

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**KUNKEL ENTERPRISES, LLC and  
MIKE KUNKEL**

Cherokee County, Iowa

ADMINISTRATIVE ORDER  
NO. 2023-AFO-18

TO: Justin Vondrak, Registered Agent  
Kunkel Enterprises, LLC  
1288 Lincoln Street SW  
PO Box 336  
LeMars, Iowa 51031

Mike Kunkel  
Kunkel Enterprises, LLC  
403 North Ash Street  
Marcus, Iowa 51035

**I. SUMMARY**

This administrative order (Order) requires Kunkel Enterprises, LLC and Mike Kunkel to comply with the provision 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:      Relating to legal requirements:**

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

Kelli Book, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/210-3408

**Appeal or 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 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: KUNKEL ENTERPRISES, LLC and MIKE KUNKEL

**III. STATEMENT OF FACTS**

1. Kunkel Enterprises is a commercial manure service based out of Merrill, Iowa. Dillon Kunkle is the commercial manure service manager and Mike Kunkel is a commercial manure service representative for Kunkel Enterprises. The commercial manure service registration was submitted on November 17, 2022. Kunkel Enterprises was hired to land apply manure for an animal feeding operation, owned by Darwin Bugg, located near Farragut, Iowa in Fremont County.

2. On November 17, 2022, DNR Field Office 4 received a complaint stating manure from the Bugg's facility was all over the road near the facility in Fremont County.

3. Alison Manz, DNR Field Office 4 environmental specialist senior, traveled to the area to investigate the complaint. Ms. Manz observed manure along the sides of Highway M16 between 260<sup>th</sup> and 280<sup>th</sup> Streets and then followed the manure to an application field in Section 7 in Fremont County. Ms. Manz also noted it appeared as if manure had pooled around the pump located in the application field.

4. Ms. Manz proceeded to Mr. Bugg's facility. She noted two tanker trucks and one manure hauling tank. Ms. Manz was unable to locate the manure applicator and there were no markings on the equipment indicating who the commercial manure applicator was. Ms. Manz noted manure pooled in areas around the facility. One of the trucks had Kunkel Express on the side. Ms. Manz checked the DNR manure applicator database and noted that all employees previously certified through Kunkel Express were no longer certified. Ms. Manz contacted Dillon Kunkel who said his dad, Mike Kunkel, was the manure applicator on-site. Ms. Manz informed Dillon that his certification expired on March 1, 2016 and his father's certification expired on March 1, 2020.

5. During a follow-up telephone call, Dillon explained that he took the class on January 6, 2022, but did not submit the paperwork and fee. The paperwork and fee were submitted on November 17, 2022. Ms. Manz advised Dillon that the tankers were likely filled too high resulting in manure spills in the field, on the road, and at the Bugg's facility. Ms. Manz informed Dillon that manure could not be applied unless the manure applicator is certified and the manure equipment is properly labeled. Ms. Manz informed Dillon that the manure must be excavated. Ms. Manz made several attempts to contact Mike Kunkel, but was unable to contact him.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: KUNKEL ENTERPRISES, LLC and MIKE KUNKEL

6. On November 21, 2022, DNR Field Office 4 received another complaint regarding manure on the road and spilling onto vehicles in the same area as the earlier complaint. John Baker, DNR Field Office 4, investigated the complaint. Mr. Baker observed manure on the road in the same area that Ms. Manz had. The manure trails led from the Bugg's facility to the application field.

7. On November 28, 2022, Ms. Manz spoke with Dillon regarding the complaint. He stated that both he and his father were certified and had both land applied manure in the days before Mr. Baker's inspection. Ms. Manz checked the DNR manure applicator database and determined that Mike Kunkel was not certified. Ms. Manz reminded Dillon that the manure spills along the roadways were unacceptable and the equipment needed the proper markings. Later in the day, Ms. Manz confirmed that Mike Kunkel had taken the manure applicator class on January 26, 2022, but had not submitted the paperwork and fee until November 28, 2022.

