

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

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Director's Office

IN THE MATTER OF:

ADMINISTRATIVE CONSENT ORDER

WINDING MEADOWS DAIRY, INC.

NO. 2016-AQ- 17
NO. 2016-SW- 12

TO: Winding Meadows Dairy, Inc.
Terry K. Van Maanen, Registered Agent
2633 Elmwood Avenue
Rock Valley, Iowa 51247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Winding Meadows Dairy, Inc., for the purpose of resolving solid waste and air quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Michelle Sabatini
Iowa Department of Natural Resources
Field Office No. 3
Gateway North Mall
1900 North Grand Avenue
Spencer, Iowa 51301
Phone: 712-262-2901 4177

Relating to legal requirements:

Anne Preziosi
Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-725-9551

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 chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or

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prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that division; 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. Terry Van Maanen owns Winding Meadows Dairy, Inc., which is located in Section 32, Doon Township, Lyon County, Iowa. The street address of the facility is 2469 260th St. Rock Valley, Iowa.

2. On August 25, 2015, Michelle Sabatini of DNR Field Office No. 3 was traveling south of Rock Valley and noticed thick black smoke in the sky. Ms. Sabatini followed the smoke to Winding Meadows Dairy, Inc., which was located six miles away. The owner of the facility was unavailable at the site. Ms. Sabatini asked the staff for permission to look at the burn pit, and they agreed. As Ms. Sabatini walked up to the burn pit, some type of canister created a small explosion. From a safe distance, Ms. Sabatini was still able to recognize two tires, metal rods, plastic tarps and other debris, as well as wood products, which appeared to be furniture and pallets. There also was a separate pile of approximately fifty tires, which were not included in the fire and were a safe distance from the burn pit. Ms. Sabatini spoke with the operations manager, Louis, at the facility. He was unaware that this type of burning was a violation. He told Ms. Sabatini that facility personnel were burning plastic tarps in the burn pit. Ms. Sabatini provided the operations manager with her contact information and the applicable burning rules.

3. On September 6, 2015, Ms. Sabatini determined that the facility where the open burning occurred was Winding Meadows Dairy, Inc., owned by Terry K. Van Maanen. She was unable to reach Mr. Van Maanen by phone to discuss the August 25 incident.

4. On September 17, 2015, Ms. Sabatini again telephoned Mr. Van Maanen to discuss the open burning. Mr. Van Maanen informed Ms. Sabatini that his operations manager spoke with him about the incident. Mr. Van Maanen admitted to adding the two tires to the pile. He stated that he knew it was a violation, but said that he has spent over \$10,000 hauling tires. Ms. Sabatini informed Mr. Van Maanen that tires are a routine process waste and must be disposed of properly.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

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air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The illegal open burning of solid waste in this case demonstrates a violation of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of construction and demolition solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Winding Meadows Dairy, Inc., agrees to the following:

1. Winding Meadows Dairy, Inc., shall pay a penalty of \$1,000.00 within 30 days of the date this order is signed by the Director; and

2. Within 90 days of the date of this order, Winding Meadows Dairy, Inc., shall cease all illegal solid waste disposal activity and illegal open burning of combustible materials, shall properly dispose of all remaining tires located at the site at a landfill or recycling center, and shall provide receipts to DNR Field Office No. 3; and

3. Winding Meadows Dairy, Inc., shall comply in the future with the regulations concerning disposal of solid waste and open burning.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

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Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, 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 a \$1,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Winding Meadows Dairy, Inc., has received economic benefit and saved time by conducting illegal open dumping and illegal open burning at the site. While only two tires were observed in the burn pile, other prohibited waste was being burned at the site. Therefore, \$50.00 is assessed for economic benefit.

Gravity of the Violation – Improper solid waste disposal and illegal open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health. Open burning results in emission of particulates to the ambient air. Particulate matter from the open burning of solid waste released toxic substances into the air. Further, failure to properly dispose of solid waste threatens the integrity of the regulatory program. Therefore, \$350.00 is assessed for the gravity of the violations.

Culpability – The prohibition against illegal open burning has been in has existed in Iowa for over 35 years. Mr. Van Mannen of Winding Meadows Dairy, Inc., admitting to knowing rules and chose not to abide by them. Therefore, \$600.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Winding Meadows Dairy, Inc. For that reason, Winding Meadows Dairy, Inc., waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, 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 sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full

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satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Chuck Gipp
Chuck Gipp, Director

Iowa Department of Natural Resources

Winding Meadows Dairy, Inc.

by Ty Van Mearns
Winding Meadows Dairy, Inc.

Dated this 1st day of
November, 2016.

Dated this 28 day of
Oct, 2016.

DNR Field Office 3; Anne Preziosi; VII.C.2