

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>PMI PORKIN LLC O'Brien County, Iowa</p> <p>AFO #65838</p>	<p>ADMINISTRATIVE ORDER NO. 2024-AFO-02</p>
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TO: Peter Matthews III, Registered Agent
PMI Porkin LLC
5996 480th Street
Paullina IA 51046

I. SUMMARY

This administrative order (Order) requires PMI Porkin LLC (PMI) 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:

Relating to technical requirements:

Londa Witte
DNR Field Office 3
1900 North Grand Avenue
Spencer, Iowa 51301
Phone: 712/262-4177

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

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. PMI owns and operates an animal feeding operation located at 6373 410th Street, Primghar, Iowa (Section 14, Highland Township, O'Brien County). The facility consists of one confinement building housing 2,400 head of swine (960 animal units).

2. The annual MMP update deadline was established as April 1 of each calendar year and the annual compliance fee for the confinement portion of the facility is \$144.00. Facilities are required to submit a complete Phosphorus Index MMP every four years. PMI was to submit a complete Phosphorus Index MMP on April 1, 2023. PMI failed to timely submit the complete Phosphorus Index MMPs and fee by April 1, 2023.

3. On April 11, 2023, DNR issued PMI a Notice of Violation letter for the facility's failure to submit the complete Phosphorus Index MMP and fee by April 1, 2023. The letter stated if the complete MMP and fee was not submitted by April 30, 2023 that further enforcement may occur.

4. On May 3, 2023, Pete Matthews, PMI representative, contacted DNR Field Office 3 and stated that Rhonda Burnside with Ag Partners was preparing the facility's Phosphorus Index MMP. On May 8, 2023, DNR Field Office 3 contacted Ms. Burnside regarding the MMP. She stated that PMI had not replied to her email or contacted her.

5. On May 10, 2023, DNR issued PMI a Notice of Referral letter for the non-submittal of the Phosphorus Index MMP and fee. The letter stated the violations were being referred for further enforcement.

6. On August 4, 2023, PMI submitted the complete Phosphorus Index MMP and fee.

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.

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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 Phosphorus Index MMP and fee was due April 1, 2023 and was not submitted until August 4, 2023. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders PMI to do the following:

1. PMI shall pay an administrative penalty in the amount of \$3,000.00 within 60 days of the date the Director signs this 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." PMI's delay in timely submitting the Phosphorus Index MMP and fee allowed the facility to save time and money. It is estimated that PMI gained an economic benefit of at least \$100.00 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 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. PMI’s 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 – PMI 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. PMI 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. 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 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