

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

IN THE MATTER OF:

KEITH JOHNSON
KRYSTAL JOHNSON

AFO ID #62422

Kossuth County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2020-AFO-07

To: Keith and Krystal Johnson
Butler Sow Farms, LLP
232 Mill Avenue S
Blooming Prairie, Minnesota 55917

Keith and Krystal Johnson
Butler Sow Farms, LLP
4206 240th Avenue
Lincoln Township, Iowa 50424

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Keith and Krystal Johnson (jointly, the Johnsons), for the purpose of resolving the violations of animal feeding operation regulations resulting from the Johnsons' failure to submit a complete annual update to the Manure Management Plan (MMP) for their animal feeding operation in Kossuth County, Iowa. This Order requires the Johnsons to pay an administrative penalty in the amount of \$3,000.00, submit a complete MMP annual update, 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
DNR Field Office 2
2300 15th St. SW
Mason City, Iowa 50401
(641) 424-4073

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: KEITH AND KRYSTAL JOHNSON

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 August 1, 2014, the Johnsons purchased the confinement animal feeding operation located at 4206 240th Avenue, Lincoln Township, Iowa (Facility). The Facility was built after 1985. The Facility is a grow-to-finish swine operation with an animal unit capacity of 808.4 animal units. The Johnsons are required to update the Facility's MMP annually by August 1.
2. On July 31, 2015, the DNR sent the Johnsons a Letter of Noncompliance (LNC) for the Johnsons' failure to submit a complete 2015 MMP for the Facility.
3. On August 5, 2016, the DNR sent the Johnsons a LNC for the Johnsons' failure to submit a complete 2016 MMP update for the Facility.
4. On August 16, 2017, the DNR sent the Johnsons a LNC for the Johnsons' failure to submit a complete 2017 MMP update for the Facility.
5. On August 10, 2018, the DNR issued the Johnsons a Notice of Violation (NOV) for the Johnsons' failure to submit a 2018 MMP update for the Facility.
6. On August 12, 2019, the DNR issued the Johnsons a NOV for the Johnsons' failure to submit a complete 2019 MMP with an Iowa Phosphorus Index for the Facility.
7. On August 25, 2019, the Johnsons sent DNR Field Office 2 an incomplete MMP for the Facility. On August 26, 2019, DNR Field Office 2 environmental specialist Sheila Kenny sent Pete Kleinschmidt, the manager for the Facility, a detailed email describing the items missing from the MMP.
8. On September 17, 2019, Mr. Kleinschmidt sent Ms. Kenny an email with a second MMP. The second update submitted by Mr. Kleinschmidt was also incomplete. Notably, the Iowa Phosphorous Index and manure application agreements were missing from the application.
9. On October 15, 2019, the DNR sent the Johnsons a LNC for failing to file a complete 2019 MMP with an Iowa Phosphorus Index.
10. As of the date of this Order, the DNR has not received a complete MMP with an Iowa Phosphorus Index for the Facility from the Johnsons.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: KEITH AND KRYSTAL JOHNSON

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)"b" requires confinement feeding operations over 500 animal units and constructed after 1985 to submit an MMP. 567 IAC 65.16(3)"b" requires 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 compliance fee is fifteen cents per animal unit. 567 IAC 65.17(17)"d" states that the phosphorus index is valid if the soil phosphorus concentration data is less than four years old. The Johnsons submitted an Iowa Phosphorus Index with the 2015 MMP; therefore, in order for the 2019 MMP to be considered complete it should have included an Iowa Phosphorus Index. The Johnsons have failed to submit a complete 2019 MMP with an Iowa Phosphorus Index. The facts of this case show a violation of these rules.

V. ORDER

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

1. Pay an administrative penalty of \$3,000.00, as detailed in the Penalty section of this Order, within 30 days of the date the Director signs this Order;
2. Submit a complete MMP with an Iowa Phosphorus Index to DNR Field Office 2 within 30 days of the date the Director signs this Order; and
3. 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 rules 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 \$3,000.00. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: KEITH AND KRYSTAL JOHNSON

- 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 Johnsons gained a delayed economic benefit by failing to submit the required MMP and associated fees. \$500.00 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 and Iowa Phosphorus Index are crucial aspects of the DNR’s animal feeding operation program. The MMP and Iowa Phosphorus Index ensure 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. Failing to submit a timely complete MMP update with fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,250.00 is assessed for this factor.
- C. Culpability: The Johnsons 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 DNR informed the Johnsons of the necessity, timing, and requirements of the MMP program repeatedly with multiple LNCs and NOV’s since 2015. Additionally, Ms. Kenny specifically listed the missing requirements from the MMP update submittal in an email. The Johnsons failed to timely submit a complete MMP with an Iowa Phosphorus Index as required, in spite of the DNR’s communications. Therefore, \$1,250.00 is assessed for this factor.

VII. APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Keith Johnson and Krystal Johnson. For that reason, both parties waive 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

Dated this 27 day of
February, 2020.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: KEITH AND KRYSTAL JOHNSON

Iowa Department of Natural Resources



KEITH JOHNSON

Dated this 26 day of
February, 2020



KRYSTAL JOHNSON

Dated this 26 day of
February, 2020

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

