

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

IN THE MATTER OF:

STEVEN MIDDLEBROOK
Facility #62835
Section 25, Albion Township
Howard County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2011-AFO- **23**

TO: Steven Middlebrook
4196 Yankee Avenue
Cresco, Iowa 52136

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Steven Middlebrook for the purpose of resolving the failure to timely submit a Manure Management Plan (MMP) update with an Iowa Phosphorus Index for Mr. Middlebrook's animal feeding operation located in Howard County, Iowa. 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:

Tom McCarthy, DNR Field Office 1
Iowa Department of Natural Resources
909 West Main Street
Manchester, Iowa 52057
Phone: 563/927-2640

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: 515/281-8563

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

1. Steven Middlebrook owns and operates a 568 animal unit confinement facility. The facility is located at 4196 Yankee Avenue, Cresco, Iowa (Section 25, Albion Township, Howard County, Iowa). Mr. Middlebrook filed the original MMP for the facility in March 2004. The annual MMP update deadline was established as April 1 of each calendar year. The original Iowa Phosphorus Index was due April 1, 2007. The original Iowa Phosphorus Index was submitted in March 2007. The next update to the Iowa Phosphorus Index was due April 1, 2011.
2. Mr. Middlebrook failed to submit the MMP update with the Iowa Phosphorus Index by April 1, 2011. On April 12, 2011, DNR Field Office 1 issued a Notice of Violation letter to Mr. Middlebrook for failing to timely submit a complete MMP update and pay fees for 2011. The letter stated that the MMP update, Iowa Phosphorous Index, and fees must be submitted by May 1, 2011 in order to avoid further enforcement.
3. On April 13, 2011, Mr. Middlebrook contacted DNR Field Office 1 and asked that the forms be sent to him. The field office personnel explained that the MMP update with the Iowa Phosphorus Index required more than just being submitted. Mr. Middlebrook explained that he was working with an agronomist. The forms were mailed to Mr. Middlebrook on the same day. On April 27, 2011, Mr. Middlebrook contacted DNR Field Office 1 requesting his facility number and stated the MMP would be submitted soon.
4. On May 2, 2011, Mr. Middlebrook submitted the MMP update. The submittal included an incomplete MMP update and incorrect fees. The Iowa Phosphorus Index was not included. On May 3, 2011, DNR Field Office 1 issued a Notice of Violation letter to Mr. Middlebrook for submitting an incomplete MMP. The letter stated that the missing information must be submitted within 10 days in order to avoid further enforcement.
5. On May 17, 2011, Mr. Middlebrook contacted DNR Field Office 1 to discuss the incomplete MMP submittal and spoke with Tom McCarthy, DNR Field Office 1 environmental specialist senior. Mr. McCarthy stated that most of the items were improperly filled out or incomplete. Mr. Middlebrook claimed someone at DNR Field Office 1 had given him an extension. Mr. McCarthy informed Mr. Middlebrook that extensions were not granted. Mr. Middlebrook stated he was working with James Wendl and Frank Moore and that the information might be able to be submitted later in the week. Following the telephone conversation, Mr. McCarthy contacted Mr. Moore and Mr. Moore stated he had not worked with Mr. Middlebrook for four years.

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6. On May 31, 2011, Mr. Middlebrook submitted information for the MMP update. Along with the information, Mr. Middlebrook also submitted the fees. Mr. Middlebrook failed to submit the Iowa Phosphorous Index, the RUSLE2 information, and the plat maps. The fees he submitted were the same ones that he had submitted earlier.

7. On June 3, 2011, DNR Field Office 1 issued a Notice of Referral to Mr. Middlebrook. The Notice of Referral indicated that the May 31 submittal was incomplete and the matter would be referred for further enforcement. On June 6, 2011, DNR Field Office 1 returned the check for the fees because it was the incorrect amount.

8. On June 16, 2011, Mr. Middlebrook submitted a complete MMP update and fees.

9. Mr. Middlebrook has a history of late and incomplete MMP update submittals. On April 20, 2004, Mr. Middlebrook was issued a Notice of Violation letter for an incomplete MMP submittal. On April 10, 2007, Mr. Middlebrook was issued a Notice of Violation letter for failing to timely submit the 2007 MMP update. On April 14, 2008, Mr. Middlebrook was issued a Notice of Violation letter for failing to timely submit the 2008 MMP update. On April 16, 2009, Mr. Middlebrook was issued a Notice of Violation letter for failing to timely submit the 2009 MMP update. On April 20, 2009, Mr. Middlebrook was issued a Notice of Violation letter for submitting an incomplete MMP update. On April 16, 2010, Mr. Middlebrook was issued a Notice of Violation letter for failing to timely submit the 2010 MMP update.

IV. CONCLUSIONS OF LAW

1. 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 on an annual basis to the DNR. 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. Mr. Middlebrook submitted an Iowa Phosphorus Index with the 2007 MMP update; therefore in order for the 2011 MMP update to be considered complete it should have included an Iowa Phosphorus Index. The 2011 MMP update was due April 1, 2011. A complete MMP update with an Iowa Phosphorus Index was not submitted until June 16, 2011. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Middlebrook agrees to do the following:

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1. Mr. Middlebrook shall pay an administrative penalty in the amount of \$2,000.00 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 Environmental Protection Commission (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 violation is the issuance of this administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Middlebrook's failure to timely submit a complete MMP update with an Iowa Phosphorus Index allowed him to save time and money. He has gained an economic benefit from the delay in the submittal. \$100.00 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 and Iowa Phosphorus Index are crucial aspects of the DNR's animal feeding operation program. The MMP update 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. Middlebrook's facility has a capacity of 568 animal units and environmental harm is likely to occur if the manure is not applied properly. DNR Field Office 1 has expended labor and expenses in informing Mr. Middlebrook of the requirements. Therefore, \$900.00 is assessed for this factor.

Culpability – Mr. Middlebrook has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Middlebrook has a history of late and incomplete MMP submittals. He has received six previous Notice of Violation letters for the same violations as those cited in this administrative consent order. Therefore, \$1,000.00 is assessed for this factor.

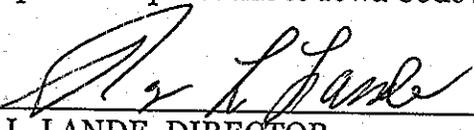
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Middlebrook. For that reason Mr. Middlebrook waives his 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.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 1st day of
September, 2011.



STEVEN MIDDLEBROOK

Dated this 26 day of
August, 2011.

Facility #62835; Kelli Book, DNR Field Office 1, EPA, Gene Tinker, VIII.C.2

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