

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

IN THE MATTER OF:

ROGER DOLECHECK

Ringgold County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2020-AFO- 18

TO: Roger Dolecheck
1694 County Highway P68
Ellston, Iowa 50074

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Roger Dolecheck for the purpose of resolving the violations of animal feeding operation regulations related to commercial manure applicators. This administrative consent order (Order) requires Mr. Dolecheck to pay an administrative penalty in the amount of \$2,100.00, 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:

Wendy Wittrock, DNR Field Office 4
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
712-243-1934

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 order 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

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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. Dolecheck owns two confinement feeding operations in Ringgold County, Iowa. Mr. Dolecheck was certified as a commercial manure applicator until his certification lapsed in 2014. Mr. Dolecheck did not renew or reapply for his commercial manure applicator certification at any time relevant to this order.

2. On February 20, 2009, the DNR issued Mr. Dolecheck a Notice of Violation for allowing an uncertified manure applicator to land apply manure from one of his confinement sites.

3. On May 18, 2016, the DNR issued Mr. Dolecheck a Letter of Noncompliance for land applying manure without the appropriate certification.

4. Between October 24, 2019, and November 5, 2019, Mr. Dolecheck land applied manure to properties located in Monroe Township, Ringgold County, Iowa.

5. On November 5, 2019, DNR Field Office 4 received an anonymous complaint regarding the land application by Mr. Dolecheck.

6. That day, DNR Environmental Specialist Wendy Wittrock investigated the complaint. Ms. Wittrock determined Mr. Dolecheck did not have a confinement site manure applicator certification and had land applied manure.

7. On November 14, 2019, the DNR issued Mr. Dolecheck a Notice of Violation detailing the violations observed on November 5, 2019.

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. 567 IAC 65.19(1) states that a confinement site manure applicator "shall not apply dry or liquid manure to land" unless the service is a certified pursuant to 567 IAC 65.19. Mr. Dolecheck was not certified pursuant to 567 IAC 65.19 while he applied manure to land. The facts of this case indicate violations of this rule.

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3. Pursuant to 567 IAC 65.19(2)(c) and 65.19(4), a confinement site manure applicator must pay a \$100 certification fee, associated \$25 annual education fee as determined by the DNR, and must renew their certification every three years. The facts of this case show Mr. Dolecheck did not pay the certification fees as required since 2014.

V. ORDER

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

1. Mr. Dolecheck shall operate his business in compliance with all applicable DNR rules and regulations, including obtaining proper certification prior to land applying manure, and
2. Mr. Dolecheck shall pay an administrative penalty in the amount of \$2,100.00 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 \$2,10.00. 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. Dolecheck avoided certification fees and associated annual education fees from 2014 to 2019. Therefore, \$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. Mr. Dolecheck’s failure to become certified as a commercial manure service threatens the integrity of the animal feeding operation regulations. Therefore, \$1,000.00 is assessed for this factor.

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Culpability – Mr. Dolecheck has a duty to know the regulations and to be aware that its actions are subject to the regulations. Mr. Dolecheck was previously notified by the DNR of the land application certification requirements, yet failed to ensure he was properly certified prior to land applying manure. 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 Mr. Dolecheck. For that reason, Mr. Dolecheck 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 11th day of
June, 2020.


ROGER DOLECHECK

Dated this 4 day of
June, 2020.

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