

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

IN THE MATTER OF:

**VAN WAARDHUIZEN INC.**  
Mahaska County Iowa

AFO #59265

ADMINISTRATIVE CONSENT ORDER  
NO. 2022-AFO- 10

TO: Keith Van Waardhuizen  
Van Waardhuizen Inc.  
2391 Ford Avenue  
Oskaloosa, Iowa 52577

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Van Waardhuizen Inc. (Van Waardhuizen) for the purpose of resolving repeated failures to timely submit Manure Management Plan updates and annual compliance fees for an animal feeding operation located in Mahaska County, Iowa. This administrative consent order requires Van Waardhuizen 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:**

Dennis Thielen, Field Office 5  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/725-8200

**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,

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VAN WAARDHUIZEN INC.

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.

**III. STATEMENT OF FACTS**

Van Waardhuizen neither admits nor denies the Statement of Facts and enters into this Administrative Consent Order for settlement purposes only.

1. Van Waardhuizen owns and operates an animal feeding operation located at 1665 235<sup>th</sup> Street; Oskaloosa, Iowa (Section 7, Garfield Township, Mahaska County). The confinement operation houses 4,800 finish swine (1,920 animal units) in three confinement building. The annual MMP update deadline was established as November 1 of each calendar year and the annual compliance fee for the facility is \$288.00.

2. The annual MMP update deadline was established as November 1 of each calendar year and the annual compliance fee for the facility is \$288.00. Van Waardhuizen failed to timely submit the annual MMP updates and fees by November 1 for the following years: 2010, 2012, 2014, 2015, 2016, 2019, and 2020. Facilities are required to submit complete Phosphorus Index MMPs every four years. Van Waardhuizen failed to timely submit the complete Phosphorus Index MMPs and fees by November 1 for the following years: 2013, 2017, and 2021.

3. DNR issued Notice of Violation letters in 2010, 2012, 2013, 2014, 2015, 2016, 2017, 2019, 2020, and 2021 for untimely submittals of complete Phosphorus Index MMPs and the annual MMP updates and fees.

**IV. CONCLUSIONS OF LAW**

Van Waardhuizen neither admits nor denies the Conclusions of Law and enters into this Administrative Consent Order for settlement purposes only.

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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VAN WAARDHUIZEN INC.

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. Van Waardhuizen failed to timely submit the complete phosphorus index MMP and fees for 2013, 2017, and 20121. Van Waardhuizen failed to timely submit the annual MMP updates and fees for 2010, 2012, 2014, 2015, 2016, 2019, and 2020. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Van Waardhuizen agrees to do the following:

1. Van Waardhuizen 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." Van Waardhuizen's failure to timely submit the complete Phosphorus Index MMPs, the MMP updates and fees has allowed the facility to save time and money. It is estimated Van Waardhuizen gained an economic benefit of at least \$500.00 and that amount is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VAN WAARDHUIZEN INC.

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. The Van Waardhuizen facility has a capacity of 1,920 animal units and environmental harm is likely to occur if the manure is not applied properly. Van Waardhuizen has as history of late MMP update submittals. Failing to timely submit the complete Phosphorus Index MMPs, MMP updates and fees threaten the integrity of the animal feeding operation regulations. Therefore, \$500.00 is assessed for this factor.

Culpability – Van Waardhuizen 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. Additionally, Van Waardhuizen has as history of late MMP update submittals; the facility failed to timely submit the complete Phosphorus Index MMPs and fees in 2013, 2017, and 2021. Van Waardhuizen failed to timely submit the annual MMP updates and fees in 2010, 2012, 2014, 2015, 2016, 2019, and 2020. 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 Van Waardhuizen. For that reason, Van Waardhuizen 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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

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*Van Waardhuizen Inc.*  
Van Waardhuizen Inc.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.