IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

BRENT MURPHY
AFO ID # 59377

Humboldt County, Iowa

TO: Brent Murphy
1709 300th St.
Burt, IA 50522

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Brent Murphy for the purpose of resolving the violations of animal feeding operation regulations resulting from Mr. Murphy’s failure to submit a required annual update to the Manure Management Plan (MMP) for an animal feeding operation in Humboldt County, Iowa. This Order requires Mr. Murphy to pay an administrative penalty in the amount of $1,000.00 and in the future comply with the laws and rules of the state governing animal feeding operations.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Jeremy Klatt
Environmental Specialist Senior
Iowa DNR Field Office #2
2300 15th St SW
Mason City, IA 50401
(641) 425-8042

Relating to legal requirements:
Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Dept. of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, IA 50319
(515) 725-8248

Send payment of penalty and fees to:
Director of the Iowa DNR
Iowa Dept. of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, IA 50319

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 459.601(2), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto, and to 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

1. Mr. Murphy owns and operates an animal feeding operation located at 1624 Delaware Avenue, Bradgate, Iowa (Section 3, Avery Township, Humboldt County). The operation consists of two confinement buildings with below building manure storage pits and has a capacity of 4,800 swine (1,920 animal units).

2. Mr. Murphy was required to submit an MMP for the facility starting in 2017. Mr. Murphy is required to submit an annual MMP update and compliance fees by April 1 of each calendar year.

3. On February 17, 2017, Mr. Murphy submitted an incomplete MMP as the new owner of the operation to DNR Field Office 2.


5. The annual MMP update and fee for Mr. Murphy’s facility was due on April 1, 2018, but Mr. Murphy failed to submit the annual MMP update and fee by April 1, 2018. On April 10, 2018, DNR issued Mr. Murphy a Notice of Violation (NOV) for failing to submit the MMP update and fee by April 1, 2018. Mr. Murphy submitted the required materials on May 10, 2018.

6. The annual MMP and fees for Mr. Murphy’s facility was due on April 1, 2019, but Mr. Murphy failed to submit the annual MMP update and fee by April 1, 2019. On April 10, 2019, DNR issued Mr. Murphy a NOV for failing to submit the MMP update and fee by April 1, 2019.

7. On May 14, 2019, DNR Field Office 2 environmental specialist senior, Jeremy Klatt, sent an email to Mr. Murphy notifying him that the MMP update and fee still had not been submitted and requested that the document be submitted.

8. On May 23, 2019, Mr. Murphy requested and was provided with his PIN number for submitting the MMP update electronically.

9. On June 14, 2019 the DNR received and approved Mr. Murphy’s MMP update and fee.

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. 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 a complete updated MMP and compliance fees 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
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compliance fee is fifteen cents per animal unit. The 2019 MMP short form update and fee for
Mr. Murphy were due April 1, 2019. The MMP update and fee was not received by the DNR
until June 14, 2019. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Brent Murphy agrees to do the following:

1. Pay an administrative penalty of $1,000.00, as detailed in the Penalty section of this
   Order, within sixty (60) days of the date the Director signs this Order.

2. In the future comply with the laws and rules of the state governing animal feeding
   operations.

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 Order with an
   administrative penalty of $1,000.00. The administrative penalty is determined as follows:

A. 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.” Mr. Murphy’s delay in submitting the MMP update and fee has allowed him
   to save time and money. It is estimated that Mr. Murphy gained an economic benefit of
   at least $250.00 and that amount is assessed for this factor.

B. 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 and the
   compliance fees are crucial to the budget of the animal feeding program. Failing to
   submit a timely complete MMP update with fee threatens the integrity of the animal
   feeding operation regulations Therefore, $500.00 is assessed for this factor.
C. Culpability: Mr. Murphy has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. The MMP program has been in place for many years and Mr. Murphy has failed to timely submit the MMP update with fee previously. Therefore, $250.00 is assessed for this factor.

VII. APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Mr. Murphy. For that reason, Mr. Murphy waives the right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V 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 a referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

[Signatures]

Dated this 10th day of August, 2019.

Dated this 31st day of July, 2019.

FO2; Noah Poppelreiter, EPA; VII.C.1; VIII.C.2