

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

IN THE MATTER OF:

**KENNEDY DREY**

Buena Vista County, Iowa

ADMINISTRATIVE CONSENT  
ORDER

NO. 2023-AFO-22

TO: Kennedy Drey  
2242 Hope Avenue  
Early, Iowa 50535

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kennedy Drey for the purpose of resolving an animal feeding operation violation related to manure application certification. This administrative consent order requires Mr. Drey to: 1) be properly certified to handle, transport, and apply manure; and 2) pay an administrative penalty in the amount of \$2,000.00.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Don Cunningham, DNR Field Office 3  
Iowa Department of Natural Resources  
1900 Grand Avenue  
Spencer, Iowa 51301  
Phone: 712/262-4177

**Relating to legal requirements:**

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

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**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**

1. Kennedy Drey owns and operates a farming operation in Buena Vista and Sac counties. His operation includes 3 animal feeding operations that have a combined capacity of 9,400 finisher swine and row crop operations, including the rental of the parcel that is the focus of this administrative consent order. Mr. Drey rents the parcel of land for the purpose of row crops and the parcel is located adjacent to Outlet Creek in the west half of Section 13, Hayes Township in Buena Vista County.

2. On February 9, 2023, DNR Field Office 3 received a complaint regarding turkey litter runoff from the parcel of land noted above. The complainant stated that the turkey litter had been applied on top of the snow and was now flowing off the field, through an adjacent property and entering an intake. The complainant stated the turkey litter had been applied on February 6, 2023. The complainant also stated it was believed that the field was owned by Craig Wells and rented by Kennedy Drey.

3. On the same day, Don Cunningham and Heath Gravert, DNR Field Office 3 environmental specialists, traveled to the field and met with the complainant. Mr. Cunningham confirmed with Mr. Drey that he rented the field and farmed it. Mr. Drey stated that he transported the turkey litter from a facility in Sac County and that Precision Spreading, a certified manure applicator, applied the material to the field on February 6, 2023.

4. While it is likely the tile outlet discharged to Outlet Creek, DNR spoke with Buena Vista County officials who indicated the tile intake was most likely private with no known outfall.

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5. Following the inspection, Mr. Cunningham discovered that Mr. Drey's commercial manure applicator certification expired on March 1, 2022. Mr. Drey stated he had taken the course; however, in reviewing the online course records they indicated that Mr. Drey began the online course in February 2022, but failed to compete four of the modules. Therefore, Mr. Drey was not certified at the time he hauled the manure to the field in February 2023.

6. On March 10, 2023, DNR issued a Notice of Violation letter to Mr. Drey for the violation and informed him the matter 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. 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 the field office inspection in February 2023, it was determined that Mr. Drey was not a certified manure applicator when he hauled the manure to the field. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Kennedy Drey agrees to do the following:

1. Mr. Drey shall ensure that he is properly certified to handle, transport, and apply manure; and
2. Mr. Drey shall pay an administrative penalty in the amount of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

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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 \$2,000.00. 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.” Mr. Drey gained an economic benefit of hauling manure without being properly certified. He avoided the expense of hiring a certified applicator to haul the manure to the field. Based on the above facts, the economic benefit Mr. Drey received was at least \$100.00 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. Transporting manure without the proper training and certification increases the risk a manure related discharge during application. Manure applicator certification is an integral part of the animal feeding operation program and violations of that regulations threaten the integrity of the water quality program. Based on the above-mentioned facts, \$1,400.00 is assessed for this factor.

Culpability – Mr. Drey 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. Therefore, \$500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

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This administrative consent order is entered into knowingly and with the consent of Kennedy Drey. For that reason, Kennedy Drey 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

  
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KENNEDY DREY

Dated this 25 day of  
October, 2023