

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

IN THE MATTER OF:

**MARY KRUSE and KRUSE
BROTHERS LTD.**

Facility #62943
Section 6, Marion Township
Lee County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2011-AFO- 21

TO: Kruse Brothers Ltd.
Lee Kruse, Registered Agent
3380 Grant Avenue
Salem, Iowa 52649

Mary Kruse
Box 114
Houghton, Iowa 52631

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kruse Brothers Ltd. and Mary Kruse (Kruse Brothers) for the purpose of resolving the failure to timely submit a Manure Management Plan (MMP) update with an Iowa Phosphorus Index for Kruse Brothers' animal feeding operation located in Lee 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:

Jeannie Greiner, DNR Field Office 6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353-1623
Phone: 319/653-2135

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,

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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. Kruse Brothers owns and operates a 830 animal unit confinement facility. The facility is located at 1627 110th Street, Salem, Iowa (Section 6, Marion Township, Lee County, Iowa). The Lee County Assessor's Office lists Mary Kruse (Chatham) as the owner of the property where the facility is located. Kruse Brothers 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, 2006. The next Iowa Phosphorus Index was due April 1, 2010.

2. On October 18, 2010, DNR and Kruse Brothers entered into Administrative Consent Order No. 2010-AFO-48 for the failure of Kruse Brothers to submit the MMP update with an Iowa Phosphorus Index by April 1, 2010. The consent order required that Kruse Brothers submit a complete MMP with an Iowa Phosphorus Index and to pay a penalty of \$3,000.00. The consent order stated if Kruse Brothers failed to comply with the consent order that further penalties could be issued. On October 7, 2010, the penalty of \$3,000.00 was paid. However, to date the MMP update with an Iowa Phosphorus Index and compliance fees have not been submitted.

3. On January 4, 2011, DNR Field Office 6 sent Lee Kruse a letter reminding him that Kruse Brothers was required by the consent order to submit a MMP update with an Iowa Phosphorous Index and compliance fees for 2010. The letter indicated that failure to do so would result in further enforcement.

4. On April 28, 2011, Kruse Brothers submitted its 2011 short form MMP update and fees. The short form did not include the Iowa Phosphorous Index.

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. Kruse Brothers submitted an Iowa Phosphorus Index with the 2006 MMP update; therefore in order for the 2010 MMP update to be considered complete it should have included an Iowa Phosphorus Index. The 2010 MMP update was due April 1, 2010. A complete MMP update with

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an Iowa Phosphorus Index for 2010 and the compliance fees have not been submitted. The above-mentioned facts indicate violations of this provision.

2. Administrative Consent Order No. 2010-AFO-48 was issued on October 18, 2010 and required Kruse Brothers to submit a complete MMP with an Iowa Phosphorus Index. To date the complete MMP with an Iowa Phosphorus Index and compliance fees has not been submitted. The above facts indicate noncompliance with Administrative Consent Order No. 2010-AFO-48.

V. ORDER

THEREFORE, the DNR orders and Kruse Brothers agrees to do the following:

1. Kruse Brothers shall submit a complete MMP update with an Iowa Phosphorus Index and compliance fees for 2010 within 30 days from the date the Director signs this administrative consent order and
2. Kruse Brothers shall pay an administrative penalty in the amount of \$5,000.00 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 \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – Kruse Brothers' failure to timely submit a complete MMP update with an Iowa Phosphorus Index allowed Kruse Brothers to save time and money. Kruse Brothers has gained an economic benefit from the delay in the submittal. Regulations require that an entity have current soil samples in place prior to manure application, Kruse Brothers has been required over a year to submit the Iowa Phosphorus Index with soil samples. Therefore Kruse Brothers has likely land applied manure without the proper soil samples. This has also led to an economic benefit for Kruse Brothers. It is estimated that Kruse Brothers has gained an economic benefit of at least \$1,000.00 and that amount is assessed for this factor.

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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. Kruse Brothers' facility has a capacity of 830 animal units and environmental harm is likely to occur if the manure is not applied properly. Kruse Brothers was required by an administrative consent order to submit an MMP update with Iowa Phosphorous Index and to date has failed to comply with the administrative consent order. Additionally, DNR Field Office 6 has expended labor and expenses in informing Kruse Brothers of the requirements. Therefore, \$3,000.00 is assessed for this factor.

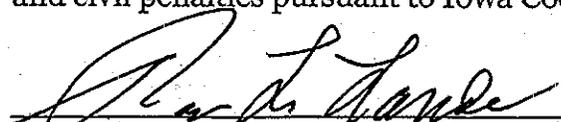
Culpability – Kruse Brothers has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Kruse Brothers is aware of the requirement to submit the Iowa Phosphorous Index and continues to operate without submitting the required information. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Kruse Brothers. For that reason Kruse Brothers 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.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 23rd day of
August, 2011.

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Kruse Bros Ltd
KRUSE BROTHERS LTD.

By 1/2 K

Mary Kruse
MARY KRUSE

Dated this 18 day of
August, 2011.

Dated this 18th day of
August, 2011.

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