

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

SHANE AND MICHELLE LARSEN
Kossuth County Iowa

ADMINISTRATIVE ORDER
NO. 2021-AFO-24

AFO #62980

TO: Shane and Michelle Larsen
399 255th Avenue
Granada, Minnesota 56039

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SHANE AND MICHELLE LARSEN

III. STATEMENT OF FACTS

1. Shane and Michelle Larsen own an animal feeding operation located at 3404 60th Avenue; Lone Rock, Iowa (Section 36, Seneca Township, Kossuth County). The confinement operation houses 3,000 finish swine (1,200 animal units). An original Phosphorus Index MMP for the facility was submitted August 2017, after the Larsens 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 \$180.00.

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. Larsen 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 and left a message for Mr. Larsen. Ms. Rattay explained that the 2021 Phosphorus Index MMP and fee needed to be submitted by June 15, 2021 or the matter would be referred for further enforcement. To date, the 2021 Phosphorus Index MMP and fee have not been submitted.

4. The Larsens failed to timely submit the 2019 MMP update and fee. On May 13, 2019, DNR issued a Notice of Violation letter to Mr. Larsen for failing to submit the MMP update and fee by May 1, 2019. The MMP update and fee were submitted and approved in June 2019.

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 an 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 May 1, 2021. To date the complete Iowa Phosphorus Index

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SHANE AND MICHELLE LARSEN

MMP and fee have not been submitted. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Shane and Michelle Larsen to do the following:

1. Submit a complete Iowa Phosphorus Index MMP to DNR Field Office 2 within 60 days from the date the Director signs this Order;
2. Pay the MMP fees 2021 in the amount of \$180.00 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.” The failure to submit the complete Iowa Phosphorus Index MMP and fee has allowed the Larsens to save time and money. It is estimated the Larsens gained an economic benefit of at least \$100.00 and that amount is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: SHANE AND MICHELLE LARSEN

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 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. The Larsen facility has a capacity of 1,200 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 – Shane and Michelle Larsen have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. DNR Field Office 2 has attempted to reach out to the Larsens regarding the MMP update submission and has received no response from the Larsens. Additionally, the Larsens failed to timely submit the 2019 MMP update fee. Therefore, \$1,400.00 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