

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

<p>IN THE MATTER OF:</p> <p>THOMAS MAXWELL Linn County Iowa</p> <p>AFO #58640</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2022-AFO- 23</p>
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TO: Thomas Maxwell
825 Maxwell Road
Central City, Iowa 52214

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Thomas Maxwell for the purpose of resolving the failure to timely submit the Manure Management Plan (MMP) update and fees for 2022 for an animal feeding operation located in Linn County, Iowa. This administrative consent order requires Mr. Maxwell 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:

<p><u>Relating to technical requirements:</u> Ashley Sherrets DNR Field Office 1 1101 Commercial Court, Suite 10 Manchester, Iowa 52057 Phone: 563/927-2640</p>	<p><u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Wallace State Office Building 502 East Ninth Street Des Moines, Iowa 50319-0034 Phone: 515/210-3408</p>
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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,

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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

1. Thomas Maxwell owns and operates an animal feeding operation located at 682 Schmidt Lane; Springville, Iowa (Section 9, Brown Township, Linn County), known as G&T Properties. The confinement operation has two confinement buildings and houses 1,800 wean to finish swine (720 animal units). The annual MMP update deadline was established as April 1 of each calendar year and the annual compliance fee for the facility is \$108.00.

2. The 2022 MMP update and fee for the Maxwell facility were due April 1, 2022. The update and fee were not submitted by April 1, 2022. On April 11, 2022, DNR issued a Notice of Violation letter to Mr. Maxwell for the late 2022 MMP update and fee. The letter informed Mr. Maxwell that failure to timely submit the MMP update and fee would result in further enforcement, including a monetary penalty. The letter also noted the repeated failure to submit the MMP updates and fees may result in further enforcement. The 2022 MMP update and fee was submitted on April 18, 2022.

3. The Maxwell facility has a history of late MMP update and fee submittals. Mr. Maxwell received Notice of Violation letters or Letters of Noncompliance in 2013, 2016, 2020, and 2021 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 2022 MMP update and fee were due April 1, 2022 and were not submitted until April 18, 2022. Additionally, MMP updates and fees were submitted late in 2013,

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2016, 2020, and 2021. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Thomas Maxwell agrees to do the following:

1. Thomas Maxwell shall pay an administrative penalty in the amount of \$2,000.00 within 30 days from the date the Directors 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.” Thomas Maxwell’s failure to timely submit the 2022 MMP update and fee and other annual updates has allowed the facility to save time and money. It is estimated Thomas Maxwell 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

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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 Maxwell facility has a capacity of 720 animal units and environmental harm is likely to occur if the manure is not applied properly. The Maxwell facility 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.

Culpability – Thomas Maxwell 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. Therefore, \$500.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Thomas Maxwell. For that reason, Thomas Maxwell waive 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



Thomas Maxwell

Dated this 11 day of
July, 2022.