

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Shirley Krogman and Larry
Krogman**
Osceola County Iowa

ADMINISTRATIVE ORDER
NO. 2020-AFO-16

AFO #60712

TO: Shirley Krogman
106 County Road N, Unit #4
Hospers, Iowa 51238

Larry Krogman
164 1st Avenue
Ashton, Iowa 51232

I. SUMMARY

This administrative order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

<u>Relating to technical requirements:</u> Londa Witte, Field Office 3 Iowa Department of Natural Resources 1900 North Grand Ave, Suite E17 Spencer, Iowa 51301 Phone: 712/262-4177	<u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Wallace State Office Building 502 East Ninth Street Des Moines, Iowa 50319-0034 Phone: 515/210-3408
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**Appeal, if any, or 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 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 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.

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III. STATEMENT OF FACTS

1. Shirley Krogman owns an animal feeding operation located at 5185 260th Street, Ashton, Iowa (Section 35, Gilman Township, Osceola County). Larry Krogman is the facility contact and operator. The facility is a 3,300 head (1,320 animal units) swine confinement operation. The facility has three confinement buildings. The annual MMP update deadline was established as December 1 of each calendar year and the annual compliance fee for the facility is \$198.00.

2. The MMP update and fee for 2019 was due December 1, 2019. The MMP update and fee was not received by December 1, 2019. On December 11, 2019, DNR issued a Notice of Violation letter to Mr. Krogman for failing to submit the MMP update and fee for 2019. The letter required Mr. Krogman to submit the MMP update and fee by January 1, 2020 to avoid a compliance action with an administrative penalty.

3. DNR Field Office 3 attempted to contact Mr. Krogman by telephone on January 15, 2020 and left a voicemail message for Mr. Krogman. On February 4, 2020, DNR issued a Notice of Referral letter to Mr. Krogman. The letter informed Mr. Krogman the matter was being referred for further enforcement. The MMP update and fee was not submitted until April 13, 2020.

4. Mr. Krogman also failed to timely submit the 2018 MMP update and fee due December 1. The 2018 MMP update and fee was not submitted until February 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. 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. 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 December 1, 2019. The 2019 MMP update and fee was not submitted until April 13, 2020. The above-mentioned facts indicate violations of this provision.

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V. ORDER

THEREFORE, the DNR orders the Krogmans to do the following:

1. Pay an administrative penalty in the amount of \$3,000.00 within 60 days of this Order, subject to appeal rights stated in Section VII of this 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 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.” The Krogmans’ delay in timely submitting the MMP update and fee allowed the facility to save time and money. It is estimated that the Krogmans gained an economic benefit of at least \$100.00 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 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. Krogman to timely submit the MMP update and fee. Therefore, \$1,400.00 is assessed for this factor.

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Culpability – The Krogmans have a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. DNR Field Office 3 has made attempts to collect the fee and MMP update and informed the Krogmans that the matter would be referred for further enforcement if the MMP update and fee were not submitted. The Krogmans were aware of the regulations yet failed to comply with the requirements by the deadline. Therefore, \$1,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

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 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.



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 1st day of
June _____, 2020.

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