

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

DWAYNE CHRISTIANSEN
Facility ID #59555
Section 36, Union Township
Worth County, Iowa

ADMINISTRATIVE ORDER
NO. 2009-AFO-25

TO: Dwayne Christiansen
3435 Yarrow Avenue
Plymouth, Iowa 50464

I. SUMMARY

This Order requires you to pay a penalty of \$3,000.00 within 60 days of the receipt of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Clay Swanson, Field Office 2
Iowa Department of Natural Resources
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 712/262-4177

Relating to appeal rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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

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III. STATEMENT OF FACTS

1. Dwayne Christiansen owns and operates a confined animal feeding operation located in Section 36, Union Township, Worth County, Iowa. The facility consists of approximately 1,200 nursery pigs (120 animal units) and 3,600 grow-finish pigs (1,440 animal units) for a total of 1,560 animal units. Mr. Christiansen submitted an original Manure Management Plan (MMP) for this facility in July 2001. His annual MMP update was established to be December 1 of each year and had filed updates each following year.

2. On June 19, 2008, DNR Field Office 2 sent Mr. Christiansen a letter reminding him the annual MMP update for his facility was due December 1, 2008. The letter explained that Mr. Christiansen would need to submit a Phosphorus Index with the MMP. The letter specifically stated that the Phosphorus Index would require soil samples for each field in the MMP.

3. On October 14, 2008, DNR Field Office 2 sent Mr. Christiansen another letter reminding him that his complete Phosphorus Index MMP update was due December 1, 2008.

4. On November 26, 2008, Mr. Christiansen contacted DNR Field Office 2 and informed the field office that due to the weather he would not be able to collect the soil samples for the Phosphorus Index and would not be able to submit the MMP update by December 1, 2008. The field office informed him that the MMP update must be submitted by January 12, 2009.

5. On December 12, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Christiansen for failing to submit a timely MMP update and applicable fees.

6. On January 16, 2009, DNR Field Office 2 issued a Notice of Referral letter to Mr. Christiansen indicating that the matter was being referred for further enforcement. On this same day, Mr. Christiansen contacted DNR Field Office 2 and said that he would not be able to submit the MMP update and that he would need more time. The field office informed him that the matter was being referred.

7. On February 5, 2009, Mr. Christiansen submitted the complete Phosphorus Index MMP update and applicable fees for his facility.

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 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The compliance fee is fifteen cents per animal unit. Mr.

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Christiansen's MMP update and compliance fee for 2008 was due December 1, 2008. Mr. Christiansen failed to submit a timely MMP update with compliance fees for 2008. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.17 includes the requirements that must be included in a MMP. 567 IAC 65.17(1)"d" states a person who submits a MMP shall include a Phosphorus Index as part of the MMP. A person who submitted an original MMP prior to April 1, 2002, shall submit a Phosphorus Index with the first MMP update on or after August 25, 2008. Mr. Christiansen's original MMP was submitted in 2001, thus making the first Phosphorus Index due with the December 1, 2008 MMP update. Mr. Christiansen failed to submit a timely Phosphorus Index.

V. ORDER

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

1. Pay a penalty of \$3,000.00 within 60 days of receipt of this Order, subject to appeals rights stated in Section VII.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize 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 these rules, 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. The administrative penalty assessed by this Order is \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Christiansen's failure to comply with the animal feeding operation regulations has allowed him to achieve an economic benefit. He has an economic benefit by delaying soil samples associated with the Phosphorus Index. He was notified of these requirements in June 2008. He gained an economic benefit over those producers who timely collected the soil samples as well as those who timely submitted the MMP update and Phosphorus Index. The economic benefit received by Mr. Christiansen is estimated to be 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

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authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Mr. Christiansen's failure to timely submit the MMP update and Phosphorus Index threatens the integrity of the animal feeding operation program. The MMP update and Phosphorus Index is a crucial aspect of the DNR's animal feeding operation program. The update and index ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. Mr. Christiansen's operation has approximately 1,560 head and if the manure is not contained or applied properly it could cause environmental harm. Based on the above considerations, \$2,000.00 is assessed for this factor.

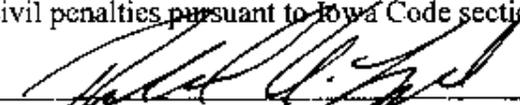
Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. The animal feeding operations area of agriculture is a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. Mr. Christiansen was made aware of the requirements six months prior to the deadline. He did contact the DNR a few days before the deadline to indicate the weather prevented him from collecting the samples; however the samples could have been collected anytime in the previous six months. The DNR sent Mr. Christiansen several letters reminding him of the requirements. Based on the above considerations, \$900.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and 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. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order. Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
June, 2008.