

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: BILL VORHES Facility ID #61427 Section 12, Union Township Floyd County, Iowa	ADMINISTRATIVE ORDER NO. 2009-AFO- 32
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TO: Bill Vorhes
2060 260th Street
Marble Rock, Iowa 50653

I. SUMMARY

This Order requires you to pay a penalty of \$4,000.00 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:

Eric Wiklund, 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. Bill Vorhes owns and operates a confined animal feeding operation located in Section 12, Union Township, Floyd County, Iowa. The confinement facility consists of two buildings with 4,000 hogs (1,600 animal units). Mr. Vorhes' original Manure Management Plan (MMP) for this facility was approved on April 10, 2002. His annual MMP update was established to be December 1 of each year.

2. On June 19, 2008, DNR Field Office 2 sent Mr. Vorhes a letter reminding him the annual MMP update for his facility was due December 1, 2008. The letter explained that Mr. Vorhes 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. Vorhes another letter reminding him that his complete Phosphorus Index MMP update was due December 1, 2008.

4. On December 12, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes for failing to submit the complete Phosphorus Index MMP update and applicable fees by December 1, 2008. The letter informed Mr. Vorhes that if the information was not submitted by December 31, 2008, the matter would be referred for further enforcement.

5. On December 24, 2008, Mr. Vorhes met with Eric Wiklund, DNR Field Office 2 environmental specialist, at the field office. Mr. Vorhes asked for the forms to sign. Mr. Wiklund explained that the Phosphorus Index MMP update required soil samples as well as the Phosphorus Index analysis. Mr. Vorhes stated he would not be able to obtain the soil samples because of the weather. Mr. Wiklund informed him that if the complete MMP was not submitted by December 31, 2008, the matter would be referred for further enforcement.

6. On January 16, 2009, DNR Field Office 2 issued a Notice of Referral letter to Mr. Vorhes indicating that the matter was being referred for further enforcement.

7. On May 11, 2009, Mr. Vorhes submitted the complete Phosphorus Index MMP update and applicable fees for his facility.

8. Since the original MMP was approved in 2003, Mr. Vorhes has failed to submit the MMP updates by the December 1 deadline each year.

-On October 15, 2003, DNR Field Office 2 sent Mr. Vorhes a letter reminding him the MMP update for 2003 was due December 1, 2003. On January 9, 2004, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes for failing to submit the 2003 MMP update by December 1, 2003. On February 26, 2004, the 2003 MMP update was submitted, but it was incomplete. On March 3, 2004, DNR Field Office 2 sent Mr. Vorhes a letter indicating the MMP update was incomplete and on April 6,

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2004, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes. The 2003 MMP update was approved on May 11, 2004.

-On October 15, 2004, DNR Field Office 2 sent Mr. Vorhes a letter reminding him the MMP update for 2004 was due December 1, 2004. On December 13, 2004, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes for failing to submit the 2004 MMP update by December 1, 2004. On January 10, 2005, DNR Field Office 2 issued a second Notice of Violation letter to Mr. Vorhes. On January 26, 2005, DNR Field Office 2 received the 2004 MMP update.

-On October 14, 2005, DNR Field Office 2 sent Mr. Vorhes a letter reminding him the MMP update for 2005 was due December 1, 2005. On December 12, 2005, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes for failing to submit the 2005 MMP update by December 1, 2005. On December 23, 2005, DNR Field Office 2 received the 2005 MMP update.

-On October 16, 2006, DNR Field Office 2 sent Mr. Vorhes a letter reminding him the MMP update for 2006 was due December 1, 2006. On December 11, 2006, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes for failing to submit the 2006 MMP update by December 1, 2006. On December 22, 2006, DNR Field Office 2 received the 2006 MMP update.

-On October 15, 2007, DNR Field Office 2 sent Mr. Vorhes a letter reminding him the MMP update for 2007 was due December 1, 2007. On December 11, 2007, DNR Field Office 2 issued a Notice of Violation letter to Mr. Vorhes for failing to submit the 2007 MMP update by December 1, 2007. On December 19, 2007, DNR Field Office 2 received the 2007 MMP update.

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. Vorhes' MMP update and compliance fee for 2008 was due December 1, 2008. Mr. Vorhes failed to timely submit an MMP update with compliance fees for 2008. The MMP update and fees were not submitted until May 11, 2009, approximately five months after the original due date. The above-mentioned facts indicate violations of this provision.

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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. Vorhes' original MMP was submitted in 2002, thus making the first Phosphorus Index due with the December 1, 2008 MMP update. Mr. Vorhes failed to timely submit a timely Phosphorus Index. The Phosphorus Index was not submitted until May 11, 2009, approximately five months after the original due date. The above-mentioned facts indicate a violation of this provision.

V. ORDER

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

1. Pay a penalty of \$4,000.00 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 \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Vorhes' 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. Vorhes 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 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. Vorhes' failure to timely

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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. Vorhes' operation has approximately 4,000 hogs and if the manure is not contained or applied properly it could cause environmental harm. Additionally, DNR Field Office 2 has expended a large amount of staff time since 2003 working with Mr. Vorhes to timely submit the MMP updates. Based on the above considerations, \$2,500.00 is assessed for this factor.

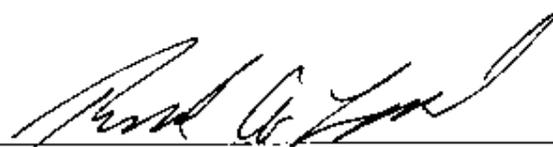
Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. The animal feeding operations area of agriculture is a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. Mr. Vorhes was made aware of the requirements six months prior to the deadline. The DNR sent Mr. Vorhes several letters reminding him of the requirements. Additionally, Mr. Vorhes has failed to timely submit the MMP updates for the five prior updates he was required to submit. Based on the above considerations, \$1,400.00 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 of Order constitutes full satisfaction of all requirements pertaining to the violations described in this 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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of
August, 2009.