8. On December 12, 2022, DNR issued Notice of Violation letters to Kunkel Enterprises in care of Mike and Dillon Kunkel for the violations observed during the November 2022 inspections. The letter informed the Kunkels 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 requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.2(3) states that the minimum level of control for a confinement feeding operation shall be the retention of all wastes between periods of application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to a water of the state. During the November 2022 investigations, DNR Field Office 4 personnel noted on two separate occasions manure was released along the road and pooled in the application field around the pump. The above-mentioned facts indicate a violation of this provision.

3. 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: KUNKEL ENTERPRISES, LLC and MIKE KUNKEL

storing, or applying manure on behalf of the service. During the first DNR Field Office 4 inspection on November 17, neither Kunkel Enterprises nor Mike Kunkel were properly certified and during the second DNR Field Office 4 inspection on November 21, it was determined that Mike Kunkel was not properly certified. The above-mentioned facts indicate violations of this provision.

4. 567 IAC 65.19(8)"e" requires any vehicle used by a certified commercial 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. During the DNR Field Office 4 November inspections, the vehicles used by Kunkel Enterprises had no lettering or numbers on them. The above-mentioned facts indicate violations of this provision.

5. 567 IAC 65.2(9) states a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. Kunkel Enterprises failed to notify DNR of the two November 2022 spills. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders Kunkel Enterprises and Mike Kunkel to do the following:

1. Kunkel Enterprises and Mike Kunkel shall ensure all applicators are properly certified to handle, transport, and apply manure;
2. Kunkel Enterprises and Mike Kunkel shall ensure that all manure handling vehicles have the proper identification shown;
3. Kunkel Enterprises and Mike Kunkel shall report any future manure spills to DNR within the required reporting timeframe; and
4. Kunkel Enterprises and Mike Kunkel shall pay an administrative penalty in the amount of \$8,000.00 within 60 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: KUNKEL ENTERPRISES, LLC and MIKE KUNKEL

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 \$8,000.00. Kunkel Enterprises and Mike Kunkel are jointly and severally liable for the payment of the penalty. 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.” Kunkel Enterprises and Mike Kunkel gained an economic benefit of applying manure without being properly certified. The company and its applicators were not certified until after the DNR notified them of their violations. Dillon Kunkel had not been certified since 2016 and Mike Kunkel had not been certified since 2020. Kunkel Enterprises delayed the costs associated with training and certification. Additionally, Kunkel Enterprises failed to have the proper numbering and lettering on its vehicles and delayed the costs associated with proper labeling. Based on the above facts, the economic benefit Kunkel Enterprise 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. Manure applicators are required to obtain training and certifications to ensure they are properly trained. Applying manure without the proper training and certification increases the risk a manure related discharge during application. In November 2022, manure was allowed to be released during two manure applications by Kunkel Enterprises and had the potential to cause environmental harm if not properly contained and reported. Additionally, Kunkel Enterprises failed to report the spills. The actions prohibited the DNR from being able to review the situation and to ensure that proper clean up could occur. The uncertified applicators, manure releases and failures to report a spill threaten the integrity of the animal feeding operation regulations. Manure applicator certification is an integral part of the animal feeding operation program and violations of that regulations threaten the

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: KUNKEL ENTERPRISES, LLC and MIKE KUNKEL

integrity of the water quality program. Based on the above-mentioned facts, \$3,000.00 is assessed for the manure applicator certification violations listed in Paragraphs 3 and 4, Section IV Conclusions of Law and \$1,500.00 is assessed for the manure release and reporting violations listed in Paragraphs 2 and 5, Section IV Conclusions of Law for a total of \$4,500.00 assessed for this factor.

Culpability – Kunkel Enterprises had 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. Ms. Manz informed Dillon Kunkel that all applicators must be certified and the vehicles must be labeled for land applying manure; however, during a second complaint investigation it was determined that the manure applicator was not certified and the vehicles were not properly certified. Both Dillon Kunkel and Mike Kunkel had previously been certified and had taken education classes in previous years and should have been aware of the requirements. Therefore, \$3,000.00 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 administrative consent 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.



Digitally signed by Kayla Lyon  
Date: 2023.07.14 11:07:23 -05'00'

---

KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources