

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

IN THE MATTER OF:

RAUSCH FEEDLOT CO.
O'Brien County

AFO #56696

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 30

TO: Michael Rausch, Registered Agent
Justin Rausch, Facility Contact
Rausch Feedlot Co.
4743 Silver Avenue
Paullina, Iowa 51046

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Rausch Feedlot Co. (Rausch Feedlot) for the purpose of resolving Rausch Feedlot's failure to timely submit a complete original Manure Management Plan (MMP) and fees upon the construction that took place at the facility in 2019. This administrative consent order requires Rausch Feedlot 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:

Jennifer Christian, 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: 515/210-3408

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

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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.

III. STATEMENT OF FACTS

1. Rausch Feedlot owns and operates an animal feeding operation located at 4743 Silver Avenue; Paullina, Iowa (Section 13, Union Township, O'Brien County).

2. On July 6, 2020, DNR Field Office 3 received a construction permit application from Rausch Feedlot proposing to remove all open lot pens and expand the facility with a 1,200 head cattle confinement building that would utilize both deep pits and bedding pack.

3. During the application review, Jennifer Christian, DNR Field Office 3 environmental specialist, met with Justin Rausch with Rausch Feedlot. Mr. Rausch stated that prior to 2019, the facility consisted of two hoop bedded barns that were constructed in 2002 and each housed 200 head of cattle, a deep pitted open lot barn that was constructed in 2012 and housed 500 cattle, and 230 head of open lot cattle in pens. Mr. Rausch further explained in March 2019, heavy snow and rain caused the roof of the open lot barn to collapse. The replacement roof was designed to withstand a heavier snow load and therefore was larger in size. Ms. Christian noted that due to the increase in roof size, the 10% of unroofed area of the barn was removed and in turn was converted into a confinement barn where all cattle are under roof. The facility currently had a total of 900 head of confinement cattle. Rausch Feedlot failed to submit an MMP when the new roof construction was completed in 2019.

4. On August 28, 2020, DNR issued a Notice of Violation and Notice Referral letter to Rausch Feedlot for the MMP violation discovered during the field office review of the construction permit application. The letter informed Rausch Feedlot that the matter was being referred for further enforcement.

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 that an owner of a confinement feeding operation, other than a small animal feeding operation, to submit an original MMP

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and updated MMPs when the confinement feeding operation is constructed or expanded after May 31, 1985, regardless of if the confinement feeding operation is required to have a construction permit. A small animal feeding operation is defined as an animal feeding operation with an animal unit capacity of 500 or fewer animal units. When the Rausch Feedlot open lot barn was converted to a confinement building in 2019, the animal unit numbers in confinement expanded from 400 to 900. The facility was required to submit an original MMP at that time. This was not submitted until July 2020. 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 an MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP. The filing fee was not submitted until July 2020. 567 IAC 65.16(6) require all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Rausch Feedlot's indemnity fee is \$90.00. The indemnity fee is required to be submitted with the MMP. The indemnity fee was not submitted until July 2020.

V. ORDER

THEREFORE, the DNR orders and Rausch Feedlot agrees to do the following:

1. Rausch Feedlot 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

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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.” Rausch Feedlot’s delay in submitting a complete MMP and fees allowed it to save time and money. It is estimated that Rausch Feedlot 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. The Rausch Feedlot facility has a capacity of 900 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Rausch Feedlot has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. 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 Rausch Feedlot. For that reason, Rausch Feedlot 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
KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
November, 2020.

Mike Rausch Pres. Rausch Feedlot Co.
RAUSCH FEEDLOT CO.

Dated this 11th day of
NOVEMBER, 2020.

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