

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

IN THE MATTER OF:  <b>BRICE AUKES</b> Hancock County, Iowa  AFO #59456	ADMINISTRATIVE CONSENT ORDER NO. 2023-AFO- 25
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TO: Brice Aukes  
425 South Golf Course Road  
Forest City, Iowa 50436

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brice Aukes for the purpose of resolving Mr. Aukes' failure to timely submit a complete Phosphorus Index Manure Management Plan (MMP) and annual fee for its animal feeding operation located in Hancock County, Iowa. This administrative consent order requires Mr. Aukes to submit a complete Phosphorus Index MMP and 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:**

Jeremy Klatt  
DNR Field Office 2  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**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

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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. Brice Aukes owns and operates an animal feeding operation located at 1460 330<sup>th</sup> Street, Forest City, Iowa (Section 8, Madison Township, Hancock County). The facility consists of two active confinement buildings and four inactive confinement buildings with housing 3,750 head of grow to finish swine (1,500 animal units).
2. The annual MMP update deadline was established as May 1 of each calendar year and the annual compliance fee for the confinement portion of the facility is \$225.00. Facilities are required to submit a complete Phosphorus Index MMP every four years. Mr. Aukes was to submit a complete Phosphorus Index MMP on May 1, 2023. Mr. Aukes failed to timely submit the complete Phosphorus Index MMP and fee by May 1, 2023. On May 10, 2023, DNR issued a Notice of Violation letter for failing to submit the Phosphorus Index MMP and fee. The letter stated that failing to submit the plan in a timely manner may result in an enforcement action.
3. On June 1, 2023, Lori Rattay, DNR Field Office 2, contacted Mr. Aukes on the telephone and stated that he had until June 15 to submit the plan and fee in order to avoid an enforcement action. On June 14, 2023, Mr. Aukes contacted Ms. Rattay and explained that the soil samples were not completed yet. Ms. Rattay advised Mr. Aukes to submit the plan and fee and send the soil samples as soon as he received them.
4. On June 15, 2023, Mr. Aukes submitted the Phosphorus Index MMP and fee, missing the soil sample results and the plat map. On June 15, 2023, DNR sent Mr. Aukes a letter for the incomplete plan. The letter informed Mr. Aukes that the missing portions of the plan must be submitted within 10 days to avoid further enforcement.
5. On August 2, 2023, DNR Field Office 2 conducted a compliance inspection at Mr. Aukes' facility. During the inspection, it was discovered that Mr. Aukes did not have 5 years of application records and failed to use a certified manure



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applicator in 2022. On August 17, 2023, DNR Field Office 2 personnel contacted Mr. Aukes and asked about the soil samples. The field office personnel informed Mr. Aukes that it had been several months since the plan and samples were due so further enforcement would likely be pursued. On August 22, 2023, DNR issued a Notice of Violation letter to Mr. Aukes for the violations discovered during the inspection as well as the failure to submit the complete Phosphorous Index MMP with the soil samples. The letter informed Mr. Aukes that the MMP violations would be referred for further enforcement. To date, the complete Phosphorous Index MMP and new compliance fee has not been submitted.

6. Mr. Aukes has failed to timely submit MMP updates in the past. Mr. Aukes failed to submit the 2020 MMP update and fee by May 1, 2020. DNR issued a Notice of Violation letter for the late submittal. Mr. Aukes failed to submit an original MMP within 60 days of acquiring the facility. DNR issued a Notice of Violation letter in February 2019. Mr. Aukes failed to submit the 2019 MMP compliance fee by May 1, 2019. DNR issued a Notice of Violation letter for the late submittal.

#### 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. The 2023 complete Phosphorus Index MMP and fee was due May 1, 2023 and to date has not been submitted. The above-mentioned facts indicate a violation of this provision.

#### V. ORDER

THEREFORE, the DNR orders and Brice Aukes agrees to do the following:

1. Mr. Aukes shall submit a complete Phosphorus Index MMP and compliance fee within 30 days of the date the Director signs this administrative consent order; and

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2. Mr. Aukes shall pay an administrative penalty 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. Aukes' delay in timely submitting the Phosphorus Index MMP and fee has allowed him to save time and money. It is estimated Mr. Aukes 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. Aukes' delay in timely submitting the Phosphorus Index MMP and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,400.00 is assessed for this factor.

Culpability - Mr. Aukes 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. Mr. Aukes



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has failed to timely submit the MMP updates and fees in the past and is aware of the regulations yet failed to comply with the requirements by the deadline. Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

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

  
Brice Aukes

Dated this 7<sup>th</sup> day of  
December, 2023.