

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

IN THE MATTER OF:

SMITH WASTE SOLUTIONS, L.L.C. ADMINISTRATIVE CONSENT ORDER
NO. 2022-AFO- 33

TO: Ethon Smith, Registered Agent
Smith Waste Solutions, L.L.C.
1374 280th Avenue
Tabor, Iowa 51653

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Smith Waste Solutions, L.L.C. (Smith Waste Solutions) for the purpose of resolving issues regarding uncertified applicators. This administrative consent order requires Smith Waste Solutions to do the following: 1) ensure all employees are properly certified to handle, transport, and apply manure and 2) pay an administrative penalty in the amount of \$4,000.00. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Wendy Wittrock, DNR Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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

Payment of penalty to:

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

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: SMITH WASTE SOLUTIONS, L.L.C.

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

1. Smith Waste Solutions is a licensed commercial manure service and Ethon Smith is the service's representative.

2. On November 9, 2021, Wendy Wittrock, DNR Field Office 4 environmental specialist, conducted a manure applicator inspection during manure application from the Parks Finishing LLC J13 facility near Thurman, Iowa. Smith Waste Solutions was conducting the manure application. Ms. Wittrock spoke to two Smith Waste Solutions employees who were applying the manure. Jeremy Down and Zac Cornell stated they recently completed the manure applicator training. Ms. Wittrock noted that the vehicles used by Smith Waste Solutions did not have signage including the name and certification number.

3. On November 10, 2021, Ms. Wittrock reviewed the manure applicator certification database. She noted that Mr. Down, Mr. Cornell, and Mr. Smith were not currently certified. Ms. Wittrock also noted that Smith Waste Solutions' manure applicator service license expired on March 1, 2021.

4. On November 11, 2021, Ms. Wittrock spoke to the Iowa State Extension Office in Fremont County and confirmed that Mr. Smith and applicators from Smith Waste Solutions completed the Commercial Manure Applicator certification class on November 5, 2021. The extension office confirmed that the class discussed that the forms and fees must be submitted prior to any manure application taking place.

5. On November 16, 2021, Ms. Wittrock contacted Smith Waste Solutions and spoke to Ally Smith. Ms. Smith stated the forms and fees for the company's applicators was submitted on November 10, 2021.

6. On November 23, 2021, DNR issued a Notice of Violation letter to Smith Waste Solutions applying manure without proper manure certifications for its applicators. The letter informed Smith Waste Solutions that the violation was being referred for further enforcement.

7. In July 2016, DNR and Smith Waste Solutions entered into an administrative consent order to address violations that occurred during a land application in March 2016. Uncertified manure applicators with Smith Waste Solutions were land applying manure.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: SMITH WASTE SOLUTIONS, L.L.C.

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, storing, or applying manure on behalf of the service. During Ms. Wittrock's investigation, it was determined that Smith Waste Solutions and two applicators for Smith Waste Solutions were not properly certified. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.19(8)"e" requires any vehicle used by a certified manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle. This information was not present on the Smith Waste Solutions' vehicles during DNR Field Office 4's inspection. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Smith Waste Solutions agree to do the following:

1. Ensure all employees are properly certified by attending training and paying the certification fees to handle, transport, and apply manure, and
2. Pay an administrative penalty of \$4,000.00 within 30 days of the date the Director signs this administrative consent 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: SMITH WASTE SOLUTIONS, L.L.C.

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 \$4,000.00. 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.” Smith Waste Solutions saved time and money by not ensuring all of its employees were properly certified to handle manure. Smith Waste Solutions delayed the expense of the certification fees and was able to accept a manure application job even though the applicators were not properly certified. An estimated economic benefit of \$1,000.00 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 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. Smith Waste Solutions’ failure to ensure that all employees were properly certified threatens the integrity of the water quality program. Therefore, \$500.00 is assessed for this factor.

Culpability – Smith Waste Solutions 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. Additionally, Smith Waste Solutions was issued an administrative consent order for the same violations in 2016. 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 Smith Waste Solutions. For that reason, Smith Waste Solutions waive the right to appeal this administrative consent order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: SMITH WASTE SOLUTIONS, L.L.C.

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



SMITH WASTE SOLUTIONS, L.L.C.

Dated this 13th day of
June, 2022.

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

