

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

IN THE MATTER OF:

BODERIC HIGGINS
Buchanan County Iowa

AFO #70436

ADMINISTRATIVE CONSENT ORDER
NO. ~~2022-AFO-~~2023-AFO-01

TO: Boderic Higgins
307 Main Street
Brandon, Iowa 52210

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Boderic Higgins for the purpose of resolving repeated failures to timely submit Manure Management Plan (MMP) updates and fees for an animal feeding operation located in Buchanan County, Iowa. This administrative consent order requires Mr. Higgins to pay an administrative penalty in the amount of \$3,000.00. 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:

Ashley Sherrets
DNR Field Office 1
1101 Commercial Court, Suite 10
Manchester, Iowa 52057
Phone: 563/927-2640

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, 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

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Boderic Higgins owns and operates an animal feeding operation located at 2967 Iowa Avenue; Rowley, Iowa (Section 8, Homer Township, Buchanan County). The facility consists of two confinement buildings housing 200 head beef finisher cattle and 400 head beef feeder calves (600 animal units). The original MMP for the facility was submitted in October 2018 and the annual MMP update deadline was established as August 1 of each calendar year. The annual compliance fee for the facility is \$90.00.

2. Mr. Higgins failed to timely submit the annual MMP updates and fees by August 1 for the following years: 2019, 2020, and 2021. Facilities are required to submit a complete Phosphorus Index MMP every four years. Mr. Higgins failed to timely submit the complete Phosphorus Index MMP and fees by August 1 for the following year: 2022.

3. DNR issued Notice of Violation letters in 2019, 2020, 2021, and 2022 for the untimely submittals of the complete Phosphorus Index MMP and the annual MMP updates and associated 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 459.312(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. 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. Mr. Higgins failed to timely submit the Phosphorus Index MMP and fees for 2022. Mr. Higgins failed to timely submit the annual MMP updates and fees for 2019, 2020, and 2021. The above-mentioned facts indicate multiple violations of this provision.

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V. ORDER

THEREFORE, the DNR orders and Mr. Higgins agrees to do the following:

1. Mr. Higgins shall pay an administrative penalty in the amount of \$3,000.00 within 30 days of 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 \$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. Higgins' repeated delay in timely submitting the Phosphorus Index MMPs, MMP annual updates, and fees allowed the facility to save time and money. It is estimated that Mr. Higgins 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. Higgins repeated delay in timely submitting the Phosphorus Index MMP, MMP annual updates, and fees threaten the integrity of the animal feeding operation regulations. Therefore, \$1,000.00 is assessed for this factor.

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Culpability – Mr. Higgins 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. Mr. Higgins failed to timely submit the Phosphorus Index MMP and fees for 2022. Mr. Higgins failed to timely submit the annual MMP updates and fees for 2019, 2020, and 2021. Mr. Higgins is aware of the regulations yet has repeatedly failed to comply with the requirements by the deadline. Therefore, \$1,900.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Higgins. For that reason, Mr. Higgins 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



BODERIC HIGGINS

Dated this 19th day of
January, ~~2022~~
2023