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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

LBH PARTNERS LLP
Emmet County

ADMINISTRATIVE CONSENT ORDER
NO. ~~2024-AFO-~~ 2025-AFO-01

AFO #59016 and AFO #64087

TO: LBH PARTNERS LLP
109 N BRIDGEMAN ST
FAIRMONT MN 56031

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and LBH Partners LLP (LBH Partners) for the purpose of resolving the failure to timely submit complete original Manure Management Plans (MMPs) and fees upon the purchase of two animal feeding operations located in Emmet County. This administrative consent order requires LBH Partners to submit complete MMPs and pay an administrative penalty in the amount of \$6,000.00. 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:
Londa Witte, DNR Field Office 3
Iowa Department of Natural Resources
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

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

Payment of penalty to:
Director
Iowa 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 to secure compliance with or prevent a violation of Iowa Code Chapter 455B,

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LBH PARTNERS LLP

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. LBH Partners owns an animal feeding operation located at 1197 560th Avenue, Armstrong, Iowa. The facility is a swine confinement operation with a capacity of 3,840 head (1,536 animal units). LBH Partners purchased the facility from Roger Tirevold on May 5, 2024. LBH Partners also owns an animal feeding operation located at 5533 120th Street, Armstrong, Iowa. The facility is a swine confinement operation with a capacity of 2,000 head (800 animal units). LBH Partners purchased the facility from Dustin Tirevold on May 15, 2024. On June 28, 2024, Roger Tirevold contacted DNR Field Office 3 and informed them that both facilities had been sold.

2. On July 3, 2024, DNR sent LBH Partners a letter regarding the purchase of the two facilities. The letter informed LBH Partners of the requirement to submit an original MMP and compliance fees within 60 days of change of ownership. The letter required LBH Partners to submit the original MMPs and compliance fees for the facility by July 31, 2024. The certified letter was signed for by LBH Partners on July 9, 2023.

3. On October 11, 2024, DNR sent LBH Partners a Notice of Referral letter for the failure to submit the original MMPs and compliance fees for the two facilities by July 31, 2024. The letter informed LBH Partners that the matter would be referred for further enforcement.

4. On October 23, 2024, LBH Partners submitted the original MMPs and compliance fees for the two facilities. The MMP submittals were incomplete.

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 65.110(1)"d" requires that a new owner of a confinement feeding operation must submit an original MMP within 60 days after acquiring the operation. The Emmet County Assessor's Office indicates the sale of the two facilities occurred on May 5, 2024 and May 15, 2024, making the original MMPs due July 4, 2024 and July 14, 2024. The complete MMPs have not been submitted. The above-mentioned facts indicate violations of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LBH PARTNERS LLP

3. 567 IAC 65.111(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. 567 IAC 65.110(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 fees were not submitted until October 23, 2024. 567 IAC 65.110(6) requires all persons required to submit an MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. The indemnity fees for the facilities were \$230.40 and \$80.00 were not submitted until October 23, 2024.

V. ORDER

THEREFORE, the DNR orders and LBH Partners agree to do the following:

1. Submit the complete MMPs to DNR Field Office 3 within 30 days from the date the Director signs this administrative consent order and
2. Pay a \$6,000.00 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, 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 \$6,000.00. 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." LBH Partners has delayed submitting complete MMPs and fees. LBH Partners delayed the costs associated with consulting fees to develop the MMPs and delayed the payment of the associated

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LBH PARTNERS LLP

fees. Through the delayed costs, it is estimated that LBH Partners has gained an economic benefit of at least \$200.00 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, \$3,000.00 is assessed for this factor.

Culpability – LBH Partners 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. Therefore, \$2,800.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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



LBH PARTNERS LLP

Dated this 20 day of
December, 2024