

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

IN THE MATTER OF:

MATT MCGINNIS
Warren County Iowa

AFO #58737

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO- 15

TO: Matt McGinnis
11506 Hwy S23
Indianola, Iowa 50125

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Matt McGinnis for the purpose of resolving the failure to submit the Manure Management Plan (MMP) update and fees for 2020 for an animal feeding operation located in Warren County, Iowa. This administrative consent order requires Mr. McGinnis to pay a \$2,000.00 administrative penalty. 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:

Dennis Thielen, DNR Field Office 5
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/250-1798

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 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MATT MCGINNIS

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. Matt McGinnis owns and operates an animal feeding operation located at 11947 173rd Avenue, Ackworth, Iowa (Section 26, Lincoln Township, Warren County). The confinement operation houses 2,000 swine (800 animal units). An original Phosphorus Index MMP for the facility was submitted December 29, 2011. The annual MMP update deadline was established as December 1 of each calendar year and the annual compliance fee for the facility is \$120.00.

2. The 2020 MMP update and fee for the McGinnis facility were due December 1, 2020. The update and fee were not submitted by December 1, 2020. On December 15, 2020, DNR issued a Notice of Violation letter for the late 2020 MMP update and fee. The letter informed Mr. McGinnis that the MMP update and fees must be submitted within 10 days and failing to submit the information within 10 days would result in further enforcement, including a monetary penalty. The 2020 MMP update and fee was not submitted until June 2021.

3. Mr. McGinnis has a past history of late submittals of the MMP update and fee. Mr. McGinnis failed to submit the MMP updates and fees by December 1 for the following years: 2012, 2017, and 2018. Notice of Violation letters were issued for each late submittal.

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 2020 MMP update and fee were due December 1, 2020. The complete 2020 MMP update and fee was not submitted until June 2021. The above-mentioned facts indicate a violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MATT MCGINNIS

V. ORDER

THEREFORE, the DNR orders and Matt McGinnis agrees to do the following:

1. Matt McGinnis shall pay an administrative penalty in the amount of \$2,000.00 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 \$2,000.00. 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. McGinnis’ failure to submit the 2020 MMP update and fee has allowed him to save time and money. It is estimated Mr. McGinnis 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 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. Mr. McGinnis’

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MATT MCGINNIS

facility has a capacity of 800 animal units and environmental harm is likely to occur if the manure is not applied properly. Failing to timely submit the MMP update and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. McGinnis 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. McGinnis has a history of late MMP update and fee submittals. DNR Field Office 5 has made multiple attempts to assist the facility with compliance issues. Therefore, \$400.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Matt McGinnis. For that reason, Matt McGinnis 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of _____, 2021.



MATT MCGINNIS

Dated this 7 day of July, 2021.

Kelli Book; Field Office 5; VIII.C.2