IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

ERIC AND HANNAH HEIMAN
AFO ID #58299
Crawford County, Iowa

To: Eric and Hannah Heiman
3746 P Avenue
Westside, Iowa 51467

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Eric and Hannah Heiman (jointly, the Heimans) for the purpose of resolving the violations of animal feeding operation regulations resulting from the Heimans' failure to submit a required annual update to the Manure Management Plan (MMP) for an animal feeding operation in Crawford County, Iowa. This Order requires the Heimans to pay an administrative penalty in the amount of $1,500.00 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:
Alison Manz
Environmental Specialist Senior
DNR Field Office 3
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
(712) 262-4177

Relating to legal requirements:
Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Dept. of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, Iowa 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. On May 1, 2019, the Heimans purchased a confinement feeding operation located at 3820 O Avenue, Westside, Iowa (Facility). The Facility is a grow-to-finish swine operation with 3,300 head of swine and an animal unit capacity of 1,320.

2. The Heimans are required to submit an original MMP and filing fees within 60 days of the purchase of the Facility. The Heimans failed to submit an MMP by July 1, 2019.

3. On September 30, 2019, the DNR issued the Heimans a Notice of Violation notifying them of their failure to timely submit an MMP and compliance fees. The Notice of Violation stated that the Heimans’ failure to submit an MMP and associated fees by October 7, 2019, would result in administrative action by the DNR.

4. The Heimans failed to submit a complete MMP by October 7, 2019. The DNR began an administrative action against the Heimans at that time.

5. On December 6, 2019, the DNR received a complete MMP and all associated fees from the Heimans.

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. 567 IAC 65.16(1)"d" requires a new owner of a confinement feeding operation that is not a small confinement feeding operation to submit a complete original MMP and associated fees to the DNR within 60 days of the acquisition of the operation. The Heimans failed to submit a complete original MMP and associated fees in a timely manner. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and the Heimans agree to do the following:

1. Pay an administrative penalty of $1,500.00, as detailed in the Penalty section of this Order, by February 15, 2020 or within 30 days of the date the Director signs this Order, whichever is later.

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 $1,500.00. 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.” The Heimans gained a nominal delayed economic benefit by failing to timely submit the required MMP and associated fees. $250.00 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 associated fees threatens the integrity of the animal feeding operation regulations. Therefore, $1,000.00 is assessed for this factor.

C. Culpability: The Heimans have a duty to be knowledgeable of the laws and rules associated with animal feeding operations. The MMP program has been in place for many years. The Heimans failed to timely submit the MMP update as required. Therefore, $250.00 is assessed for this factor.

VII. APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Eric Heiman and Hannah Heiman. For that reason, each party waives their 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

ERIC HEIMAN

HANNAH HEIMAN

Dated this 21st day of December, 2019.

Dated this 18th day of December, 2019

Dated this 18th day of December, 2019

FO3; Noah Poppelreiter; EPA; VIII.C.1; VIII.C.2