

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

IN THE MATTER OF:

**RICK NIKKEL**  
Jasper County, Iowa

AFO #63342

ADMINISTRATIVE CONSENT  
ORDER  
NO. 2023-AFO-07

TO: Rick Nikkel  
11733 Tower Street  
Sully, Iowa 50251

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Rick Nikkel for the purpose of resolving Mr. Nikkel's repeated failures to timely submit Manure Management Plan (MMP) updates and fees for his animal feeding operation located in Jasper County, Iowa. This administrative consent order requires Mr. Nikkel to pay an administrative penalty in the amount of \$2,000.00. 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:**

Dennis Thielen, DNR Field Office 5  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-003  
Phone: 515/725-8200

**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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICK NIKKEL

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.

**III. STATEMENT OF FACTS**

1. Rick Nikkel owns and operates an animal feeding operation located at 11733 Tower Street, Sully, Iowa (Section 29, Lynn Grove Township, Jasper County). The facility consists of one confinement building housing 3,200 head of swine (1,280 animal units) and an open feedlot with 450 head of cattle (450 animal units).

2. The annual MMP update deadline was established as October 1 of each calendar year and the annual compliance fee for the confinement portion of the facility is \$192.00. Mr. Nikkel failed to timely submit the annual MMP updates and fees by October 1 for the following years: 2017, 2019, 2020, and 2021. Facilities are required to submit a complete Phosphorus Index MMP every four years. Mr. Nikkel failed to timely submit the complete Phosphorus Index MMPs and fees by October 1 for the following years: 2022 and 2018.

3. DNR issued Notice of Violation letters in 2017, 2019, 2020, 2021, and 2022 for the untimely submittals of the complete Phosphorus Index MMPs, 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICK NIKKEL

concentration data is less than four years old. The above-mentioned facts indicate multiple violations of this provision.

**V. ORDER**

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

1. Mr. Nikkel shall pay an administrative penalty in the amount of \$2,000.00 in accordance with the following payment plan:

\$1,000.00 due April 1, 2023 and  
\$1,000.00 due April 1, 2024.

**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." Mr. Nikkel's repeated delay in timely submitting the Phosphorus Index MMPs plus the MMP annual updates and fees allowed the facility to save time and money. It is estimated that Mr. Nikkel 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: RICK NIKKEL

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. Nikkel'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, \$800.00 is assessed for this factor.

Culpability – Mr. Nikkel 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. Nikkel failed to timely submit the Phosphorus Index MMPs and fees for 2022 and 2018. Mr. Nikkel failed to timely submit the annual MMP updates and fees for 2017, 2019, 2020, and 2021. Mr. Nikkel is aware of the regulations yet has repeatedly failed to comply with the requirements by the deadline. Therefore, \$1,100.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

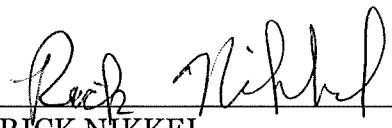
This administrative consent order is entered into knowingly and with the consent of Mr. Nikkel. For that reason, Mr. Nikkel waives the right to appeal this administrative consent order or any part thereof.

**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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

  
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RICK NIKKEL

Dated this 13 day of  
March, 2023.