

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

IN THE MATTER OF:

S&V LLC. and BILL VORHES

AFO #61427
Floyd County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2021-AFO-14

TO: S&V LLC. Jean Westendorf, Registered Agent 649 Bradford Street Marble Rock, Iowa 50653	Bill Vorhes 2060 260 th Street Marble Rock, Iowa 50653
---	---

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR), S&V LLC. (S&V), and Bill Vorhes for the purpose of resolving manure applications violations. This administrative consent order requires S&V and Mr. Vorhes to: comply with all separation distance requirements for future land applications of manure and pay an administrative penalty in the amount of \$4,500.00.

Questions regarding this administrative consent order should be directed to:

<u>Relating to technical requirements:</u> Jeremy Klatt, Field Office 2 Iowa Department of Natural Resources 2300 15 th Street SW Mason City, Iowa 50401 Phone: 641/424-4073	<u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Wallace State Office Building 502 East Ninth Street Des Moines, Iowa 50319-0034 Phone: 515/210-3408
---	---

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: S&V LLC. and BILL VORHES

II. JURISDICTION

This 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 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.

III. STATEMENT OF FACTS

S&V and Mr. Vorhes neither admit nor deny the Statement of Facts and enter into this administrative consent order for settlement purposes only.

1. S&V is an animal feeding operation located at 2150 Highway 14 in Marble Rock, Iowa (Section 12, Union Township, Floyd County). The facility has two confinement buildings with the capacity of 4,000 head of swine (1,600 animal units). Bill Vorhes is the operator of the facility.

2. On January 8, 2021, DNR Field Office 2 received a complaint that manure from the S&V facility was being surfaced applied on snow near a residence. On the same day, Jeremy Klatt, DNR Field Office 2 environmental specialist senior responded to the complaint. Mr. Klatt observed Mr. Vorhes applying manure from the facility to a field in the SE ¼ of Section 12 in Union Township. Mr. Klatt noted that manure had been surface applied to the south edge of the field, approximately 350 feet from a residence across the road. Mr. Klatt observed at least two inches of snow in several areas of the field.

3. In review of the manure applicator certification database, it was determined that Mr. Vorhes was not certified to apply manure at the time of the inspection. Mr. Vorhes subsequently became certified on January 27, 2021. Further review of the manure applicator certification database indicated that the facility had no certified manure applicators between December 31, 2018 and January 27, 2021.

4. On January 12, 2021, DNR Field Office 2 received an additional complaint that manure was being applied to the same field. Mr. Klatt contacted Mr. Vorhes who informed Mr. Klatt that he had not applied the manure but indicated another family member may have land applied the manure on January 12, 2021.

5. On January 20, 2021 Mr. Klatt and Carl Berg, DNR Field Office 2 environmental specialist section, conducted an inspection of the facility. During the inspection, it was determined that the facility had no manure application records available at the time. The facility did have a load sheet in the pump out tractor that

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: S&V LLC. and BILL VORHES

indicated at least five loads were hauled on January 8, as well as applications on December 22, 2020 and January 6, 7, and 12, 2021.

6. On February 5, 2021, DNR issued a Notice of Violation letter to S&V for the violations observed during the January inspection. The letter informed the facility the violations were being referred for further enforcement.

7. S&V and Mr. Vorhes received a Notice of Violation letter in 2016 for failing to have a certified manure applicator apply manure from the facility. During the inspection the facility and Mr. Vorhes were also reminded of the manure application recording requirements.

IV. CONCLUSIONS OF LAW

S&V and Mr. Vorhes neither admit nor deny the Conclusions of Law and enter into this administrative consent order for settlement purposes only.

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. 567 IAC 65.3(3)"a" states the required separation distance for liquid manure application from a confinement feeding operation from a residence not owned by the titleholder, a business, a church, a school or a public use area is 750 feet. DNR Field Office 2 personnel determined that S&V and Mr. Vorhes failed to comply with the separation distance requirements from a residence. DNR Field Office 2 personnel determined that S& V and Mr. Vorhes had surfaced applied manure without incorporating it within 350 feet of the residence. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.3(4) prohibits the application of liquid manure from a confinement feeding operation on snow-covered ground between December 1 and April 1, unless the application is deemed an emergency. During the DNR Field Office 2 investigation in January 2021, it was determined that manure from the S&V confinement feeding operation was surface applied to snow covered ground on January 8, 2021. No facts were presented to indicate the application was due to an emergency. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.19(1) states that a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. During the DNR Field Office 2 investigation in January 2021, it was determined Mr. Vorhes applied manure from the S&V facility without being certified. It was also noted from the load sheets that manure was applied from the facility in December 2020 and January 2021 and there was no indication in the manure applicator certification

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: S&V LLC. and BILL VORHES

database that anyone from the S&V facility was certified to apply manure. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and S&V and Bill Vorhes agree to do the following:

1. S&V and Mr. Vorhes shall comply with all separation distance requirements for future land applications of manure;
2. S&V and Mr. Vorhes shall pay an administrative penalty in the amount of \$4,500.00 in accordance with the following payment plan. If any payments are not received in accordance with the payment plan, the remaining portion of the penalty shall be due immediately.

\$187.50 due July 15, 2021	\$187.50 due July 15, 2022
\$187.50 due August 15, 2021	\$187.50 due August 15, 2022
\$187.50 due September 15, 2021	\$187.50 due September 15, 2022
\$187.50 due October 15, 2021	\$187.50 due October 15, 2022
\$187.50 due November 15, 2021	\$187.50 due November 15, 2022
\$187.50 due December 15, 2021	\$187.50 due December 15, 2022
\$187.50 due January 15, 2022	\$187.50 due January 15, 2023
\$187.50 due February 15, 2022	\$187.50 due February 15, 2023
\$187.50 due March 15, 2022	\$187.50 due March 15, 2023
\$187.50 due April 15, 2022	\$187.50 due April 15, 2023
\$187.50 due May 15, 2022	\$187.50 due May 15, 2023
\$187.50 due June 15, 2022	\$187.50 due June 15, 2023

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 administrative consent order with an administrative penalty of \$4,500.00. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: S&V LLC. and BILL VORHES

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.” S&V and Mr. Vorhes gained an economic benefit by avoiding the costs associated with proper manure incorporation, including the cost of fuel, equipment maintenance, and the cost of labor to run the equipment. Additionally, S&V and Mr. Vorhes avoided the costs associated with being properly certified to apply manure from the facility, including certification and education fees. Based on the above facts, the economic benefit S&V and Mr. Vorhes received was at least \$500.00 and that amount 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. The potential for a water quality violation resulted from the manure not being incorporated at the time of application. Separation distance requirements are established to ensure the protection of human health, personal property and natural resources. Furthermore, surface application on snow-covered ground is prohibited unless there is an emergency due to the fact that the practice often results in runoff high in pollutants leaving the field with snow melt. Manure applicators are required to obtain training and certifications to ensure they are properly trained. The training includes information about winter application and separation distance requirements. The regulations are integral parts of the animal feeding operation program and violations of those regulations threaten the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – S&V and Mr. Vorhes have a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. S&V and Mr. Vorhes had previously been informed about the regulations regarding applicator certifications and application records. Therefore, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of S&V and Mr. Vorhes. For that reason, S&V and Mr. Vorhes waive the right to appeal this administrative consent order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: S&V LLC. and BILL VORHES

VIII. NONCOMPLIANCE

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

S&V LLC by Jason Westenberg
S&V LLC.

Dated this 28 day of
June, 2021.

Bill Vorhes
Bill Vorhes

Dated this 28 day of
June, 2021.

Kelli Book, Field Office #2