

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>MISSISSIPPI VALLEY MEAT INC. Kossuth County, Iowa</p> <p>AFO #62422</p>	<p>ADMINISTRATIVE ORDER NO. 2024-AFO-03</p>
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<p>TO: Michael Pugh, Registered Agent Mississippi Valley Meat Inc. 425 E. Oakdale Blvd, Suite 201 Coralville, Iowa 52241</p>	<p>Mississippi Valley Meat Inc. 1556 Iroquois Drive NE Solon, Iowa 52333</p>
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I. SUMMARY

This administrative order (Order) requires Mississippi Valley Meat, Inc. (Mississippi Valley Meat) 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:

Jeremy Klatt
DNR Field Office 2
2300 15th 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

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. Mississippi Valley owns and operates an animal feeding operation located at 4206 240th Avenue, Buffalo Center, Iowa (Section 24, Lincoln Township, Kossuth County). The facility has a capacity of 2,246 gestation, grow to finish, and sow and litter swine (898.40 animal units).
2. The annual MMP update deadline for the facility was established as August 1 of each calendar year. The annual compliance fee for the facility is \$134.76. Mississippi Valley failed to submit the 2023 MMP update and fee by August 1, 2023.
3. On August 10, 2023, DNR issued a Notice of Violation letter to Mississippi Valley for failing to submit the 2023 MMP update and fee for its facility. The letter stated that the failure to submit the MMP update and fee in a timely manner may result in an enforcement action with a monetary penalty.
4. The MMP update and fee for Mississippi Valley were submitted and approved on August 22, 2023.
5. Mississippi Valley was notified in January 2023 during an inspection that a failure to timely submit an MMP may result in an enforcement action with a monetary penalty. Mississippi Valley failed to timely submit its 2022 MMP update and fee by August 1, 2022. A Notice of Violation letter was issued on August 10, 2022. In August 2021, Mississippi Valley failed to submit an original MMP and fees within 60 days of acquiring the facility. A Notice of Violation letter was issued on August 19, 2021.

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

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the previous MMP submission. Mississippi Valley has failed to submit the 2023 MMP update and fee by the due date. Additionally, Mississippi Valley failed to submit the 2022 MMP update and fee by the due date. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders Mississippi Valley to do the following:

1. Mississippi Valley shall pay an administrative penalty in the amount of \$3,000.00 within 30 days from 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.” Mississippi Valley’s delay in timely submitting the MMP annual updates and fees allowed the facility to save time and money. It is estimated Mississippi Valley 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

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operation program and the compliance fees are crucial to the budget of the animal feeding program. Mississippi Valley's delay in timely submitting the MMP annual updates and fees threaten the integrity of the animal feeding operation regulations. Therefore, \$1,900.00 is assessed for this factor.

Culpability – Mississippi Valley 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. Mississippi Valley failed to timely submit the annual MMP updates and fees for 2022 and 2023. The facility also failed to submit an original MMP within 60 days for the initial purchase. Therefore, \$1,000.00 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