

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

IN THE MATTER OF:

**NORTH IOWA CUSTOM
FINISHING, INC.**
Kossuth County Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO-07

TO: Chris Weydert, Registered Agent
North Iowa Custom Finishing, Inc.
1401 90th Avenue
Bode, Iowa 50519

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> Jeremy Klatt, Field Office 2 Iowa Department of Natural Resources 2300 15 th Street SW Mason City, Iowa 50401 Phone: 641/424-4073	<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 and 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. North Iowa owns and operates North Iowa 3 located at 2609 175th Avenue; Burt, Iowa (Section 11, Plum Creek Township, Kossuth County). The facility is a 4,400 head (1,760 animal units) swine confinement operation. The annual MMP update deadline was established as April 1 of each calendar year and the annual compliance fee for the facility is \$264.00.

2. The MMP update and fee for 2020 for North Iowa 3 was due April 1, 2020. The MMP update and fee was not received by April 1, 2020. On April 13, 2020, DNR issued a Notice of Violation letter to North Iowa for failing to timely submit the MMP update and fee for North Iowa 3. The letter stated that the MMP update and fee must be submitted by May 1, 2020 to avoid further enforcement, including an administrative penalty.

3. On May 12 and 26, 2020, DNR Field Office 2 left telephone messages for Chris Weydert, North Iowa representative.

4. On June 4, 2020, the 2020 MMP update and fees for North Iowa 3 were submitted and approved by DNR Field Office 2.

5. North Iowa was issued Notice of Violation letters for North Iowa 3 for late MMP updates and fees in 2016 and 2017. Additionally, Administrative Consent Order 2019-AFO-10 was entered into between DNR and North Iowa on April 12, 2019. The consent order was to address late MMP update submittals for three of North Iowa's animal feeding operations, including North Iowa 3. The consent order required North Iowa to pay an administrative penalty in the amount of \$4,500.00 in two parts. The first payment of \$2,250.00 was due March 1, 2019 and was submitted. The second payment of \$2,250.00 was due March 1, 2020 and to date the payment has not been submitted. Mr. Weydert was sent a penalty due reminder letter on May 8, 2020.

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

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submit a complete updated MMP and compliance fees 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 2020 MMP update and fee for North Iowa 3 was due April 1, 2020 and was not submitted until June 4, 2020. The above-mentioned facts indicate a violation of this provision.

3. Administrative Consent Order 2019-AFO-10 required North Iowa to pay an administrative penalty in the amount of \$4,500.00 in two parts. The first payment of \$2,250.00 was due March 1, 2019 and was submitted. The second payment of \$2,250.00 was due March 1, 2020 and to date the payment has not been submitted. The above-mentioned facts indicate a violation of the administrative consent order.

V. ORDER

THEREFORE, the DNR orders North Iowa to do the following:

1. Pay the remaining \$2,250.00 penalty assessed by Administrative Consent Order 2019-AQ-10 within 60 days of the date the Director signs this Order; and
2. Pay an administrative penalty in the amount \$4,100.00 within 60 days of 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 \$4,100.00. 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

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benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” North Iowa’s delay in timely submitting the MMP updates and fees allowed it to save time and money. It is estimated that North Iowa 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. DNR has expended a large amount of staff time working with North Iowa to timely submit the MMP updates and fees. Additionally, North Iowa has failed to comply with Administrative Consent Order 2019-AFO-10. Therefore, \$1,500.00 is assessed for this factor.

Culpability – North Iowa 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. DNR Field Office 2 attempted to collect the fees and MMP updates and informed North Iowa that the matter would be referred for further enforcement if the MMP update and fee was not submitted by May 1, 2020. North Iowa was aware of the regulations yet failed to comply with the requirements by the deadline. Additionally, North Iowa has a history of late MMP update submittals that includes two previous Notice of Violation letters and one previous Administrative Consent Order for North Iowa 3. Therefore, \$2,500.00 is assessed for this factor.

VII. 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

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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 _____ day of
_____, 2021.

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