

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

ALBERTO TELLO CASTANEDA
Sac County

AFO #61849

ADMINISTRATIVE ORDER
NO. 2021-AFO-23

TO: Alberto Tello Castaneda
1114 630th Street
Storm Lake, Iowa 50588

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:

Relating to technical requirements: **Relating to legal requirements:**

Londa Witte, Field Office 3
Iowa Department of Natural Resources
1900 North Grand Ave, Ste E17
Spencer, Iowa 51301
Phone: 712/262-4177

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
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. Alberto Tello Castaneda owns an animal feeding operation located at 3076 Xavier Avenue; Auburn, Iowa (Section 14, Coon Valley Township, Sac County). The facility is a 1,600 head swine (640 animal units) operation. The Sac County Assessor's Office indicates that Mr. Castaneda purchased the facility from Ross and Sara Renze on September 3, 2020. DNR Field Office 3 received an email from the Renze's consultant on December 28, 2020 indicating the change of ownership.

2. On December 29, 2020, DNR Field Office 3 sent Mr. Castaneda a letter, explaining the requirements for a new owner. The letter requested Mr. Castaneda submit an original MMP and fees by February 28, 2021.

3. On March 19, 2021, DNR Field Office 3 issued a Notice of Referral Letter to Mr. Castaneda for failing to submit an original MMP and fees. The letter informed Mr. Castaneda that the matter was being referred for further enforcement. To date the original MMP and fees have not been submitted to the field office.

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 16(1)"e" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Sac County Assessor's Office indicates the sale of the facility occurred on September 3, 2020, making the original MMP due November 2, 2020. To date the original MMP and fees have not been submitted. 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. To date, the filing fee has not been received. 567 IAC 65.16(6) requires all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Mr. Castaneda indemnity fee is \$64.00. The indemnity fee is required to be submitted with the MMP. To date, the indemnity fee has not been received.

4. 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

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the previous MMP submission. The compliance fee is fifteen cents per animal unit. Mr. Castaneda failed to timely submit the 2021 MMP update and fee. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Castaneda to do the following:

1. Submit a complete original MMP to DNR Field Office 3 within 60 days from the date the Director signs this Order;
2. Submit the \$250.00 filing fee to DNR Field Office 3 within 60 days from the date the Director signs this Order;
3. Submit the \$64.00 indemnity fee to DNR Field Office 3 within 60 days from the date the Director signs this Order;
4. Submit the 2021 compliance fee of \$96.00 to DNR Field Office 3 within 60 days from the date the Director signs this Order and
5. 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

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should be made where clear data are not available.” Mr. Castaneda’s delay in submitting a complete MMP and fees allowed him to save time and money. It is estimated that Mr. Castaneda 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. Mr. Castaneda’s facility has a capacity of 640 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Castaneda 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. The field office notified Mr. Castaneda of the MMP requirements and to date the original MMP and fees have not been submitted. Therefore, \$1,000.00 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