

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

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| IN THE MATTER OF: MEL'S PIT SERVICE, LLC Osceola County, Iowa | ADMINISTRATIVE ORDER NO. 2021-AFO-10 |
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TO: Mel's Pit Service, LLC
26409 County Highway 10
Lucan, Minnesota 56255

I. SUMMARY

This administrative order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

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 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 thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Mel's is a commercial manure service. Mel's is owned and operated 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. 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 application, Mel's was not a certified commercial manure service in Iowa, none of its employees were certified manure applicators, and its contractor, Mr. Jarmer, was not a certified manure applicator.
4. On October 22, 2019, the DNR issued Mel's a Notice of Violation letter detailing the violations observed on October 8, 2019.
5. On October 23, 2019, Mel's became a certified manure applicator in Iowa.
6. On April 1, 2020, Mr. Jarmer agreed to Administrative Consent Order 2020-AFO-10.

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 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. Mel's 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.

V. ORDER

THEREFORE, the DNR orders the following:

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1. Mel's shall not operate or conduct business in the state of Iowa unless the commercial manure service and the employees are properly certified;
2. Mel's shall operate its business in compliance with all applicable DNR rules and regulations; and
3. Mel's shall pay an administrative penalty in the amount of \$500.00 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 order with an administrative penalty of \$500.00. 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.” Mel's 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. Mel's failure to become certified as a commercial manure service threatens the integrity of the animal feeding operation regulations. However, due to the contractor/subcontractor relationship between Mel's and Mr. Jarmer, a substantial amount of this harm is mitigated by Mr. Jarmer's acceptance of culpability. \$250.00 is assessed for this factor.

Culpability – Mel's has a duty to know the regulations and to be aware that its actions are subject to the regulations. Mel's failed to ensure it and its employees were properly certified prior to applying and transporting manure. Again, due to the contractor/subcontractor relationship between Mel's and Mr. Jarmer, this factor should have a reduced penalty due to Mr. Jarmer's acceptance of culpability. In the interest of resolving this matter administratively, \$200.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of
_____, 2021.

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