty due May 29, 2010. On June 14, 2010, DNR Legal Services a letter to J. Ward Farms and its registered agent regarding the payment of penalty. To date the penalty has not been submitted to the DNR.

3. The MMP update and compliance fee for 2010 for the J. Ward Farms facility were due on October 1, 2010. On October 13, 2010, DNR Field Office 2 issued a Notice of Violation letter to J. Ward Farms for failing to submit the 2010 MMP update and compliance fee by October 1, 2010. The letter stated the MMP update and compliance fee were to be submitted by November 1, 2010 to avoid further enforcement. J. Ward Farms failed to submit the 2010 MMP update and fee by November 1, 2010. On November 16, 2010, DNR Field Office 2 sent J. Ward Farms a Notice of Referral indicating the matter was being referred for further enforcement. The MMP update and compliance fee were submitted on December 22, 2010.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to submit an updated MMP on an annual basis to the DNR. The updated MMP must reflect all amendments made during the period of time since the previous MMP submission. The owner of the animal feeding operation shall also submit the updated

MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. J. Ward Farms failed to timely submit the 2010 MMP update. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 65.16(3)"c" also states that an annual compliance fee of $0.15 per animal unit at the animal feeding operation shall accompany the annual MMP update submitted to the DNR for approval. J. Ward Farms failed to timely submit the 2010 compliance fee. The above-mentioned facts indicate a violation of this provision.

3. Administrative Order No. 2010-AFO-15 assessed a penalty of $3,000.00. The penalty was due May 29, 2010 and has not been paid. J Ward Farms failed to comply with the order by not paying the penalty.

V. ORDER

THEREFORE, the DNR orders and J. Ward Farms agrees to do the following:

1. J. Ward Farms shall pay the penalty of $3,000.00 assessed by Administrative Order No. 2010-AFO-15. The penalty shall be paid in accordance with the payment plan stated in Paragraph 3 of this section;

2. J. Ward Farms shall pay an administrative penalty of $2,000.00 for the untimely submittal of the 2010 MMP update and compliance fee. The penalty shall be paid in accordance with the payment plan stated in Paragraph 3 of this section; and

3. J. Ward Farms shall pay the past penalty of $3,000.00 and the additional penalty of $2,000.00 for a total of $5,000.00. The $5,000.00 shall be paid in accordance with the following payment plan:

$625.00 due February 1, 2011;	$625.00 due February 1, 2012;
$625.00 due May 1, 2011;	$625.00 due May 1, 2012;
$625.00 due August 1, 2011;	$625.00 due June 1, 2012;
$625.00 due November 1, 2011;	$625.00 due November 1, 2012.

The payments shall first be applied to Administrative Order No. 2010-AFO-15 and when the penalty assessed in that order is paid in full, the payments shall be applied to this administrative consent order. If any of the payments are not received in accordance with the plan the remaining portion of the $5,000.00 penalty shall be due immediately.

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 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 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 $2,000.00. The administrative penalty is determined as follows:

Economic Benefit – J. Ward Farms' failure to timely submit the 2010 MMP update and compliance fees has allowed the company to save time and money. It has gained an economic benefit from the delay in the submittal and payment of the fee. $50.00 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 update is a crucial aspect of the DNR's animal feeding operation program. The MMP update 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 J. Ward Farms' facility has a capacity of 1,604 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, $1,000.00 is assessed for this factor.

Culpability – J. Ward 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. J. Ward Farms received an administrative order for the same violations during the previous year. Therefore, $950.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of J. Ward Farms. For that reason J. Ward 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.

ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 2d day of March, 2011.

J. WARD FARMS

Dated this 18 day of FEB, 2011.

Facility #63402; Kelli Book, DNR Field Office 2, EPA, VIII.C.2