IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **PIEPER, INC.** Facility #59711 Lee County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- 13

TO: Mike Pieper
Pieper, Inc.
3635 190th Street
Wever, Iowa 52658

Mike Blaser, Registered Agent
Pieper, Inc.
666 Grand Avenue, Suite 2000
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Pieper, Inc. (Pieper) for the purpose of resolving the failure to timely submit a complete Manure Management Plan (MMP) update and fees for 2015 for the Pieper facility. 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:
Jeff Prier, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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, 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. Pieper owns an animal feeding operation located at 3635 190th Street, Wever, Iowa (Section 21, Green Bay Township, Lee County). The facility is an 8,000 head (3,200 animal units) swine gestation confinement operation. Pieper filed the original Iowa Phosphorus Index MMP for the facility on January 23, 2004. The annual MMP update deadline was established as November 1 of each calendar year. The compliance fee for the facility is $480.00. The animal feeding operation is currently being leased and operated by Carroll Farms; however Pieper has continued to submit the MMP for the facility.

2. Pieper failed to submit the 2015 MMP short form update and fee by November 1, 2015. On November 12, 2015, DNR issued a Notice of Violation letter to Pieper for failing to submit the 2015 MMP short form update and fee by November 1, 2015. The letter informed Pieper that the MMP short form update and fee must be submitted by December 1, 2015 to avoid a compliance action with a monetary penalty.

3. Pieper failed to submit the 2015 MMP short form update and fee by November 1, 2015. The MMP short form update and fee was submitted on January 7, 2016, and was approved by DNR on January 7, 2016.

4. Pieper failed to timely submit the 2008 MMP update and fee for its facility. The violation was resolved through an Attorney General Consent Order, Judgment and Decree on October 28, 2011. The Consent Order Judgment and Decree also included other environmental violations.

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 459.12(13) and 567 IAC 65.16(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 fees 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. The 2015 MMP short form update and fee for Pieper were due

November 1, 2015 and were not submitted until January 7, 2016. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Pieper agrees to do the following:

1. Pieper shall pay an administrative penalty in the amount of $3,000.00 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 $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 10.2(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 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Pieper's delay in failing to timely submit a complete MMP short form update and fee allowed Pieper to save time and money by deferring the payment of the compliance fee for approximately two months. It is estimated that Pieper gained an economic benefit of at least $50.00 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 update is a crucial aspect of the DNR's animal feeding operation program. The MMP update confirms 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. While, the MMP short form update submitted by Pieper did not reflect any changes to th4e MMP, the Pieper facility has a capacity of 3,200 animal units and environmental harm could occur if the manure is not applied properly. Therefore, $1,450.00 is assessed for this factor.

Culpability – Pieper 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. This is Pieper's second violation for failing to timely submit its annual MMP and fees. Pieper was issued a letter that informed it of a monetary penalty if the 2015 MMP update and fee were not submitted by December 1, 2015. The MMP update and fee were not submitted until January 7, 2016. Pieper was aware of the regulations yet failed to comply with the requirement by the deadline. Therefore, $1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of July, 2016.

Mike Pieper
Pieper, Inc.

Dated this 27 day of June, 2016.

Facility #59711; Kelli Book; Field Office 6; EPA; VIII.C.2