

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

NOLAN JUNKER
Grundy County, Iowa

AFO #59513

ADMINISTRATIVE ORDER
NO. 2024-AFO-05

TO: Nolan Junker
10619 R Avenue
New Hartford, Iowa 50660

I. SUMMARY

This administrative order (Order) requires Nolan Junker 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
Wallace State Office Building
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. Nolan Junker owns and operates an animal feeding operation located at 24255 120th Street; Parkersburg, Iowa 50665 (Section 09, Beaver Township, Grundy County), known as Schissel Farms. The facility has two confinement buildings that house 3,840 swine (1,536 animal units).
2. An original Phosphorus Index MMP for the facility was submitted in 2012. The annual MMP update deadline was established as April 1 of each calendar year and the annual compliance fee for the facility is \$230.40.
3. The 2023 MMP update and annual compliance fee were due April 1, 2023. On April 11, 2023, DNR issued a Notice of Violation letter to the Mr. Junker for failing to submit the 2023 MMP update and annual compliance fee. The letter informed Mr. Junker if the MMP update and annual compliance fee were not submitted by April 30, 2023 the matter may be referred for further enforcement, including the assessment of a monetary penalty.
4. On May 1, 2023, DNR Field Office 2 left a telephone message for Mr. Junker reminding him that the 2023 MMP update and annual compliance fee were to have been submitted by April 1, 2023. Mr. Junker was informed that the MMP update and annual compliance fee must be submitted by May 15, 2023 or the matter would be referred for further enforcement.
5. On May 26, 2023, Mr. Junker contacted DNR Field Office 2 regarding the submittal of the 2023 MMP update and annual compliance fee. The 2023 MMP update and annual compliance fee was submitted the same day.
6. On January 13, 2023, DNR issued Administrative Order No. 2023-AFO-02 to Mr. Junker for failing to submit the 2022 MMP update and annual compliance fee. The order required Mr. Junker to submit the 2022 MMP and annual compliance fee within 30 days of issuance of the order. The order also required Mr. Junker to pay a \$3,000.00 administrative penalty within 30 days of issuance of the order. The order was not appealed and to date, Mr. Junker has not submitted the 2022 MMP update, the 2022 annual compliance fee of \$230.40, nor the \$3,000.00 administrative penalty.
7. Mr. Junker failed to timely submit the annual MMP updates and fees by April 1 for the following years: 2014 and 2019. DNR issued Notice of Violation letters in 2014 and 2019 for the untimely MMP updates and fees.

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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 459.12(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. The 2023 MMP update and fee were due April 1, 2022 and were not submitted until May 26, 2023. The above-mentioned facts indicate a violation of this provision.

3. Administrative Order No. 2023-AFO-02 was issued to Mr. Junker for failing to submit the 2022 MMP update and fee. The order required him to: 1) submit the 2022 MMP update; 2) pay the 2022 annual compliance fee; and 3) pay a \$3,000.00 administrative penalty. To date, Mr. Junker has failed to comply with any of the provisions required by the administrative order.

V. ORDER

THEREFORE, the DNR orders Nolan Junker to do the following:

1. Pay the 2022 MMP fee in the amount of \$230.40 within 60 days of the date the Director signs this Order;
2. Pay the administrative penalty of \$3,000.00 assessed by Administrative Order No. 2023-AFO-02 within 60 days of the date the Director signs this Order; and
3. Pay an administrative penalty in the amount of \$7,000.00 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

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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 \$7,000.00. 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. Junker’s failure to timely submit the 2022 MMP annual compliance fee and the administrative penalty assessed by the previous order has allowed him to delay the payment and his failure to timely submit 2023 MMP update and fee has allowed him to save time and money. It is estimated Mr. Junker gained an economic benefit of at least \$500.00 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 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. Mr. Junker’s facility has a capacity of 1,536 animal units and environmental harm is likely to occur if the manure is not applied properly. Failing to comply with the previous administrative order and failure to timely submit the MMP update and fee threatens the integrity of the animal feeding operation regulations. Additionally, Mr. Junker has repeated the same violation for multiple years resulting in a large amount of DNR staff time being used to ensure Mr. Junker complies the regulations. Therefore, \$1,500.00 is assessed for failing to comply with the previous order and \$2,000.00 is assessed for failing to timely submit the 2023 MMP update and fee for a total of \$3,500.00 being assessed this factor.

Culpability – Mr. Junker 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. Junker has repeated violated the same provision by failing to timely submit annual MMP update and fees. Additionally, he has failed to comply with the previous administrative order. Therefore, \$3,000.00 is assessed for this factor.

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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