

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>C&M HOGS LLC Lee County, Iowa</p> <p>AFO #67167</p>	<p>ADMINISTRATIVE ORDER NO. 2024-AFO-28</p>
--	---

TO: Albert James Creswell
C&M Hogs LLC
1432 37th Street
Fort Madison, Iowa 52627

I. SUMMARY

This administrative order (Order) requires C&M Hogs LLC (C&M Hogs) 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:

Jeff Prier, Field Office 6
Department of Natural Resources
1023 W Madison Street
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

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

Appeal or 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 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: C&M HOGS LLC

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. C&M Hogs owns and operates a two building 4,980 head swine (1,992 animal units) confinement feeding operation with below-building pits for manure storage. The operation is located at 1963 230th Street; Donnellson, Iowa (Section 3, Charleston Township, Lee County). Albert James Cresswell is the operation's contact person.

2. The annual MMP update deadline was established as April 1 of each calendar year and the annual compliance fee for the confinement portion of the facility is \$298.80. Facilities are required to submit a complete Phosphorus Index MMP every four years. C&M Hogs was to submit a complete Phosphorus Index MMP on April 1, 2024. C&M Hogs failed to timely submit the complete Phosphorus Index MMP and fee by April 1, 2024.

3. In February and March 2024, emails were sent to C&M Hogs reminding the facility of the MMP update deadline. On April 11, 2024, DNR issued C&M Hogs a Notice of Violation letter for the facility's failure to submit the complete Phosphorus Index MMP and fee by April 1, 2024. On April 30, 2024, DNR emailed Mr. Cresswell to inquire about the MMP. During the month of May 2024, DNR spoke to Mr. Cresswell and the facility's consultant about the MMP. The complete Phosphorus Index MMP and fee were submitted on July 12, 2024.

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: C&M HOGS LLC

concentration data is less than four years old. The 2024 Phosphorus Index MMP and fee were due April 1, 2024 and were not submitted until July 12, 2024. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders C&M Hogs to do the following:

1. C&M Hogs shall pay an administrative penalty in the amount of \$3,000.00 within 60 days of 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 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 \$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 10.30(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.” C&M Hogs’ delay in timely submitting the Phosphorus Index MMP and fee allowed the facility to save time and money. It is estimated that C&M Hogs 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: C&M HOGS LLC

operation program and the compliance fees are crucial to the budget of the animal feeding program. C&M Hogs' delay in timely submitting the Phosphorus Index MMP and fee threatens the integrity of the animal feeding operation regulations. Therefore, \$1,400.00 is assessed for this factor.

Culpability – C&M Hogs 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. C&M Hogs 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. 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 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