

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

IN THE MATTER OF:

GERALD SCHULTES
Audubon County, Iowa

AFO #60937

ADMINISTRATIVE CONSENT
ORDER
NO. 2024-AFO-20

TO: Gerald Schultes
2328 110th Street
Audubon, Iowa 50025

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gerald Schultes for the purpose of resolving Mr. Schultes failure to timely submit a complete 2024 Iowa Phosphorus Index Manure Management Plan (MMP) and annual fee for his animal feeding operation located in Audubon County, Iowa, as well as his repeated failure to timely submit MMP updates in previous years. This administrative consent order requires Mr. Schultes to pay an administrative penalty in the amount of \$3,000.00. 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:

Jessica Montana
DNR Field Office 4
1401 Sunnyside Lane
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Payment of penalty to:

Director of the Iowa DNR
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

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

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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.

III. STATEMENT OF FACTS

1. Gerald Schultes owns and operates an animal feeding operation located at 1248 Quail Avenue; Audubon, Iowa (Section 14, Viola Township, Audubon County). The facility consists of three confinement buildings housing 3,300 head of swine (1,320 animal units).

2. The annual MMP update deadline was established as January 1 of each calendar year and the annual compliance fee for the confinement portion of the facility is \$198.00. Facilities are required to submit a complete Phosphorus Index MMP every four years. Mr. Schultes was to submit a complete Phosphorus Index MMP on January 1, 2024. Mr. Schultes failed to timely submit the complete Phosphorus Index MMPs and fee by January 1, 2024.

3. On January 10, 2024, DNR issued Mr. Schultes a Notice of Violation letter for the facility's failure to submit the complete Phosphorus Index MMP and fee by January 1, 2024. The letter informed Mr. Schultes the matter may be referred for further enforcement. The Phosphorus Index MMP and fee were not submitted until January 25, 2024.

4. Mr. Schultes has failed to timely submit the 2023, 2022, and 2021 MMP updates by January 1 of each year. A Notice of Violation letter was issued for each late MMP update.

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

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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 2024 Phosphorus Index MMP and fee were due January 1, 2024 and were not submitted until January 25, 2024. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Gerald Schultes agrees to do the following:

1. Gerald Schultes shall pay an administrative penalty in the amount of \$3,000.00 within 30 days of 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, 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 \$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.” Mr. Schultes’ delay in timely submitting the Phosphorus Index MMP and fee allowed him to save time and money. It is estimated that Mr. Schultes gained an economic benefit of at least \$50.00 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. Mr. Schultes’ delay in timely submitting the Phosphorus Index MMP and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,450.00 is assessed for this factor.

Culpability – Mr. Schultes 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. Mr. Schultes has failed to timely submit the MMP updates for three previous years and each year he was issued a Notice of Violation letter, including the regulations. Mr. Schultes 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. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Gerald Schultes. For that reason, Gerald Schultes 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 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



GERALD SCHULTES

Dated this _____ day of _____, 2024.