

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

IN THE MATTER OF:

**PRECISION MANURE
APPLICATION, INC.**

CMS No. CMS2109

ADMINISTRATIVE CONSENT ORDER
NO. 2023-AFO-04

TO: Cory Jackson, Registered Agent
Precision Manure Application, Inc.
511 Washington Avenue
Iowa Falls, Iowa 50126

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Precision Manure Application, Inc. (Precision Manure Application) for the purpose of resolving issues regarding uncertified applicators. This administrative consent orders Precision Manure Application 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 \$5,000.00. 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:

Isaiah Lary, DNR Field Office 2
Iowa Department of Natural Resources
2300 15th St 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

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,

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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

1. Precision Manure Application is a licensed commercial manure service based out of Alden, Iowa and land applies manure in Iowa. For purposes of this administrative consent order S&K was a subcontractor working under Precision Manure Application's commercial manure service number.

2. On October 19, 2022, Isaiah Lary, DNR Field Office 2 environmental specialist observed Precision Manure Application applying manure to a field located in Section 2, Grimes Township, Cerro Gordo County. Beau Peden, an S&K worker, was one of the people applying manure. Following the visit, Mr. Lary determined that Mr. Peden was not certified; his manure applicator certification expired on March 1, 2020.

3. On October 21, 2022, Mr. Lary spoke to Adam Jackson with Precision Manure Application. Mr. Jackson stated that Mr. Peden was shut down immediately following Mr. Lary's visit. Mr. Peden went home and watched the training videos and the certification fee was submitted to DNR on October 20, 2022.

4. On November 10, 2022, Mr. Lary observed Precision Manure Application applying manure to a field located near Iowa Falls, Iowa. Logan Bell was one of the people applying manure. Mr. Bell was not certified at the time of the inspection. Mr. Bell had not been working for Precision Manure Application for more than a month; however, he had previously been certified in 2020¹.

5. On November 21, 2022, a Notice of Violation letter was issued to Precision Manure Application for the uncertified manure application by Mr. Peden, and on November 30, 2022, a Notice of Violation letter was issued to Precision Manure Application for the uncertified manure application by Mr. Bell. The letters informed Precision Manure Application that the violations would be 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

¹ DNR regulations allow for an exemption for applicators who have been employed for less than 30 days. However, this is a one-time exemption and Mr. Bell was previously certified in 2020.

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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 Mr. Lary's two investigations, it was determined that Precision Manure Application had two applicators who were not properly certified. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Precision Manure Application agrees 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 \$5,000.00 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.

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 \$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

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should be made where clear data are not available.” Precision Manure Application saved time and money by not ensuring all of its employees were properly certified to handle manure. However, any economic benefit received by Precision Manure Application was minimal as the two applicators immediately took the training and submitted the certification fees. Therefore, no economic benefit 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. Precision Manure Application’s failure to ensure that all employees were properly certified threatens the integrity of the water quality program. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Precision Manure Application 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, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Precision Manure Application. For that reason, Precision Manure Application waives the right to appeal this administrative consent order or any part thereof.

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.

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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

 V.P.
PRECISION MANURE APPLICATION, INC.

Dated this 27 day of
February, 2023.