

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**TIM BOMGAARS**  
Sioux County Iowa

AFO #59065

ADMINISTRATIVE ORDER  
NO. 2022-AFO-19

TO: Tim Bomgaars  
3563 360<sup>th</sup> Street  
Orange City, Iowa 51041

**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  
DNR Field Office 3  
1900 N. Grand Avenue, Suite 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. Tim Bomgaars owns and operates an animal feeding operation located at 3563 360<sup>th</sup> Street; Orange City, Iowa (Section 19, Capel Township, Sioux County). The confinement operation has four confinement buildings and houses 4,150 swine (1,660 animal units). An original Phosphorus Index MMP for the facility was submitted in 2006. The annual MMP update deadline was established as November 1 of each calendar year and the annual compliance fee for the facility is \$249.00.

2. The 2021 MMP update and fee for Mr. Bomgaars' facility were due November 1, 2021. The update and fee were not submitted by November 1, 2021. On November 12, 2021, DNR issued a Notice of Violation letter for the late 2021 MMP update and fee. The letter informed Mr. Bomgaars that failure to timely submit the MMP update and fee would result in further enforcement, including a monetary penalty. The letter went unclaimed; therefore, DNR Field Office 3 left a voicemail for Mr. Bomgaars on December 28, 2021 with the same information. The MMP update and fee was not submitted until June 23, 2022 and was approved on June 29, 2022.

3. In addition to the late submittal in 2021, Mr. Bomgaars has a history of late MMP update and fee submittals. Mr. Bomgaars received Notice of Violation letters in 2009, 2012, 2014, and 2019 for untimely submittals of the MMP updates and 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 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 the previous MMP submission. The compliance fee is fifteen cents per animal unit. The 2021 MMP update and fee were due November 1, 2021 and were not submitted until June 2022. Additionally, MMP updates and fees were submitted late in 2009, 2012, 2014, and 2019. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders Tim Bomgaars to do the following:

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1. Pay an administrative penalty in the amount of \$3,000.00 within 60 days from the date the Directors 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.” Mr. Bomgaars’ failure to timely submit MMP updates and fees have allowed the him to save time and money. It is estimated Mr. Bomgaars 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 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. Bomgaars’ facility has a capacity of 1,660 animal units and environmental harm is likely to occur if the manure is not applied properly. The 2021 MMP update and fee were submitted seven months late, and Mr. Bomgaars has as history of late MMP update submittals. Failing to timely submit the MMP update and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,400.00 is assessed for this factor.

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Culpability – Mr. Bomgaars. 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 2021 MMP update and fee were submitted seven months late, and Mr. Bomgaars has as history of late MMP update submittals. Therefore, \$1,500.00 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 administrative consent 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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources