

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

IN THE MATTER OF:

BRAD MOECKLY
Polk County

ADMINISTRATIVE CONSENT ORDER
NO. 2023-AFO- 16

AFO #66169

TO: Brad Moeckly
3073 NE 126th Avenue
Elkhart, Iowa 500073

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brad Moeckly for the purpose of resolving Mr. Moeckly's failure to timely submit a complete original Manure Management Plan (MMP) and fees upon an expansion at his animal feeding operation located in Polk County. This administrative consent order requires Mr. Moeckly to pay an administrative penalty in the amount of \$1,000.00. 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, Field Office 5
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
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 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

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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

Brad Moeckly neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Brad Moeckly owns an animal feeding operation located at 3073 Northeast 126th Avenue; Elkhart, Iowa (Section 32, Elkhart Township, Polk County) (referred to as the Moeckly Home Place). The facility is a swine to grow confinement operation with a current capacity of 940 animal units. The facility increased to the current capacity in June 2019; prior to June 2019, the facility's capacity was under 500 animal units.

2. On July 29, 2019, DNR Field Office 5 received a complaint regarding Mr. Moeckly's manure application. The complainant indicated that Mr. Moeckly changed the buildings and added more pigs to the facility. On July 30, 2019, Jeff Theobald, DNR Field Office 5 environmental specialist, contacted Mr. Moeckly by telephone. In review of the complaint, Mr. Theobald asked about any increase in numbers at the facility. Mr. Moeckly stated there had been no increase in animals at the facility and that the facility still had around 600 head (240 animal units).

3. On September 27, 2019, DNR Field Office 5 received a complaint about a possible manure release from Mr. Moeckly's facility. The complainant also stated that Mr. Moeckly was over populating the facility after a reconfiguration earlier in the year. On September 27, 2019, Bill Gibbons, DNR Field Office 5 environmental specialist, contacted Mr. Moeckly regarding the complaint. Mr. Gibbons inquired as to the number of animals at the facility. Mr. Moeckly indicated he had converted the sow operation to a swine finishing operation and currently only had 600 head (240 animal units).

4. On October 26, 2021, Mr. Moeckly submitted a Notice of Environmental Audit and Disclosure of Violations under the Iowa Code 455K. The disclosure of violations indicated that the facility failed to submit an original management plan and appropriate fees when the facility converted to a finishing operation and exceeded 500 animal units in June 2019. On February 23, 2022, DNR denied the request for immunity since Mr. Moeckly provided incorrect information to DNR Field Office 5 on two occasions in 2019 regarding the number of animals at the facility. Mr. Moeckly initially stated there had been no change at the facility and then stated that the numbers of animals were not increased when a change occurred at the facility.

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5. On February 18, 2022, DNR issued a Notice of Violation letter to Mr. Moeckly for failing to submit the original MMP and appropriate fees when the changes were made at the facility in 2019. The letter required that Mr. Moeckly submit the MMP and all past compliance fees. The letter informed Mr. Moeckly the violations would be referred for further enforcement. On March 24, 2022, Mr. Moeckly submitted the MMP and all appropriate fees and past compliance fees.

6. Mr. Moeckly also operates another animal feeding operation that requires annual MMP submittals. In 2010, 2013, and 2015, Mr. Moeckly failed to timely submit the annual MMP updates. Mr. Moeckly was reminded of the MMP requirements with each of the late submittals.

IV. CONCLUSIONS OF LAW

Brad Moeckly neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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 65.16(1)"b" requires that an owner of a confinement feeding operation, other than a small animal feeding operation, to submit an original MMP and updated MMPs when the confinement feeding operation is constructed or expanded after May 31, 1985, regardless of if the confinement feeding operation is required to have a construction permit. A small animal feeding operation is defined as an animal feeding operation with an animal unit capacity of 500 or fewer animal units. In June 2019, Mr. Moeckly expand the facility to an animal unit capacity of 940 and the MMP was not submitted until March 2022. The above-mentioned facts indicate a violation of this provision.

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. The MMP should have been in place when Mr. Moeckly expanded the number of the animals at the facility in June 2019 and the filing fee was not submitted until March 2022. 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. Mr. Moeckly's indemnity fee is \$94.00. The indemnity fee is required to be submitted with the MMP. The MMP should have been in place when Mr. Moeckly expanded the number of animals at the facility in June 2019 and the indemnity fee was not submitted until June 2022.

4. 567 IAC 65.16(3)"b" requires an owner of a confinement feeding

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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 compliance fee for Mr. Moeckly's facility is \$141.00. The facility was expanded in 2019 and should have submitted an MMP update and annual compliance fee for 2020 and 2021. The fees were not submitted until March 2022. The above-mentioned facts indicate violations of this provision.

V. ORDER

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

1. Mr. Moeckly shall pay an administrative penalty in the amount of \$1,000.00 within 30 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 administrative consent order with an administrative penalty of \$1,000.00. 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. Moeckly delayed submitting a complete MMP and fees. He delayed the costs associated with consulting fees to develop an MMP and delayed the payment of the associated fees. Through the delayed costs, it is estimated that Mr. Moeckly has gained an economic benefit of at least \$50.00 and that amount is assessed for this factor.

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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. Environmental harm is likely to occur if the manure is not applied properly. Therefore, \$650.00 is assessed for this factor.

Culpability – Mr. Moeckly 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. Moeckly was asked on two occasions in 2019 regarding the expansion at the facility. He provided incorrect information to the field office which prohibited the field office from being able to assist him in coming into compliance for over two years. Mr. Moeckly is aware of the MMP regulations as he has another facility subject to the annual MMP requirements. Therefore, \$300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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


Brad Moeckly

Dated this 16 day of
May, 2023