

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

IN THE MATTER OF:

Josh Hulstein
Sioux County Iowa

AFO #67413

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 13

TO: Josh Hulstein
3020 Ironwood Avenue
Hull, Iowa 51239

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Josh Hulstein for the purpose of resolving the failure to timely submit the Manure Management Plan (MMP) update and fee for 2019 for an animal feeding operation located in Sioux County, Iowa. This administrative consent order requires Mr. Hulstein to submit the MMP update and fee for 2019 and to pay an administrative penalty in the amount of \$3,000.00. 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:

Londa Witte, Field Office 3
Iowa Department of Natural Resources
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-9572

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

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issued pursuant thereto; and 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. Hulstein owns and operates an animal feeding operation located at 3020 Ironwood Avenue; Hull, Iowa (Section 20, Sheridan Township, Sioux County)¹. The facility is a 590 head (670 animal units) dairy confinement operation. The facility has 240 dairy cattle heifer and hut calves and 350 dairy cattle. The annual MMP update deadline was established as November 1 of each calendar year and the annual compliance fee for the facility is \$100.50.

2. The MMP update and fee for 2019 was due November 1, 2019. The MMP update and fee was not received by November 1, 2019. On November 12, 2019, DNR issued a Notice of Violation letter to Mr. Hulstein for failing to submit the MMP update and fee for 2019. The letter required Mr. Hulstein to submit the MMP update and fee by December 1, 2019 to avoid a compliance action with an administrative penalty.

3. The MMP update and fee for 2019 had not been submitted and on January 7, 2020, DNR issued a Notice of Referral letter to Mr. Hulstein. The letter informed Mr. Hulstein the matter was being referred for further enforcement.

4. On January 14, 2020, Mr. Hulstein contacted DNR Field Office 3. The field office personnel explained to Mr. Hulstein what needed to be submitted. To date, the MMP update and fee for 2019 has not been submitted to DNR Field Office 3.

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 fee on an annual basis to the DNR.

¹ The Sioux County Assessor's Office lists Glenn Hulstein as the owner of the property where the facility is located. However, Josh Holstein is the owner on record as noted on the Manure Management Plan Form submitted to the DNR on March 6, 2019.

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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. The 2019 MMP update and fee was due November 1, 2019. To date, the 2019 MMP update and fee has not been submitted. The above-mentioned facts indicate violations of this provision.

V. ORDER

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

1. Mr. Hulstein shall submit the MMP update and fee for 2019 to DNR Field Office 3 within 30 days from the date the Director signs this administrative consent order and
2. Mr. Hulstein shall pay an administrative penalty in the amount of \$3,000.00 with in 30 days from the date the Director signs this administrative consent order.

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 administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

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. Hulstein's delay in timely submitting the MMP update and fee allowed the facility to save time and money. It is estimated that Mr. Hulstein gained an economic benefit of at least \$100.00 and that amount is assessed for this factor.

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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. Additionally, DNR has expended a large amount of staff time working with Mr. Hulstein to timely submit the MMP update and fee. Therefore, \$1,400.00 is assessed for this factor.

Culpability – Mr. Hulstein 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. DNR Field Office 3 has made attempts to collect the fee and MMP update and informed Mr. Hulstein that the matter would be referred for further enforcement if the MMP update and fee were not submitted. Mr. Hulstein was aware of the regulations yet failed to comply with the requirements by the deadline. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Hulstein. For that reason, Mr. Hulstein 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.

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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of
May, 2020.



JOSH HULSTEIN

Dated this 9-20 day of
_____, 2020.

Kelli Book; Field Office 3; EPA; VIII.C.2