

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>BRADLEY SMITH Clay County, Iowa</p> <p>AFO #60520 AFO #65876 AFO #67234</p>	<p>ADMINISTRATIVE ORDER NO. 2024-AFO-22</p>
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TO: Bradley Smith
2915 330th Avenue
Terril, Iowa 51364

I. SUMMARY

This administrative order (Order) requires Bradley Smith 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:

Londa Witte
DNR Field Office 3
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

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

Payment of penalty to:

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

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 violations of Iowa Code chapter 455B, Division III, Part 1; and Iowa Code chapter 459 and the rules adopted or permits issued pursuant

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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. Bradley Smith owns at least three animal feeding operations in Clay County, Iowa. The Smith facility is located at 2945 330th Street; Terril, Iowa (Section 14, Lake Township, Clay County). The facility has a capacity of 4,000 head of swine (1,600 animal units). The Clark facility is located at 2790 320th Avenue; Terril, Iowa (Section 2, Lake Township, Clay County). The facility has a capacity of 4,400 head of swine (1,760 animal units). The Nelson facility is located at 3245 290th Street, Terril, Iowa (Section 14, Lake Township, Clay County). The facility has a capacity of 4,400 head of swine (1,760 animal units).

2. The annual MMP update deadline for each of facilities was established as July 1 of each calendar year. The annual compliance fee for the Smith facility is \$240.00 and the annual compliance fee for the Clark and Nelson facilities is \$264.00 each. Mr. Smith failed to submit the 2023 MMP update and fee by July 1, 2023 for the Smith, Clark, and Nelson facilities.

3. On July 10, 2023, DNR issued a Notice of Violation letter to Mr. Smith for failing to submit the 2023 MMP updates and fees for the Smith, Clark, and Nelson facilities.

4. On July 31, 2023, Mr. Smith contacted DNR Field Office 3 and informed the DNR that he intended on mothballing two of the facilities and his consultant would be submitting the MMP update for the third facility.

5. On September 11, 2023, DNR Field Office 3 left a telephone message for Mr. Smith that the paperwork and fees for the three facilities needed to be submitted by September 15, 2023.

6. On September 21, 2023, DNR sent a Notice of Referral letter to Mr. Smith for the violations, informing him the violations would be referred for further enforcement.

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7. On October 27, 2023, the MMP updates and fees for the three facilities were submitted to the DNR.

8. Mr. Smith has failed to submit MMP updates and fees in a timely manner for his facilities in the past. Mr. Smith failed to submit the MMP updates and fees for the Nelson facility by July 1 for the following years 2020, 2021, and 2022; Notice of Violation letters were sent each year for the late submittals. Mr. Smith failed to submit the MMP update and fee for the Clark facility by July 1 in 2021. A Notice of Violation letter was sent for the late 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. Smith failed to submit the 2023 MMP updates and fees for three of his facilities by July 1, 2023. The MMP updates and fees for the three facilities until October 27, 2023. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Smith to do the following:

1. Pay an administrative penalty in the amount of \$9,000.00 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 \$9,000.00. 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. Smith’s delay in timely submitting the MMP annual updates and fees for three of his facilities allowed him to save time and money. It is estimated Mr. Smith gained an economic benefit of at least \$100.00 for each of the three facilities for a total amount of \$300.00 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. Smith’s delay in timely submitting the MMP annual updates and fees for three of his facilities threaten the integrity of the animal feeding operation regulations. Therefore, \$1,200.00 is assessed for each of the three facilities for a total amount of \$3,600.00 assessed for this factor.

Culpability – Mr. Smith 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. Smith failed to timely submit the annual MMP updates and fees for 2023 and did not submit the updates until over three months after the due date. Additionally, Mr. Smith has failed to timely submit MMP updates for his facilities in 2020, 2021, and 2022. Therefore, \$1,700.00 is assessed for each of the three facilities for a total amount of \$5,100.00 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

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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 administrative consent 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