

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

IN THE MATTER OF:

SCOTT TAPPER

AFO #59197
Hamilton County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO- 29

TO: Scott Tapper
2430 240th Street
Webster City, Iowa 50595

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Scott Tapper for the purpose of resolving animal feeding operation violations at Mr. Tapper's animal feeding operation located in Hamilton County. This administrative consent order requires Scott Tapper to: 1) ensure land application of manure is done by a certified manure applicator; and 2) pay an administrative penalty in the amount of \$5,000.00.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Sheila Bly, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

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, 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

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

III. STATEMENT OF FACTS

Scott Tapper neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Scott Tapper owns and operates an animal feeding operation located at 2470 240th Street; Blairsburg, Iowa (Section 18, Liberty Township, Hamilton County). The facility has five confinement buildings with the capacity of 960 nursery swine and 2,100 grow to finish swine (936 animal units). The annual MMP update deadline for the facility was established as October 1 of each calendar year and the annual compliance fee for the facility is \$140.40. Between the years 2009 and 2020, Mr. Tapper failed to timely submit the MMP updates. DNR issued Notice of Violation letters in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 for the late MMP updates. The 2021 MMP update was to be a complete Iowa Phosphorus Index MMP. The complete Iowa Phosphorus Index MMP and fees were submitted on November 10, 2021.

2. On August 3, 2021, Sheila Bly, DNR Field Office 2 environmental specialist, conducted a routine inspection at Mr. Tapper's facility. During the inspection, Ms. Bly reviewed the manure application records. The records indicated that Mr. Tapper applied manure from the facility during four of the previous five years. However, Mr. Tapper's confinement site manure applicator certification expired on December 31, 2015. The application records also indicated that the manure application rates had been improperly calculated; the rate failed to include the legume credit in the calculations. This resulted in the application of manure and commercial fertilizer in excess of the nitrogen use levels necessary to achieve optimum crop yields. Further review of the MMP indicated the last complete Phosphorus Index MMP was developed in 2017. The MMP listed eight application fields and only one of the fields had soil sampling data that was less than four years old. The other fields, six of which were used for application in the last five years, had sampling data ranging from November 2013 to October 2015.

3. In 2012, Mr. Tapper conducted an environmental self-audit of his facility. One of the violations disclosed to the DNR was the failure to submit a design plan for a secondary containment barrier prior to beginning construction of a formed manure storage structure earlier in 2012. The disclosure indicated the missing design plan would be developed and submitted by April 2012. However, the design plan was never submitted to the DNR.

4. During Ms. Bly's inspection in August 2021, Mr. Tapper did not have a copy of the secondary containment barrier design documentation in his records. Ms.

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Bly was able to obtain a copy from the local NRCS office. Ms. Bly noted that the construction of the secondary containment barrier was not done in accordance with the design document and did not meet the regulatory requirements. The berm did not extend as far as the design plan; did not include an outlet pipe with gate valve, and was never smoothed out to the dimensions shown in the plan.

5. On August 24, 2021, DNR issued Mr. Tapper a Notice of Violation and Referral letter for the violations discovered by Ms. Bly during her August 2021 inspection. The letter informed Mr. Tapper the violations were being referred for further enforcement.

IV. CONCLUSIONS OF LAW

Scott Tapper neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.312(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit an 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 Phosphorus Index MMPs and fees were submitted late in 2009, 2013, 2017, and 2021; and MMP updates and fees were submitted late in 2010, 2011, 2012, 2014, 2015, 2016, 2018, 2019, and 2020. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.3(6) states that a confinement feeding operation required to submit an MMP to the DNR must use a certified commercial manure service for land application of manure and an operation that applies its own manure must comply with certification requirements in 567 IAC 65.19. 567 IAC 65.19(1) states that a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. During the DNR Field Office 2 inspection in August 2021, it was determined Mr. Tapper applied manure from the facility during four of the previous five years. However, his confinement site manure applicator certification expired on December 31, 2015. The above-mentioned facts indicate violations of these provisions.

4. 567 IAC 65.3(1) states that a confinement feeding operation required to submit an MMP to the DNR shall not apply manure in excess of the nitrogen use

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levels necessary to obtain optimum crop yields. During the DNR Field Office 2 inspection in August 2021, Ms. Bly noted Mr. Tapper's application records indicated the manure application rates had been improperly calculated; the rate failed to include the legume credit in the calculations. This resulted in the application of manure and commercial fertilizer in excess of the nitrogen use levels necessary to achieve optimum crop yields. The above-mentioned facts indicate violations of these provisions.

5. 567 IAC 65.17(16) requires that soil samples be obtained from each field in the MMP, and the soil samples shall be four years old or less. During the DNR Field Office 2 inspection in August 2021, Ms. Bly noted Mr. Tapper's MMP listed eight application fields and only one of the fields had soil sampling data that was less than four years old. The other fields, six of which were used for application in the last five years, had sampling data ranging from November 2013 to October 2015. The above-mentioned facts indicate violations of this provision.

6. 567 IAC 65.11(3) requires a minimum separation distance of 500 feet between a water source and a manure storage structure, but construction is allowed if a secondary containment barrier is constructed per 567 IAC 65.12(7). 567 IAC 65.15(17) requires that a construction design plan be submitted and comply with construction requirements. During the DNR Field Office 2 inspection in August 2021, Ms. Bly noted that the construction design plan had not been submitted to the DNR and the construction of the secondary containment barrier was not done in accordance with the design document and did not meet the regulatory requirements. The berm did not extend as far as the design plan; did not include an outlet pipe with gate valve, and was never smoothed out to the dimensions shown in the plan. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Scott Tapper agrees to do the following:

1. Mr. Tapper shall ensure that land application of manure at his facility is conducted by a certified manure applicator or that he is certified as a confinement site applicator prior to land application of manure; and
2. Mr. Tapper shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of 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.

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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 \$5,000.00. 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.” Mr. Tapper gained an economic benefit by avoiding the costs associated with failing to properly update and maintain the MMP for his facility. This includes the delay or avoidance of the costs of soil sampling and reporting. Additionally, Mr. Tapper gained an economic benefit of applying manure for several years without being properly certified. He avoided the costs associated with training and certification. Mr. Tapper gained an economic benefit in the construction of the secondary containment barrier, by failing to construct in accordance with the plan and regulations he avoided the costs associated with proper construction. Based on the above facts, the economic benefit Mr. Tapper received was at least \$2,000.00 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. Mr. Tapper’s facility has a capacity of 936 animal units and environmental harm is likely to occur if the manure is not applied properly. Mr. Tapper has a history of late MMP update submittals. Additionally, manure applicators are required to obtain training and certifications to ensure they are properly trained. Separation distance requirements are in place to further protect the environment from potential harm and exemptions are allowed only when other measures, such as secondary containment barriers, have been established to provide an increased level of protection. The above-mentioned regulations are integral parts of

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the animal feeding operation program and violations of those regulations threaten the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Tapper has 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. Mr. Tapper has received multiple Notice of Violation letters for similar violations as those noted in this administrative consent order. Mr. Tapper has previously been informed about the regulations that apply to his facility. Additionally, Mr. Tapper conducted an environmental audit in 2012 and disclosed violations regarding the separation distance. As part of the audit he was to construct a secondary containment barrier to come into compliance with the regulations, to date the barrier has not been properly constructed. 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 Mr. Tapper. For that reason, Mr. Tapper 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



SCOTT TAPPER

Dated this 14 day of
October, 2022.