

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

IN THE MATTER OF:

JON KREBSBACH
Mitchell County Iowa

AFO #69340

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO-21

TO: Jon Krebsbach
209 NW 5th Street
Adams, Minnesota 55909

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jon Krebsbach for the purpose of resolving the failure to timely submit the complete Iowa Phosphorus Index Manure Management Plan (MMP) for 2021 for an animal feeding operation located in Mitchell County, Iowa. This administrative consent order requires Mr. Krebsbach 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:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

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

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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. Jon Krebsbach owns an animal feeding operation located at 4895 Ocean Avenue; Stacyville, Iowa (Section 21, Stacyville Township, Mitchell County). The confinement operation houses 2,400 wean to finish swine (960 animal units). An original Phosphorus Index MMP for the facility was submitted May 2017, after Mr. Krebsbach purchased the facility. The annual MMP update deadline was established as May 1 of each calendar year and the annual compliance fee for the facility is \$144.00.

2. The 2021 MMP submission was to be a complete Phosphorus Index MMP. It was not submitted by May 1, 2021. On May 10, 2021, DNR issued a Notice of Violation letter for the late 2021 Phosphorus Index MMP and fee. The letter informed Mr. Krebsbach that if the complete Phosphorus Index MMP and fee were not submitted within 10 days of receipt of the letter that further enforcement would be pursued.

3. On June 1, 2021, Lori Rattay, DNR Field Office 2, called Mr. Krebsbach regarding the Phosphorus Index MMP and fee submission. Mr. Krebsbach stated he was working with a consultant and the consultant was supposed to submit the Phosphorus Index MMP and fee. Ms. Rattay recommended Mr. Krebsbach remind the consultant the 2021 Phosphorus Index MMP and fee needed to be submitted by June 15, 2021 or the matter would be referred for further enforcement. The 2021 Phosphorus Index MMP and fee were not submitted until August 17, 2021.

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

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concentration data is less than four years old. The complete Iowa Phosphorus Index MMP and fee were due May 1, 2021. The 2021 Phosphorus Index MMP and fee were not submitted until August 17, 2021. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Jon Krebsbach agrees to do the following:

1. Jon Krebsbach 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. Krebsbach's failure to timely submit the complete Iowa Phosphorus Index MMP and fee has allowed him to save time and money. It is estimated Mr. Krebsbach gained an economic benefit of at least \$50.00 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

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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 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. Krebsbach'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, \$1,450.00 is assessed for this factor.

Culpability – Mr. Krebsbach 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. DNR Field Office 2 has reached out to Mr. Krebsbach regarding the submission of the Phosphorus Index MMP and fee and he 2021 Phosphorus Index MMP and fee were not submitted until August 17, 2021. 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 Jon Krebsbach. For that reason, Mr. Krebsbach 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

Jon Krebsbach
JON KREBSBACH

Dated this 30 day of
September, 2021.

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