

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

IN THE MATTER OF:

KYLEE MASSMANN
NICK MASSMANN
Facility ID # 70474

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 25

O'Brien County, Iowa

To: Kylee Massmann
Nick Massmann
4816 Roosevelt Avenue
Paullina, Iowa 51046

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Nick and Kylee Massmann (jointly, the Massmanns), for the purpose of resolving the violations of animal feeding operation regulations resulting from the construction of a confinement feeding operation owned by the Massmanns in Paullina, Iowa. This administrative consent order (Order) requires the Massmanns to obtain a separation distance waiver or in some other way remedy the violation of separation distances at the Confinement if the Confinement ever operates at an animal unit capacity over 500 animal units, and in the future comply with the laws and rules governing animal feeding operations.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Lois Benson
DNR Field Office 3
Iowa Department of Natural Resources
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
712-262-4177

Relating to legal requirements:

Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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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 and of Iowa Code chapter 459; 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. This Order pertains to a confinement animal feeding operation built by the Massmanns and located at the SE 1/4 of the NE 1/4 of Section 26, Tier 94N, Range 41W, Union Township, Obrien County (Confinement). The Confinement utilizes a covered, formed manure storage structure. The Confinement was constructed with an intended animal unit capacity of 996 animal units. The animal unit capacity of the Confinement has been reduced to 480 animal units as detailed below.

2. The Confinement is located 1,079 feet from the nearest residence, located at 4958 Roosevelt Ave, Paullina, Iowa (Residence), in an area outside the corporate limits of a city. The Residence is owned by Kevin and Hallie Dessel (jointly, the Owners).

3. On August 9, 2018, the Massmanns submitted a construction design statement (Design Statement) to the DNR requesting approval to build the Confinement, and specifically the formed manure storage structure at the Confinement. With the Design Statement, the Massmanns attached a waiver of separation distances (Waiver) signed by Amanda Dessel, dated August 7, 2018. The Waiver stated that Ms. Dessel lived at the Residence and that she waived any objection to the separation distances imposed by Iowa Code section 459.202. The Waiver was notarized by a duly authorized notary public and had been recorded with the O'Brien County Recorder's Office.

4. On September 28, 2018, the DNR issued the Massmanns a construction approval letter (Approval Letter). The Approval Letter authorized the construction of the Confinement as detailed in the Design Statement and provided guidance on the requirements of construction, including on the mandatory separation distances.

5. On or about December 1, 2018, the Massmanns learned that Ms. Dessel was not authorized to sign the Waiver. The Massmanns sent a new waiver request form to the Owners. The Owners declined to sign that waiver.

6. On December 17, 2018, it came to the DNR's attention that the Waiver had not been signed by the appropriate party and that the Confinement was in violation of the mandatory separation distances.

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7. On February 8, 2019, the DNR issued the Massmanns a Notice of Violation (NOV) for the failure to comply with separation distances at the Confinement.

8. After a series of discussions with the Owners and with the DNR, the Massmanns elected to convert the Confinement to a nursery facility. The conversion will cost a substantial amount of money, estimated at over \$240,000. The conversion will require multiple physical alterations that will prevent the Confinement from having an animal unit capacity of more than 480 animal units without expanding or altering the Confinement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.202(4)(b) details the mandatory separation distances between a confinement feeding operation and a residence not owned by the owner of the confinement feeding operation, if the residence is located outside the corporate limits of a city. Pursuant to that section, there is no minimum separation distance from a covered formed manure storage structure at a confinement feeding operation holding more than 500 animal units but less than 1,000 animal units must be 1,250 feet from the nearest residence.

2. Iowa Code section 459.205(2)(a) allows a titleholder of a property to waive the requirements of section 459.202. Pursuant to section 459.205(2)(b), this waiver become valid when recorded in the applicable county recorder's office.

3. Because the Confinement was constructed 1,079 feet from the nearest residence, the Confinement will be in violation of the mandatory separation distances in Iowa Code section 455B.202(4)(b) if it ever operates at an animal unit capacity over 500 animal units without a separation distance waiver.

4. However, pursuant to section 459.202(4)(b), there is no minimum separation distance from a covered formed manure storage structure at a confinement feeding operation to the nearest residence if the animal unit capacity of the animal feeding operation is less than 500 animal units. Because the Massmanns agree to convert the Confinement to a nursery facility and maintain an animal unit capacity of 480 animal units, the Confinement will be in compliance with this section going forward.

V. ORDER

THEREFORE, the DNR orders and the Massmanns agree to the following:

1. The Massmanns shall operate the Confinement in compliance with all applicable laws and rules.

2. The Massmanns shall obtain a separation distance waiver or in some other way enter into compliance with applicable statutes or rules regarding mandatory separation distances at the Confinement if the Confinement ever operates at an animal unit capacity over 500 animal units.

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VI. PENALTY

While the facts of this matter indicate there was initially a violation of the statutory separation distances, the Massmanns worked diligently to bring the Confinement back into compliance after learning of the violation. The final solution chosen by the Massmanns will permanently reduce the animal unit capacity to a degree that the Confinement falls below the statutorily mandated distance. The Massmanns chose this solution despite the high conversion cost. In light of these facts, the DNR has determined that an administrative penalty is not appropriate. The purpose of this Order is to ensure ongoing compliance at the Confinement in the future, should the Confinement be expanded or altered, as detailed in Paragraphs 1-2, Section V of this Order.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of the Massmanns. 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 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 or Iowa Code section 459.603.




KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 25th day of
September, 2020



KYLEE MASSMANN

Dated this 10 day of
September, 2020



NICK MASSMANN

Dated this 10 day of
September, 2020