

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>DOUGLAS RIESBERG Carroll County, Iowa</p> <p>AFO #62249 and #62250</p>	<p>ADMINISTRATIVE ORDER NO. 2024-AFO-06</p>
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TO: Douglas Riesberg
15027 210th Street
Carroll, Iowa 51401

I. SUMMARY

This administrative order (Order) requires Douglas Riesberg 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:

Alison Manz
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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 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. Douglas Riesberg owns and operates at least two animal feeding operations located in Carroll County, Iowa. WJR Pork Site 20 (#62249) is located at 20489 Falcon Avenue, Carroll, Iowa (Section 26, Arcadia Township, Carroll County). The facility has a capacity of 4,940 swine grow to finish (1,976 animal units). WJR Pork Site 40 (#62250) is located at 21510 Falcon Avenue, Carroll, Iowa (Section 35, Arcadia Township, Carroll County). The facility has a capacity of 3,600 swine grow to finish (1,440 animal units).

2. The annual MMP update deadlines for WJR Pork 20 and WJR Pork 40 was established as December 1 of each calendar year. The annual compliance fee for WJR Pork 20 is \$296.40 and the annual compliance fee for WJR Pork 40 is \$216.00. WJR Pork 20 and WJR Pork 40 failed to timely submit the 2022 MMP updates and fees by December 1, 2022.

3. On December 14, 2022, DNR issued two Notice of Violation letters to Mr. Riesberg for failing to submit the 2022 MMP update and fee for the two facilities. The letters stated that the failure to submit the MMP updates and fees in a timely manner may result in an enforcement action with a monetary penalty.

4. The MMP update WJR Pork 40 was submitted on December 21, 2022. The MMP update for WJR Pork 20 and the annual compliance fees for the two facilities were not submitted.

5. Between December 2022 and April 2023, DNR Field Office 4 made several attempts to contact Mr. Riesberg; however, he did not return any of the telephone calls. On March 31, 2023, Becky Sexton with Twin Lakes Environmental, consultant for Mr. Riesberg, contacted DNR Field Office 4 and stated that Mr. Riesberg would be submitting the compliance fees that day. To date, the 2022 MMP update for WJR Pork 20 and the 2022 annual compliance fees for the two facilities have not been submitted.

6. Mr. Riesberg has failed to timely submit MMP updates for the facilities in the past. The 2018 and 2019 MMP updates for WJR Pork 20 and WJR Pork 40 were not submitted by December 1 and Notice of Violation letters were issued to Mr. Reisberg in 2018 and 2019. Additionally, a complete Phosphorus Index MMP was

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not submitted by December 1, 2020; DNR issued a Notice of Violation letter for the untimely 2020 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. Mr. Riesberg has failed to submit the 2022 annual compliance fees for his two facilities; therefore, the MMP updates are considered incomplete. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders Douglas Riesberg to do the following:

1. Mr. Riesberg shall submit the 2022 annual compliance fee for WJR Pork 20 in the amount of \$296.40 and the 2022 annual compliance fee for WJR Pork 40 in the amount of \$216.00 within 60 days from the date the Director signs this Order and
2. Mr. Riesberg shall pay an administrative penalty in the amount of \$6,000.00 within 60 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 \$6,000.00. The administrative penalty is determined as follows:

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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. Riesberg’s repeated delay in timely submitting the MMP annual updates and fees allowed him to save time and money. It is estimated he gained an economic benefit of at least \$200.00 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. Riesberg’s repeated delay in timely submitting the MMP annual updates and fees threaten the integrity of the animal feeding operation regulations. Therefore, \$2,800.00 is assessed for this factor.

Culpability – Mr. Riesberg 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. Riesberg failed to timely submit the annual MMP updates and fees for 2018, 2019, and 2022 for two of his facilities. He is aware of the regulations yet has repeatedly failed to comply with the requirements by the deadline. Therefore, \$3,000.00 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.

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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