

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

JOHN AND CATHY TUTTLE
Wayne County Iowa

AFO #67320

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 33

TO: John and Cathy Tuttle
615 Main Street
Clio, Iowa 50052-8743

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and John and Cathy Tuttle for the purpose of resolving the failure to timely submit the Manure Management Plan (MMP) update and fee for 2020 for an animal feeding operation located in Wayne County, Iowa. This administrative consent order requires the Tuttle's to pay an administrative penalty in the amount of \$1,500.00. 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:

Bryan Bunton, Field Office 5
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-0105

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

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,

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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. John and Cathy Tuttle own and operate an animal feeding operation located at 1451 Highway J54, Clio, Iowa (Section 2, Grand River Township, Wayne County). The confinement operation is known as Tuttle Farms Site #1 and has one confinement building that houses 986 head of beef finishing cattle (986 animal units). An original Phosphorus Index MMP for the facility was submitted June 6, 2012. The annual MMP update deadline was established as June 1 of each calendar year and the annual compliance fee for the facility is \$147.90.
2. The MMP updates and fees for 2013 and 2014 were not submitted. The MMP update and fee for 2015 was not submitted by June 1, 2015. DNR Field Office 5 issued a Notice of Violation letter for the late 2015 MMP update. The 2015 MMP update and fee was submitted on June 29, 2015.
3. The 2016 MMP submittal was to be a complete Phosphorus Index MMP. DNR Field Office 5 issued a Notice of Violation letter for the late 2016 Phosphorus Index MMP. On June 28, 2016, the Tuttle's submitted a 2016 MMP update and fees; however, a complete Phosphorus Index was not submitted.
4. The MMP update and fee for 2017 was timely submitted. The MMP update and fee for 2018 was timely submitted. DNR Field Office 5 contacted Cathy Tuttle by telephone regarding the complete Phosphorus Index MMP that was still outstanding from 2016, as well as the back fees for 2013 and 2014. On August 22, 2018, the back fees for 2013 and 2014 were submitted. However, the complete Phosphorus Index MMP was not submitted.
5. The 2019 MMP update and fee for 2019 were not submitted by June 1, 2019. On August 27, 2019, DNR Field Office 5 sent an email to Ms. Tuttle regarding the overdue 2016 complete Phosphorus Index MMP and the overdue 2019 MMP update and fees. On October 9, 2019, DNR Field Office 5 contacted Ms. Tuttle to discuss the MMP requirements and DNR Field Office 5 explained that the complete Phosphorus Index MMP was three years past due. On October 22, 2019, the 2019 MMP update and fees were submitted. On October 29, 2019, DNR Field Office 5 sent a letter to the Tuttle's and stated that the 2016 complete Phosphorus Index MMP must be submitted by December 15, 2019. DNR Field Office 5 granted an extension until January 31, 2020 to allow time for soil sampling.

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6. There was numerous email correspondence between Ms. Tuttle and DNR Field Office 5 in January 2020 regarding the soil samples. The Tutttles submitted the 2016 Phosphorus Index MMP and fees on March 20, 2020. On June 5, 2020, DNR Field Office 5 emailed Ms. Tuttle to inform her the 2016 Phosphorus Index MMP was missing information and had been deemed administratively incomplete.

7. The 2020 MMP update and fee was not received by June 1, 2020. On June 12, 2020, DNR issued a Notice of Violation letter to the Tutttles for failing to submit the MMP update and fee for 2020. The letter required the Tutttles to submit the MMP update and fee within 10 days to avoid a compliance action with an administrative penalty. On June 9, 2020, DNR Field Office 5 emailed Cathy Tuttle a list of MMP service providers and on July 1, 2020, DNR Field Office 5 contacted Ms. Tuttle to see if a service provider had been contacted. The field office informed Ms. Tuttle that the MMP update for 2020 had not been submitted. Ms. Tuttle informed the field office that a service provider had not been contacted.

8. In August 2020, 5J Farms & Services, an MMP service provider, contacted DNR Field Office 5, and stated the company had been hired by the Tutttles to submit the complete 2016 Phosphorus Index MMP and the 2020 MMP update. On August 31, 2020, the 2016 Phosphorus Index MMP and the 2020 MMP update were submitted.

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. 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 fee 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. 567 IAC 65.17(17)"d" states that the phosphorus index is valid if the soil phosphorus concentration data is less than four years old. The Tutttles submitted an Iowa Phosphorus Index MMP in 2012; therefore, in order for the 2016 MMP to be considered complete it should have included an Iowa Phosphorus Index. The complete 2016 Iowa Phosphorus Index MMP and the 2020 MMP update and fee were not submitted until August 2020. The above-mentioned facts indicate violations of this provision.

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V. ORDER

THEREFORE, the DNR orders and John and Cathy Tuttle agree to do the following:

1. John and Cathy Tuttle shall pay an administrative penalty in the amount of \$1,500.00 in accordance with the following payment plan. If any of the payments are not submitted on or before the due date, the remaining portion of the penalty may be due immediately.

\$74.00 due November 15, 2020	\$62.00 due November 15, 2021
\$62.00 due December 15, 2020	\$62.00 due December 15, 2021
\$62.00 due January 15, 2021	\$62.00 due January 15, 2022
\$62.00 due February 15, 2021	\$62.00 due February 15, 2022
\$62.00 due March 15, 2021	\$62.00 due March 15, 2022
\$62.00 due April 15, 2021	\$62.00 due April 15, 2022
\$62.00 due May 15, 2021	\$62.00 due May 15, 2022
\$62.00 due June 15, 2021	\$62.00 due June 15, 2022
\$62.00 due July 15, 2021	\$62.00 due July 15, 2022
\$62.00 due August 15, 2021	\$62.00 due August 15, 2022
\$62.00 due September 15, 2021	\$62.00 due September 15, 2022
\$62.00 due October 15, 2021	\$62.00 due October 15, 2022

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 \$1,500.00. 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

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should be made where clear data are not available." The Tuttle's delay in timely submitting the MMP update and fee, as well as the complete Iowa Phosphorus Index MMP has allowed them to save time and money. It is estimated Tuttle's gained an economic benefit of at least \$500.00 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 and Iowa Phosphorus Index are crucial aspects of the DNR's animal feeding operation program. The MMP and Iowa Phosphorus Index ensure 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. The Tuttle's facility has a capacity of 986 animal units and environmental harm is likely to occur if the manure is not applied properly. Failing to submit a timely complete Iowa Phosphorus Index MMP and the MMP update with fee threatens the integrity of the animal feeding operation regulations. Therefore, \$500.00 is assessed for this factor.

Culpability – The Tuttle's have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. The Tuttle's have a history of late MMP update and fee submittals. The facility operated without an approved complete Iowa Phosphorus Index for four years. DNR Field Office 5 has made multiple attempts to assist the facility with compliance issues. Therefore, \$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 John and Cathy Tuttle. For that reason, John and Cathy Tuttle waive 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.

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Kayla Lyon
KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 14th day of
December, 2020.

John Tuttle
JOHN TUTTLE

Dated this 15th day of
December, 2020.

Cathy Tuttle
CATHY TUTTLE

Dated this 15 day of
December, 2020.

Kelli Book; Field Office 5; EPA; VIII.C.2