

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

BRAD ZIESER
Benton County Iowa

AFO #67361

ADMINISTRATIVE ORDER
NO. 2021-AFO-06

TO: Brad Zieser
3147 53rd Street
Center Point, Iowa 52213

I. SUMMARY

This administrative order (Order) requires to comply with the provision 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>	<u>Relating to legal requirements:</u>
Ashley Sherrets, Field Office 1	Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources	Wallace State Office Building
909 West Main Street #4	502 East Ninth Street
Manchester, Iowa 52057	Des Moines, Iowa 50319-0034
Phone: 563/927-2640	Phone: 515/210-3408

Appeal 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. Brad Zieser owns and operates an animal feeding operation located at 3129 53rd Street, Center Point, Iowa (Section 15, Polk Township, Benton County). The confinement operation houses 2,400 swine wean to finish (960 animal units). An original Phosphorus Index MMP for the facility was submitted June 27, 2012. The annual MMP update deadline was established as June 1 of each calendar year and the annual compliance fee for the facility is \$144.00.

2. The 2020 MMP submittal was to be a complete Phosphorus Index MMP. It was not submitted by June 1, 2020. DNR issued a Notice of Violation letter for the late 2020 Phosphorus Index MMP and fee. The letter informed Mr. Zieser that if the complete Phosphorus Index MMP and fee were not submitted by July 1, 2020 that further enforcement would be pursued. To date the 2020 Phosphorus Index MMP and fee have not been submitted.

3. Mr. Zieser has a past history of late submittals of the MMP update and fee. Mr. Zieser failed to submit the MMP updates and fees by June 1 for the following years: 2013, 2014, 2015, 2016, 2017, 2018, and 2019. Notice of Violation letters were issued for each late submittal. Following the issuance of each Notice of Violation letter, the MMP update and fee for that year were submitted.

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. 567 IAC 65.17(17)"d" states that the phosphorus index is valid if the soil phosphorus concentration data is less than four years old. The complete Iowa Phosphorus Index MMP and fee were due June 1, 2020. To date the complete Iowa Phosphorus Index MMP and fee have not been submitted. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Brad Zieser to do the following:

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1. Submit a complete Iowa Phosphorus Index MMP to DNR Field Office 1 within 30 days from the date the Director signs this Order;
2. Pay the MMP fees 2020 in the amount of \$144.00 within 60 days from the date the Director signs this Order; and
3. Pay an administrative penalty in the amount of \$3,000.00 within 60 days from the date the Director signs 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.” Mr. Zieser’s failure to submit the complete Iowa Phosphorus Index MMP and fee has allowed him to save time and money. It is estimated Mr. Zieser 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 and Iowa Phosphorus Index are crucial aspects of the DNR’s animal feeding operation program. The MMP and Iowa Phosphorus Index ensure

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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. Zieser's facility has a capacity of 960 animal units and environmental harm is likely to occur if the manure is not applied properly. Failing to submit a timely complete Iowa Phosphorus Index MMP and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Zieser 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. Mr. Zieser has a history of late MMP update and fee submittals. DNR Field Office 1 has made multiple attempts to assist the facility with compliance issues. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal 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 8th day of
April, 2021.

Kelli Book; Field Office 1; VIII.C.2