

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

BRAD ZIESER
Benton County Iowa

AFO #67361

ADMINISTRATIVE ORDER
NO. 2023-AFO-03

TO: Brad Zieser
3147 53rd Street
Center Point, Iowa 52213

I. SUMMARY

This administrative order (Order) requires Brad Zieser 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:

<u>Relating to technical requirements:</u> Ashley Sherrets, Field Office 1 Iowa Department of Natural Resources 1101 Commercial Court, Suite 10 Manchester, Iowa 52057 Phone: 563/927-2640	<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
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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. Brad Zieser owns and operates an animal feeding operation located at 3129 53rd Street, Center Point, Iowa (Section 15, Polk Township, Benton County). The confinement operation houses 2,400 swine wean to finish (960 animal units). An original Phosphorus Index MMP for the facility was submitted June 27, 2012. The annual MMP update deadline was established as June 1 of each calendar year and the annual compliance fee for the facility is \$144.00.

2. The 2022 MMP update deadline was June 1, 2022. Mr. Zieser failed to submit the 2022 MMP update and fee by June 1, 2022. On June 10, 2022, DNR issued a Notice of Violation letter to Mr. Zieser for the violation. The letter informed Mr. Zieser that the matter may be referred for further enforcement. On August 5, 2022, the 2022 MMP update and fee were submitted and approved by the DNR.

3. Mr. Zieser has a past history of late submittals of the MMP update and fee. In April 2021, DNR issued an Administrative Order to Mr. Zieser for the untimely submittal of the 2020 Phosphorus Index MMP and fees. The order required Mr. Zieser to submit the late MMP and fees and pay a \$3,000.00 administrative penalty. The MMP, fees, and administrative penalty were submitted to the DNR. Additionally, Mr. Zieser failed to submit the MMP updates and fees by June 1 for the following years: 2013, 2014, 2015, 2016, 2017, 2018, and 2019. Notice of Violation letters were issued for each late submittal. Following the issuance of each Notice of Violation letter, the MMP update and fee for that year were submitted.

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 459.312(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. Mr. Zieser failed to timely submit the 2022 MMP update and fee. The MMP update and fee were not submitted until August 2022. The above-mentioned facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders Mr. Zieser to do the following:

1. Pay an administrative penalty in the amount of \$3,000.00 within 60 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 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. Zieser’s delay in timely submitting the MMP annual update and fee allowed the facility to save time and money. It is estimated that Mr. Zieser 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 submittals are a crucial aspect of the DNR’s animal feeding operation program and the compliance fees are crucial to the budget of the animal feeding program. Mr. Zieser’s repeated delay in timely submitting the Phosphorus Index MMPs, MMP annual updates, and fees threaten the integrity of the animal feeding operation regulations. Therefore, \$1,900.00 is assessed for this factor.

Culpability – Mr. Zieser 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

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rules. Mr. Zieser has been issued an Administrative Order and numerous NOVs for the untimely submittal of the Phosphorus Index MMPs, MMP annual updates, and fees. Mr. Zieser is aware of the regulations yet continued to wait until an NOV was issued to submit the annual MMP update. 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 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources