

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

<p>IN THE MATTER OF:</p> <p>JOE TOMKA Carroll County, Iowa</p> <p>AFO #63218</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2024-AFO-25</p>
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TO: Joe Tomka
14824 210th Street
Carroll, Iowa 51401

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Joe Tomka for the purpose of resolving Mr. Tomka’s failure to timely submit a complete Iowa Phosphorus Index Manure Management Plan (MMP) and 2024 annual fee for his animal feeding operation located in Carroll County, Iowa. This administrative consent order requires Mr. Tomka to pay an administrative penalty in the amount of \$2,000.00. 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
Iowa DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney
Iowa DNR
6400 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Payment of penalty to:

Director
Iowa DNR
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 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. Joe Tomka owns and operates an animal feeding operation located at 14824 210th Street, Carroll, Iowa (Section 35, Arcadia Township, Carroll County). The Construction Design Statement (CDS) for the facility, received on April 21, 2020, indicated the capacity of the facility included 825 head of cattle in confinement and 400 head of cattle in open feedlots.

2. The annual MMP update deadline was established as May 1 of each calendar year and the annual compliance fee for the confinement portion of the facility is \$123.75. Facilities are required to submit a complete Phosphorus Index MMP every four years. Mr. Tomka was to submit a complete Phosphorus Index MMP on May 1, 2024. Mr. Tomka failed to timely submit the complete Phosphorus Index MMP and annual compliance fee by May 1, 2024.

3. On May 13, 2024, DNR issued Mr. Tomka a Notice of Violation letter for Mr. Tomka's failure to submit the complete Phosphorus Index MMP and fee by May 1, 2024. On June 7, 2024, Mr. Tomka submitted an MMP short form update and the annual compliance fee to the field office. DNR Field Office 4 notified Mr. Tomka that the complete Phosphorus Index MMP was due. On June 26, 2024, Mr. Tomka submitted the MMP to DNR Field Office 4. The new MMP indicated the facility now had 999 head of cattle in confinement and no cattle in open feedlots.

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

5. In December 2021, DNR Field Office 4 conducted an inspection at Mr. Tomka's facility and during the inspection, Mr. Tomka stated that there were two active open feedlots that would be discontinued once the fourth confinement barn was constructed. It was noted that the total capacity after the final confinement barn was constructed would be 1,000 head. This was in conflict of what was in the CDS that had previously been submitted. In a January 2022 letter to Mr. Tomka, he was required to submit documentation clarifying the facility capacity no later than

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February 15, 2022. No documentation was ever submitted to the field office. Additionally, during the inspection, the field office personnel reminded Mr. Tomka that the MMP update for the facility was due by May 1 of each year and was told to not use the Notice of Violation letter as a reminder. Mr. Tomka was informed that future late submittals of MMP update may result in an enforcement action.

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 65.110(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. 567 IAC 65.111(12)"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 was due May 1, 2024. The annual compliance fee was submitted on June 7, 2024 and the MMP was submitted on June 26, 2024. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Joe Tomka agrees to do the following:

1. Pay an administrative penalty in the amount of \$2,000.00 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

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the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. 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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Tomka’s delay in timely submitting the Phosphorus Index MMP and fee allowed him to save time and money. It is estimated that Mr. Tomka 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 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. Tomka’s delay in timely submitting the Phosphorus Index MMP and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$900.00 is assessed for this factor.

Culpability – Mr. Tomka 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. Tomka 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. Tomka is aware of the regulations yet failed to comply with the requirements by the deadline. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

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administrative consent order. However, DNR reserves the right for further enforcement for violations related to the capacity and permitting of this facility. 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

Joe Tomka
JOE TOMKA

Dated this 12 day of
July, 2024.

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