

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

IN THE MATTER OF:

JEFF MOELLERS
AFO ID #64755

Cerro Gordo County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO-08

To: Jeff Moellers
7826 E Avenue
Arlington, Iowa 50606

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Jeff Moellers for the purpose of resolving the violations of animal feeding operation regulations resulting from Mr. Moellers' failure to timely submit a complete Manure Management Plan (MMP) update for his animal feeding operation in Cerro Gordo County, Iowa. This Order requires Mr. Moellers 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
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 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.

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III. STATEMENT OF FACTS

1. In 2006, Mr. Moellers began operating a confinement animal feeding operation located at 11815 130th Street, Swaledale, Iowa (Facility). The Facility is a grow-to-finish swine operation with an animal unit capacity of 1,666 animal units. On July 11, 2006, Mr. Moellers submitted an original MMP for the Facility, but failed to include an Iowa Phosphorous Index. Mr. Moellers submitted a complete MMP with an Iowa Phosphorous Index on March 7, 2007.

2. Mr. Moellers is required to update the Facility's MMP annually by August 1 and to submit complete MMPs with new phosphorous indexes every four years.

3. On July 30, 2015, Mr. Moellers submitted a complete MMP with an updated Iowa Phosphorous Index.

4. Mr. Moellers did not submit a full MMP with an Iowa Phosphorous Index by August 1, 2019, as required.

5. On August 12, 2019, the DNR issued a Notice of Violation (NOV) to Mr. Moellers for his failure to submit a complete MMP.

6. On or about August 28, 2019, Mr. Moellers submitted an MMP update, but failed to include a new an Iowa Phosphorous Index. Specifically, the MMP update indicated no new soil samples were taken for the Phosphorous Index as required by 567 IAC 65.17(17)"h"(3).

7. On August 27, 2019, DNR Field Office 2 environmental specialist senior Jeremy Klatt contacted Becky Sexton, Mr. Moellers' consultant. Ms. Sexton told Mr. Klatt the soil samples would be collected during the fall of 2019. The DNR agreed to provide Mr. Moellers until November 1, 2019, to submit the complete MMP with an Iowa Phosphorus Index and updated soil samples before the DNR would take administrative action.

8. On September 16, 2019, the DNR issued a NOV to Mr. Moellers for his failure to submit a complete 2019 MMP for the Facility and notified him of the November 1, 2019, deadline.

9. On or about December 3, 2019, Mr. Moellers submitted a complete MMP with an Iowa Phosphorus Index to DNR Field Office 2. The DNR approved the MMP on December 3, 2019.

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 confinement feeding

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operations to submit an annual update to their MMPs. 567 IAC 65.17(17)"h"(3) requires animal feeding operations to submit a complete MMP update with a new phosphorous index, including applicable soil samples taken within the last four years, at least once every four years. Mr. Moellers was required to submit his annual MMP update by August 1 of each year. Mr. Moellers failed to submit a complete MMP update with a new Iowa Phosphorous Index by August 1, 2019. The facts of this case show a violation of these rules.

V. ORDER

THEREFORE, the DNR orders and Mr. Moellers agrees to do the following:

1. Pay an administrative penalty of \$1,000.00, as detailed in the Penalty section of this Order, within 30 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.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. Moellers gained a delayed economic benefit by failing to timely submit the required MMP update and associated fees. \$50.00 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. 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

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MMP update with fee threatens the integrity of the animal feeding operation regulations
Therefore, \$700.00 is assessed for this factor.

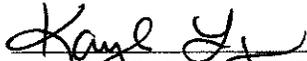
- C. Culpability: Mr. Moellers has a duty to be knowledgeable of the laws and rules associated with animal feeding operations. The MMP program has been in place for many years. Mr. Moellers failed to timely submit a complete MMP update as required, in spite of the DNR's attempt to provide Mr. Moellers with additional time to comply with the submittal. Therefore, \$250.00 is assessed for this factor.

VII. APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Mr. Moellers. For that reason, Mr. Moellers waives his 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

Dated this 17th day of
Feb, 20 20



JEFF MOELLERS

Dated this 9 day of
February, 20 20