

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

IN THE MATTER OF:

**KYLE HEYDEN**  
O'Brien County

AFO #62329

ADMINISTRATIVE CONSENT ORDER  
NO. 2024-AFO-15

TO: Kyle Heynen  
1650 Pleasant Court Drive  
Sheldon, Iowa 51250

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kyle Heynen for the purpose of resolving Mr. Heynen's failure to timely submit a complete original Manure Management Plan (MMP) and fees upon his purchase of his animal feeding operation located in O'Brien County. This administrative consent order requires Mr. Heynen to do the following: 1) pay 2021 and 2022 annual compliance fees for the facility and 2) pay an administrative penalty in the amount of \$2,500.00. 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:**

Lois Benson, Field Office 3  
Iowa Department of Natural Resources  
1900 Grand, Gateway North, Ste E17  
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

**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 to secure compliance with or prevent a violation of Iowa Code Chapter 455B,

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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. Kyle Heyden owns an animal feeding operation located at 4753 and 4757 370<sup>th</sup> Street; Hospers, Iowa (Section 30, Carroll Township, O'Brien County) The facility is a swine grow to finish confinement operation with a capacity of 2,200 head (880 animal units.) The facility consists of two parcels of property and Mr. Heyden purchased both parcels of the facility on June 9, 2020. One parcel of property had a confinement building with a deep pit for manure storage and the other parcel had a confinement building with an outdoor concrete manure storage structure. Both of the parcels were considered as one facility because they were only 900 feet apart.

2. On August 25, 2023, DNR Field Office 3 received an anonymous complaint that an outdoor concrete manure storage structure at Mr. Heyden's facility was near the top of the structure. On August 28, 2023, Lois Benson, DNR Field Office 3 environmental specialist spoke to Mr. Heyden and he stated the manure storage structure was overflowing. He stated that the manure storage structure was being pumped down. Ms. Benson asked about the facility purchase and the MMP for the facility. Mr. Heyden believed the facility was a small animal feeding operation.

3. On September 27, 2023, DNR issued a Notice of Violation letter to Mr. Heyden for the freeboard exceedance and MMP violations. The letter informed Mr. Heyden the violations were being referred for further enforcement.

4. On October 6, 2023, Mr. Heyden submitted the original MMP and indemnity fees.

**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. 567 IAC 65.16(1)"e" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The O'Brien County Assessor's Office indicates the sale of the two parcels occurred on June 9, 2020, making the original MMP due December 2020. The original MMP and fees were not submitted until October 2023. The above-

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mentioned facts indicate a violation of this provision.

3. 567 IAC 65.17(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR an MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP. The filing fee was not submitted until October 2023. 567 IAC 65.16(6) require all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. The indemnity fee for the facility was \$88.00 and was not submitted until October 2023.

4. 567 IAC 65.16(3)"b" requires 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 compliance fee for Mr. Heynen's facility is \$132.00. The facility was purchased in 2020 and Mr. Heynen should have submitted an MMP update and annual compliance fee for 2020, 2021, 2022, and 2023. To date those fees have not been submitted. The above-mentioned facts indicate violations of this provision.

## V. ORDER

THEREFORE, the DNR orders and Mr. Heynen agrees to do the following:

1. Mr. Heynen shall pay the 2020, 2021, 2022 and 2023 annual compliance fees of \$132.00 for each year (a total of \$528.00) within 30 days from the date the Director signs this administrative consent order and
2. Mr. Heynen shall pay a \$2,500.00 administrative penalty within 30 days from 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,

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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 \$2,500.00. 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. Heynen delayed submitting a complete MMP and fees. He delayed the costs associated with consulting fees to develop an MMP and delayed the payment of the associated fees. Through the delayed costs, it is estimated that Mr. Heynen has 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 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. Environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,900.00 is assessed for this factor.

Culpability – Mr. Heynen 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. Therefore, \$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 Mr. Heynen. For that reason, Mr. Heynen 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

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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources



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Kyle Heynen

Dated this 28 day of  
February, 2024