

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

IN THE MATTER OF: Manildra Milling Corporation Fremont County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-AQ- 20 NO. 2011-SW- 23
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TO: Gerard A. Degnan, President
Manildra Milling Corporation
4210 Shawnee Mission PKWY Suite 312 A
Shawnee Mission, Kansas 66205

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Manildra Milling Corporation (Manildra) for the purpose of resolving air quality and solid waste disposal violations. 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:
Alison Manz, Environmental Specialist
Field Office 4
1401 Sunnyside Lane,
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:
Carrie Schoenebaum, Attorney for the DNR

Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules

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promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Manildra is an international company which produces modified starch products at its facility in Hamburg, Iowa at Section 28, T67N, R42W, Fremont County, which is locally known as 100 George Street. Manildra began operations at this location in 2000.
2. On January 7, 2003, the Department received a complaint alleging the open burning of old corn at Manildra. The complainant alleged the burning had been going on for 3-4 days. The complainant stated that the smoke was worse at night, and that he contacted the City of Hamburg who informed him that Manildra was burning trash and that nothing could be done.
3. On January 9, 2003, Dan Olson, an Environmental Specialist with the Department, investigated the complaint. Upon arrival at the facility he observed smoke coming from a small burn pile on the east side of the facility. Remnants of plastic pipe, rubber hose, electric wire and pallets were observed in the burn pile. Mr. Olson took pictures to document his observations. Manildra's plant manager, Jeffrey Sabraski was not available during Mr. Olson's investigation, but Michael Wright, Manildra's controller, was present. Mr. Wright stated that the company had burned some plastic and paper bags that had contained starch. Mr. Olson informed him of the other materials he observed in the burn pile and advised him that neither the bags nor the other material could be burned. Mr. Wright stated that the burning would stop immediately. Mr. Olson provided Mr. Wright with a copy of the Department's rules regulating open burning.
4. On January 28, 2003, the Department mailed a Notice of Violation (NOV) to Manildra for the above discussed violations. This NOV summarized the relevant law and provided information as to how to obtain a variance or a permit so that the company could utilize its boiler as an incinerator.
5. On June 30, 2004, the Department received a complaint alleging that Manildra was burying something in a field southeast of the plant between midnight and 2:00 am and that Manildra had been open burning in the middle of the night.
6. On July 2, 2004, the Department received a complaint alleging that open dumping and open burning was taking place at night and on the weekends in a field behind Manildra's property. The complainant stated that he observed a large truck dumping a liquid and that nothing will grow where the substance was dumped.

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7. On July 13, 2004, Dan Stipe, Environmental Program Supervisor with the Department, conducted an investigation. Once on site Mr. Stipe met with Mr. Sabraski the plant manager. Mr. Sabraski informed Mr. Stipe that the material being spread on the field was starch water from the grain milling plant. Mr. Sabraski indicated that the starch water was registered with the Iowa Department of Agriculture and Land Stewardship (IDALS) as a fertilizer, and the starch water was applied under an IDALS registration. Mr. Sabraski stated that he was often at the plant late at night, and sometimes spread the starch water during the night. Mr. Sabraski acknowledged that he had applied too much starch water in one area which did cause the grass to die. Further, Mr. Sabraski stated that wastewater from the wastewater treatment plant at Manildra is land applied in accordance with its National Pollution Discharge Elimination System permit issued to the facility. Mr. Sabraski also acknowledged that pallets and other trade waste were periodically burned. Mr. Stipe informed Mr. Sabraski that such open burning is a violation of Iowa law and that future violations may result in legal action.

8. On August 9, 2004, the Department sent a NOV to Manildra for open burning violations. This NOV summarized the relevant law and attached was a copy of the investigation report prepared by Mr. Stipe.

9. On October 22, 2010, the United States Environmental Protection Agency filed a complaint with the Department alleging illegal open burning of combustible materials at Manildra.

10. On November 2, 2010, Alison Manz and Melodie Carr, Environmental Specialists with the Department, conducted an investigation. Once on site they observed and photographed a large plume of black smoke. They met with Mr. Sabraski, who acknowledged that flour sacks and a few pallets were being burned. Then they proceeded to the south end of the facility where they observed flour sacks, pallets, mattress springs, metal chairs, plastic buckets and other various forms of solid waste in the burn pile. Mr. Sabraski stated that some of the employees must have put some of the other solid waste on the burn pile. From Ms. Manz and Ms. Carr's observations it was evident that open burning takes place at this location frequently. Mr. Sabraski confirmed that the burning of flour sacks was a routine practice at this site. Mr. Sabraski was provided a copy of the Department's rules which regulate open burning.

11. On November 5, 2010, the Department mailed a NOV to Manildra which summarized the relevant laws and informed the company that the matter will be referred to the Department's Legal Services Bureau for enforcement.

IV. CONCLUSIONS OF LAW

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1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of 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). Manildra allowed the burning of various solid wastes. Therefore, the above stated facts demonstrate noncompliance with 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 such rules at 567 IAC chapters 100-123.
4. 567 IAC 100.4 prohibits 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 above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Manildra agrees to do the following:

1. Cease the illegal burning of solid waste;
2. Properly dispose of all solid waste;
3. Properly clean up the solid waste within 20 days of the date the Director signs this order and submit landfill receipts to the Department's Field Office 4 within 15 days of completion of the cleanup; and
4. Manildra shall pay a penalty in the amount of \$10,000.00 to the Department within 30 days of the date the Director signs this order.

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) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a

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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, the Department 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 \$10,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department 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." The Fremont County Sanitary Disposal Project charges \$80.00 per ton for disposal of solid waste. It is reasonable to estimate that Manildra has engaged in the illegal burning of solid waste since at least 2003 and has therefore saved thousands of dollars. Therefore, it is reasonable to estimate that at least \$4,000.00 has been saved by Manildra. For these reasons that amount is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Manildra has been sent 3 NOVs for open burning violations; therefore, it had notice that its routine practice of burning flour sacks and pallets was a violation of the law. Moreover Manildra is a large international company and is therefore expected to understand and comply with the laws which regulate its business. Further, it has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that its conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above considerations, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Manildra. For that reason, it waives its rights to appeal this order or any part thereof.

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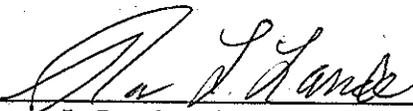
VIII. NONCOMPLIANCE

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 sections 455B.146 and 455B.307.



Gerard Degnan, President Manildra Milling Corporation

Dated this 25th day of
July, 2011.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 27th day of
August, 2011.

Carrie Schoenebaum; DNR Field Office 4; EPA; VI C and VII.C.1.