

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**TYSON DRINKALL dba T&C
FARMS LLC**

Mitchell County, Iowa

ADMINISTRATIVE ORDER
NO. 2021-AFO-13

TO: T&C Farms LLC
312 Center Street
Ostrander, MN 55961

Tyson Drinkall, Representative
312 Center Street
Ostrander, MN 55961

I. SUMMARY

The administrative order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeals rights stated in this Order. Questions regarding this Order should be directed to:

Relating to technical requirements:

Carl Berg, DNR Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515/210-3408

Appeal and Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319

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 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TYSON DRINKALL dba T&C FARMS LLC

III. STATEMENT OF FACTS

1. T&C Farms LLC (T&C Farms) is a licensed commercial manure service and Tyson Drinkall is the service's representative.

2. T&C Farms was hired by Omega One, L.L.C. to land apply manure from the Hermann West Finisher Farm, located at 4758 Shadow Avenue; McIntire, Iowa. On November 2, 2020, a manure spill was reported to DNR Field Office 2. Manure was spilled during transport from the Hermann West Finisher Farm to a field for land application. Del Drinkall, T&C Farms, was operating the tractor and accidentally activated the PTO pump which released manure while driving. The manure was contained and no manure reached a water of the state.

3. On November 3, 2020, Carl Berg, DNR Field Office 2 environmental specialist senior, met with Cody Drinkall, Del Drinkall, and Tyson Drinkall. The group walked the manure spill area and observed the cleanup. Mr. Berg asked about the applicators' certification statuses. Cody Drinkall has recently taken the manure certification class, but had not paid the fees. Del Drinkall and Tyson Drinkall were not certified applicators. There were no certified applicators from T&C Farms with Del Drinkall when the spill occurred. Cody Drinkall stated that he had previously land applied manure from the facility and there were only a few more loads to be removed. T&C Farms took immediate steps to have four employees properly certified following the investigation. T&C Farms also submitted its commercial manure service fee.

4. On November 17, 2020, DNR issued a Notice of Violation letter to T&C Farms for transported, handling, and applying manure without proper manure certifications for its applicators. The letter informed T&C Farms that the violation was being referred for further enforcement.

IV. 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 permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.315(2) and 567 IAC 65.19(1) state that 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. Iowa Code section 459.102(12)"b" defines a "commercial manure service representative" as an employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling,

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TYSON DRINKALL dba T&C FARMS LLC

storing, or applying manure on behalf of the service. During Mr. Berg's investigation, it was determined that three applicators for T&C Farms were not properly certified. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders Tyson Drinkall dba T&C Farms LLC to do the following:

1. Ensure all employees are properly certified to handle, transport, and apply manure and
2. Pay an administrative penalty of \$5,000.00, within 60 days of issuance of 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 this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an 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.” T&C Farms saved time and money by not ensuring all of its employees were properly certified to handle manure. T&C Farms delayed the expense of the certification fees and was able to accept manure application jobs even though the applicators were not properly certified. An estimated economic benefit of \$200.00 is being 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TYSON DRINKALL dba T&C FARMS LLC

administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. T&C Farms' failure to ensure that all employees were properly certified threatens the integrity of the water quality program. Therefore, \$2,800.00 is assessed for this factor.

Culpability –T&C Farms 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. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. Therefore, \$2,000.00 is assessed for this factor.

VII. 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.

Kelli Book, Field Office 2, VIII.D.4