

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:
JEFF LYNCH
Jackson County Iowa

AFO #64070

ADMINISTRATIVE ORDER
NO. 2022-AFO- 04

TO: Jeff Lynch
5571 234th Street
Bernard, Iowa 52302

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:**

Ashley Sherrets, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Court Suite 10
Manchester, Iowa 52057
Phone: 563-927-2640

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. Jeff Lynch owns and operates an animal feeding operation located at 5571 234th Street; Bernard, Iowa (Section 27, Butler Township, Jackson County). The confinement operation has one confinement building that houses 2,400 swine (960 animal units). An original Phosphorus Index MMP for the facility was submitted 2009, and complete Phosphorus Index MMPs were submitted in 2013 and 2017. The annual MMP update deadline was established as October 1 of each calendar year and the annual compliance fee for the facility is \$144.00.

2. The annual MMP update deadline was established as October 1 of each calendar year and the annual compliance fee for the facility is \$144.00. Mr. Lynch failed to timely submit the annual MMP updates and fees by October 1 for the following years: 2011, 2012, 2014, 2016, and 2018. Facilities are required to submit complete Phosphorus Index MMPs every four years. Mr. Lynch failed to timely submit the complete Phosphorus Index MMP for the following years: 2013, 2017, and 2021.

3. DNR issued Notice of Violation letters in 2011, 2012, 2013, 2014, 2016, 2017, 2018, and 2021 for the untimely submittals of the complete Phosphorus Index MMPs and the annual MMP updates and associated fees.

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. Mr. Lynch failed to timely submit the complete Phosphorus Index MMPs and fees for 2013, 2017, and 2021. Mr. Lynch failed to timely submit the annual MMP updates and fees for 2011, 2012, 2014, 2016, and 2018. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders Jeff Lynch to do the following:

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1. Pay an administrative penalty in the amount of \$3,000.00 within 60 days from issuance of the 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 timely submit the complete Phosphorus Index MMPs, annual MMP updates, and annual compliance fees has allowed Mr. Lynch to save time and money. It is estimated Mr. Lynch 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 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. Lynch’s facility has a capacity of 960 animal units and environmental harm is likely to occur if the manure is not applied properly. Mr. Lynch has as history of late MMP update submittals. Failing to timely submit complete Phosphorus Index MMPs, annual MMP updates, and annual compliance fees threaten the integrity of the animal feeding operation regulations. Therefore, \$1,500.00 is assessed for this factor.

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Culpability – Mr. Lynch 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. Lynch has as history of late MMP update submittals. Therefore, \$1,400.00 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 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