

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

IN THE MATTER OF:

GREGG HORA
Webster County Iowa

AFO #59301

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO- 05

TO: Gregg Hora
1730 River Forest Drive
Fort Dodge, Iowa 50501-7012

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gregg Hora for the purpose of resolving the failure to submit the complete Iowa Phosphorus Index Manure Management Plan (MMP) for 2021 for an animal feeding operation located in Webster County, Iowa. This administrative consent order requires Gregg Hora 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 issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GREGG HORA

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Gregg Hora owns and operates an animal feeding operation located at 2105 Taylor Avenue; Fort Dodge, Iowa (Section 31, Colfax Township, Webster County). The confinement operation houses 1,920 finish swine (768 animal units). The annual MMP update deadline was established as October 1 of each calendar year and the annual compliance fee for the facility is \$115.20. A Phosphorus Index MMP for the facility was submitted in 2017.

2. The 2021 MMP submission was to be a complete Phosphorus Index MMP. On September 29, 2021, DNR sent Mr. Hora a letter because an annual update was submitted instead of the complete Phosphorus Index MMP. On November 1, 2021, Mr. Hora submitted a Phosphorus Index MMP and compliance fee for 2021; however, the plan did not include updated soil samples. On November 3, 2021, DNR Field Office 2 contacted Mr. Hora and explained that the Phosphorus Index MMP needed to include new soil samples. On November 30, 2021, DNR contacted Mr. Hora to inquire about the status of the soil samples. Mr. Hora stated he was scheduled to meeting with NRCS in mid-December and the soil samples would not be submitted prior to that meeting. During the telephone conversation, Mr. Hora was told that due to the untimely submittal of the MMP, an administrative penalty would likely be assessed. The 2021 Phosphorus Index MMP was approved by the DNR on January 10, 2022.

3. Mr. Hora failed to timely submit MMP updates and fees for the following years: 2007, 2010, 2011, 2012, 2013, 2014, and 2015. Notice of Violation letters were sent for the untimely submittals. Additionally, a Letter of Noncompliance was issued in 2017 for an incomplete MMP 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 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GREGG HORA

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 October 1, 2021; a complete plan was not submitted until January 2022. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Gregg Hora agrees to do the following:

1. Gregg Hora 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." The failure to submit the complete Iowa Phosphorus Index MMP and fee has allowed Mr. Hora to save time and money. It is estimated Mr. Hora 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GREGG HORA

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 facility has a capacity of 768 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, \$900.00 is assessed for this factor.

Culpability – Gregg Hora 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. In addition to the untimely submittal of the 2021 complete Iowa Phosphorus Index MMP, Gregg Hora failed to timely submit the MMP updates and fees in 2007, 2010, 2011, 2012, 2013, 2014, and 2015 and failed to submit a complete MMP in 2017. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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



GREGG HORA

Dated this 4th day of
February, 2022.

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