

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

IN THE MATTER OF:

CODY JARMER

Osceola County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO-10

TO: Cody Jarmer
281 1st Avenue
Westbrook, Minnesota 56183

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cody Jarmer for the purpose of resolving the violations of animal feeding operation regulations related to commercial manure applicators. This administrative consent order (Order) requires Mr. Jarmer to pay an administrative penalty in the amount of \$3,000.00 and in the future comply with the laws and rules governing the animal feeding operations.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Brandon Miner, DNR Field Office 3
DNR Field Office 3
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
712-262-4177

Relating to legal requirements:

Noah Poppelreiter, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8248

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 Order administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any oOrder necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459, subchapter III, and the rules adopted or permits issued pursuant

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CODY JARMER

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. Mr. Jarmer engages in the business of transporting, handling, and applying manure. Mr. Jarmer operates out of Minnesota.
2. On October 8, 2019, Cody Jarmer contacted the DNR to report a spill of manure he was hauling. DNR Field Office 2 environmental specialist Grady Kragenbring discussed the spill with Mr. Jarmer by telephone. Mr. Jarmer informed Mr. Kragenbring that he was transporting manure as a contractor of Mel's Pit Service, LLC, a commercial manure service incorporated and operating out of Minnesota. Mel's was contracted to transport and apply manure to fields in Osceola County, Iowa, from an animal feeding operation owned by Woodford Creek Farms, LLP.
3. At the time of the transportation and application, Mr. Jarmer was not a certified commercial manure service in Iowa.
4. On October 22, 2019, the DNR issued Mr. Jarmer a Notice of Violation letter detailing the violations observed on October 8, 2019.
5. On December 19, 2019, Mr. Jarmer became a certified manure applicator in Iowa.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Commission shall adopt rules related to the construction or operation of animal feeding operations, including permitting and certification requirements. The Commission has adopted such rules at 567 IAC chapter 65.
2. A "commercial manure service" includes "a sole proprietor ... engaged in the business of transporting, handling, storing, or applying manure for a fee." 567 IAC 65.1(1). The facts of this case show Mr. Jarmer is a commercial manure service.
3. 567 IAC 65.19(1) states that a commercial manure service "shall not transport, handle, store or apply dry or liquid manure to land" unless the service is a certified pursuant to 567 IAC 65.19. Mr. Jarmer was not certified pursuant to 567 IAC 65.19 while its employees and contractors were transporting, handling, and applying manure in Iowa. The facts of this case indicate violations of this rule.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CODY JARMER

V. ORDER

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

1. Mr. Jarmer shall operate his business in compliance with all applicable DNR rules and regulations, including obtaining proper certification prior to transporting, handling, storing, or applying manure, and
2. Mr. Jarmer shall pay an administrative penalty in the amount of \$3,000.00 within 30 days from the date the Director signs this Order.

VI. PENALTY

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. Jarmer obtained a nominal economic benefit from the delay in paying the applicable fees. Therefore, \$50.00 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. Mr. Jarmer’s failure to become certified as a commercial manure service threatens the integrity of the animal feeding operation regulations. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Jarmer has a duty to know the regulations and to be aware that its actions are subject to the regulations. Mr. Jarmer failed to ensure he was properly certified prior to applying and transporting manure. Therefore, \$1,450.00 is assessed for this factor.

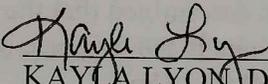
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CODY JARMER

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Jarmer. For that reason, Mr. Jarmer waives the right to appeal this Order or any part thereof.

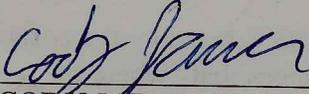
VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent 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.



KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 15th day of
April, 2020.



CODY JARMER

Dated this 20th day of
March, 2020.

Noah Poppelreiter, DNR Field Office 3, EPA, VIII.D.4