

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Craig Pieper Lee County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- //
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TO: Craig Pieper
3773 190th Street
Wever, IA 52658

I. SUMMARY

This administrative consent order (order) is entered into between Craig Pieper and the Iowa Department of Natural Resources (Department). Mr. Pieper hereby agrees to ensure that he is properly certified prior to land application of manure, to land apply manure in accordance with the laws of the State of Iowa and to pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Bert Noll, Environmental Specialist
IDNR Field Office #3
2300 15th St SW
Spencer, IA 51301
641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-8244

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to 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 I, or Iowa Code chapter 459 and the rules promulgated or permits issued pursuant thereto, and

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER ISSUED TO:
Craig Pieper**

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

The parties hereby agree to the following statement of facts:

1. Henry Pieper Corp. owns and operates a farrow to finish swine confined animal feeding operation (AFO) consisting of 400 sows, 1600 nursery and 3200 head finishing swine located at 3733 190th Street Wever, Iowa. Craig Pieper is listed by the Iowa Secretary of State as the president of this corporation.

2. On March 6, 2015, the Department received a complaint alleging that beginning on March 4, 2015, Craig Pieper began surface applying manure from the Henry Pieper Corp. AFO to a field located across the road from this facility. The complainant alleged that the manure was being land applied to frozen ground.

3. On March 6, 2015, Bert Noll, an Environmental Specialist with the Department, went to the site to investigate. Once there he met with Mr. Pieper and explained the complaint. Mr. Pieper stated that he had surface applied manure on March 4, 2015, to approximately 80 acres of land located in NE NW S22 T68 R3.¹ Mr. Pieper stated that he thought that beginning March 1, surface application was permitted. Mr. Noll observed that manure had been land applied up to 50 feet of the adjacent water source.

Mr. Noll informed Mr. Pieper that during the time period beginning February 1, and ending April 1, a person may land apply liquid manure on frozen ground only when there is an emergency.

4. Upon return to the office Mr. Noll discovered that Mr. Pieper's manure applicator certification was expired at the time of the above referenced application.

5. On March 17, 2015, the Department sent Mr. Pieper a Notice of Violation for the above discussed violations. This NOV also explained the relevant law.

6. On March 18, 2015, Mr. Pieper renewed his manure applicator certification.

¹ This land is owned by Peaches & Cream LLP and Mr. Pieper is listed as a general partner of this company.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER ISSUED TO:
Craig Pieper**

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following 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, including certification requirements for hauling manure. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.19(1) states a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Mr. Pieper was not a certified applicator at the time of the March application. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.3(4) states that
A person who applies liquid manure on frozen or snow-covered ground shall comply with ... the following requirements:

...
b. Frozen ground. During the period beginning February 1 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on frozen ground only when there is an emergency.

The above stated facts demonstrate non-compliance with this provision.

4. 567 IAC 65.3(3) "g" states that "[a] person shall not apply manure on land within 200 feet from a designated area [.]" Designated area is defined in 567 IAC 65.1 to include a water source. The above stated facts show non-compliance with this provision of law.

V. ORDER

THEREFORE, the Department orders and Mr. Pieper agrees to the following provisions in order to cease, abate, and redress the above-cited violations:

1. Mr. Pieper shall ensure that prior to land application of manure that he is properly certified to apply or otherwise handle manure;

2. Mr. Pieper shall ensure that in the future manure is land applied in accordance with the laws of the state of Iowa; and

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER ISSUED TO:
Craig Pieper**

3. Mr. Pieper shall pay a penalty in the amount of \$3,000.00 within 30 days of the date the Director of the Department signs this 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 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 these rules, 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 an administrative penalty. The administrative penalty assessed by this order is \$3,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. Pieper did not ensure that he was properly certified prior to land applying manure. Therefore Mr. Pieper has obtained an economic benefit from time saved by not attending the proper class and from costs delayed by not timely paying the necessary fees. Moreover, the manure was also land applied on frozen ground during the prohibited timeframe. There are some costs associated with the storage of manure which were avoided by the illegal application. Therefore, \$200.00 is assessed for this factor.

Gravity of the Violation – 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 Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. The intent of the manure applicator certification program is to educate manure applicators on how to properly land apply manure and how to properly respond to a manure spill. Land application of manure without proper certification increases the risk of a manure discharge and damage to the environment. Moreover, Mr. Pieper land applied manure in violation of the water source separation distance and on frozen ground during the prohibited time. Both of these violations increase the chance that nutrients will reach a water of the State. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – Mr. Pieper has been certified as a commercial manure representative since 2006; therefore at the time of the violations he was well aware of the applicable

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER ISSUED TO:
Craig Pieper

laws. Moreover, Mr. Pieper has a duty to be aware of the laws which regulate land application of manure. For these reasons, \$1,800.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Mr. Pieper. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this 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.



Craig Pieper

Dated this 5 day of
April, 2016.



Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 2nd day of
May, 2016.

Craig Pieper, Field Office 3, Carrie Schoenebaum; Bert Noll, I.C.1., & I.C.6.a.

