

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

IN THE MATTER OF:

COLE BLAIR
Calhoun County

AFO #63269

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 11

TO: Cole Blair
1621 340th Street
Lake City, Iowa 51449

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cole Blair for the purpose of resolving Mr. Blair's failure to timely submit a complete original Manure Management Plan (MMP) and fees upon the purchase of an animal confinement feeding operation. This administrative consent order requires Mr. Blair to submit an original MMP, filing fee, and indemnity fee 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, Ste 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,

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Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits 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. Cole Blair owns and operates an animal feeding operation located at 1752 310th Street; Lake City (Section 23, Elm Grove Township, Calhoun County). The facility is a 2,400 head swine (960 animal units) operation with two confinement buildings. The Calhoun County Assessor's Office indicates that Mr. Blair purchased the facility from Dornbier Hogs, Inc. on August 13, 2019. The consultant for Dornbier Hogs notified DNR Field Office 3 of the ownership change on September 16, 2019.

2. On September 18, 2019, DNR Field Office 3 sent Mr. Blair a letter, explaining the requirements for a new owner. The letter requested Mr. Blair submit an original MMP and fees by November 18, 2019. On January 6, 2020, DNR Field Office 3 issued a Notice of Referral Letter to Mr. Blair for failing to submit an original MMP and fees. The letter informed Mr. Blair that the matter was being referred for further enforcement. To date the original MMP and fees have not been submitted to the field office.

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 16(1)"e" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Calhoun County Assessor's Office indicates the sale of the facility occurred on August 13, 2019, making the original MMP due October 12, 2019. To date the original MMP and fees have not been submitted. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.17(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR a MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP. To date, the filing fee has not been received. 567 IAC 65.16(6) require all persons required to submit a MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Mr. Blair's indemnity fee is \$96.00. The indemnity fee is required to be submitted with

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the MMP. To date, the indemnity fee has not been received.

V. ORDER

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

1. Mr. Blair shall submit a complete original MMP to DNR Field Office 3 within 30 days from the date the Director signs this administrative consent order;
2. Mr. Blair shall submit the \$250.00 filing fee to DNR Field Office 3 within 30 days from the date the Director signs this administrative consent order;
3. Mr. Blair shall submit the \$96.00 indemnity fee to DNR Field Office 3 within 30 days from the date the Director signs this administrative consent order; and
4. Mr. Blair shall pay an administrative penalty in the amount of \$3,000.00 within 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

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should be made where clear data are not available." Mr. Blair's delay in submitting a complete MMP and fees allowed him to save time and money. It is estimated that Mr. Blair has gained an economic benefit of at least \$500.00 and that amount is assessed for this factor.

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 is a crucial aspect of the DNR's animal feeding operation program. The MMP ensures 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. Mr. Blair's facility has a capacity of 960 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Blair 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 field office notified Mr. Blair of the MMP requirements and to date the original MMP and fees have not been submitted. Therefore, \$1,000.00 is assessed for this factor.

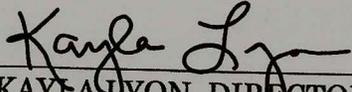
VII. WAIVER OF APPEAL RIGHTS

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

VIII. NONCOMPLIANCE

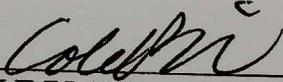
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties 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 8th day of
April, 2020.



COLE BLAIR

Dated this 8 day of
April, 2020.

Kelli Book; Field Office 3; EPA; VIII.C.1