

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**RONALD L LANKSINK
REVOCABLE TRUST and
ELIZABETH A LANKSINK
REVOCABLE TRUST**
Woodbury County

ADMINISTRATIVE ORDER
NO. 2022-AFO-25

AFO #59588

TO: Ronald L Lanksink Revocable Trust
Elizabeth A Lanksink Revocable Trust
306 5th Street
Danbury, Iowa 51019

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, Field Office 3
Iowa Department of Natural Resources
1900 N Grand Ave, Ste 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

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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. Lanksink Revocable Trust owns an animal feeding operation located at 3120 Taylor Avenue; Danbury, Iowa (Section 14, Liston Township, Woodbury County). The facility has two buildings, with 1,200 nurse swine and 2,400 grow to finish swine (1080 animal units). The Woodbury County Assessor's Office indicates that Lanksink Revocable Trust purchased the facility from RAM Pork, LLC on July 18, 2019.

2. On March 23, 2021, DNR Field Office 3 sent a Change of Ownership letter to Lanksink Revocable Trust. The letter informed them that the original MMP and associated fees were to have been submitted within 60 days of taking ownership of the facility. The letter requested the original MMP and associated fees be submitted by April 23, 2021.

3. On May 13, 2021, Tanner Seuntjens contacted DNR Field Office 3 and stated he was buying the facility from Lanksink Revocable Trust and was responsible for the day to day operations. He stated he would send in the MMP and fees. However, according to the Woodbury County Assessor's Office website, no change of ownership has occurred.

4. On August 22, 2022, Mr. Seuntjens submitted the MMP and fees for the facility; however, the check did not clear the bank and was returned to the DNR. Therefore, to date, a complete MMP has not been submitted. Lanksink Revocable Trust remains listed as the owner of the facility on the MMP and with the Woodbury County Assessor's Office.

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. 567 IAC 16(1)"e" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Woodbury County Assessor's Office indicates the sale of the facility occurred on July 18, 2019, making the original MMP due September 16, 2019. To date the original MMP and fees have not been submitted. The above-mentioned facts indicate a violation of this provision.

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3. 567 IAC 65.17(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR an MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP. To date, the filing fee has not been received. 567 IAC 65.16(6) require all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Lanksink Revocable Trust's indemnity fee is \$108.00. The indemnity fee is required to be submitted with the MMP. To date, the indemnity fee has not been received.

4. 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. Lanksink Revocable Trust's annual compliance fee is \$162.00. Lanksink Revocable Trust failed to timely submit the 2020 and 2021 MMP updates and fees. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Lanksink Revocable Trust to do the following:

1. Submit a complete original MMP to DNR Field Office 3 within 60 days from the date the Director signs this Order;
2. Submit the \$250.00 filing fee to DNR Field Office 3 within 60 days from the date the Director signs this Order;
3. Submit the \$108.00 indemnity fee to DNR Field Office 3 within 60 days from the date the Director signs this Order;
4. Submit the 2020 and 2021 compliance fees of \$324.00 to DNR Field Office 3 within 60 days from the date the Director signs this Order; and
5. Pay an administrative penalty in the amount of \$3,000.00 within 60 days from the date the Director 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.

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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.” Lanksink Revocable Trust’s failure to submit a complete MMP, MMP annual updates, and fees allowed it to save time and money. It is estimated that Lanksink Revocable Trust has gained an economic benefit of at least \$500.00 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. Lanksink Revocable Trust’s facility has a capacity of 1080 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Lanksink Revocable Trust has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. The field office notified Lanksink Revocable Trust of the MMP requirements and to date the original MMP and fees have not been submitted. Therefore, \$1,000.00 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

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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

Kelli Book; Field Office 3; VIII.C.1