

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

IN THE MATTER OF:

**FEEDLOT SERVICE Co. and  
FRED ROANE**

ADMINISTRATIVE  
CONSENT ORDER

NO. 2023-SW- 11

To: Feedlot Service Company

Mr. Fred Roane  
31363 Morton Avenue  
Neola, Iowa, 51559

Re: Non-compliance with Iowa water quality, solid waste and manure control regulations.

**I. SUMMARY**

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR), Feedlot Service Company and Fred Roane to resolve violations of Iowa law governing water quality, solid waste disposal, and manure controls resulting from the land application of solid waste and manure on property near Neola in Pottawattamie County, Iowa.

As detailed below, Mr. Roane must comply with the terms of Administrative Consent Order No's. 2021-SW-14 and 2021-WW-22, implement procedures to ensure that Iowa law is complied with at all times, and pay a \$7,000 civil penalty.

**Relating to Technical Requirements:**

John Baker, Environmental Specialist  
Iowa Department of Natural Resources  
Field Office No. 4  
1401 Sunnyside Lane  
Phone: 712-243-1934

**Relating to Legal Requirements**

Bradley Adams, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa, 50319  
Phone: 515-664-8894

**Payment of Penalty to:**

Director of the Iowa DNR  
502 East Ninth Street  
Des Moines, Iowa, 50319

## II. JURISDICTION

This Order is issued pursuant to Iowa Code § 4558.307(2) which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 459A.502 which authorizes the Director to pursue civil penalties for the violation of regulations governing feedlot operations, and; Iowa Code § 4558.109 and 567 Iowa Administrative Code (IAC) 10, which authorizes the Director to assess administrative penalties.

## III. STATEMENT OF FACTS

1. Mr. Roane neither agrees with nor contests the statement of facts in this Order, and/or the conclusions reached by the DNR during its investigation, and enters into this Order for settlement purposes only.
2. In 2021, Mr. Roane entered into an Administrative Consent Order<sup>1</sup>, incorporated here by reference, where he was assessed a \$9,000 penalty for violations of Iowa Code sections 455B.186 and 455B.307, as well as 567 Iowa Administrative Code Chapter 121, Rules 61.3 and 65.101.
3. On February 14, 2023, Iowa Department of Natural Resources (DNR) received an anonymous complaint against the Feedlot Service Company. According to the complainant, application of paunch manure occurred to fields in Section 31, Minden Township, and Section 5, York Township, both in Pottawattamie County, and the application was not in compliance with 567 Iowa Administrative Code 121.6. The complainant alleged the application occurred on high slopes, too close to a creek, and too close to a well. Additionally, the complainant stated product from Oakland Foods (OSI) in the City of Oakland was being applied to the fields.
4. On February 21, 2023, John Baker and Alison Manz, both of DNR FO 4, conducted an investigation and documented that:
  - a. Paunch manure surface application was occurring 20 feet from a well.
  - b. Paunch manure surface application was occurring on slopes greater than five and eight percent.
  - c. Paunch manure residue was in several areas along the 310th Street roadside ditch.
  - d. Paunch manure runoff was observed up to the water's edge of Keg Creek.
  - e. Paunch manure was present along the embankments of Keg Creek.
  - f. No product from OSI was being applied.
  - g. Application to the Section 5, York Field was manure from the open cattle feedlot, not paunch.

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<sup>1</sup> Administrative Consent Order No's. 2021-SW-14 and 2021-WW-22.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code §§ 455B.303-455B.304 grant the Environmental Protection Commission the authority to adopt rules regulating solid waste and give the Department the authority to enforce those rules. 567 IAC 121.6(1)(a) states that if application of solid waste occurs within 200 feet of a stream, lake, sinkhole or tile line surface intake located downgradient of the land application site, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application. Solid waste shall not be applied to ground having greater than 9 percent slope at any time. If application on frozen or snow-covered ground cannot be avoided, it shall be limited to land areas of less than 5 percent slope. The waste shall not be applied within 200 feet of an occupied residence nor within 500 feet of a well. The facts set out above establish a violation of this regulatory requirement.

#### **V. ORDER**

**THEREFORE**, the DNR orders and Feedlot Service Company and Mr. Fred Roane agrees to do the following:

1. Feedlot Service Company and Fred Roane comply with the provisions of 567 IAC 121 at all times.
2. Feedlot Service Company and Fred Roane comply with the terms of Administrative Consent Order No's. 2021-SW-14 and 2021-WW-22, including:
  - a. Discontinuing the land application of all putrescible products, including grease.
  - b. Updating and maintaining on-site the long-range plan, in compliance with 567 IAC 121.
  - c. Continuing to maintain all land application records on-site, in compliance with 567 IAC 121.
  - d. The Feedlot Service Company must ensure all trucks used to haul by-products are properly equipped and maintained to ensure leachate does not leak from the trucks.
3. Within 30 days of the date the Director signs this order, Feedlot Service Company and Fred Roane pay an administrative penalty of \$7,000.

#### **VI. PENALTY**

1. Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations.
2. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. The administrative penalty assessed by this Order is determined as follows:

- a) 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. Roane avoided the time and expense of properly applying the paunch manure. Mr. Roane avoided the expense of properly controlling, land applying, and subsequently removing the paunch manure. Mr. Roane has been advised in the past that, at a minimum, all separation distances must be met and the paunch should be incorporated. Accordingly, \$2,000 is assessed for this factor.
- b) Gravity. Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety, and whether the violation threatens the integrity of the regulatory program. Enforcement history and past complaint investigation details show that Feedlot Service and Mr. Roane has avoided costs associated with compliance of 567 IAC 121. As a transportation business, it is Mr. Roane's responsibility to ensure all regulations are followed. Failure to ensure the paunch manure was being applied in compliance with 567 IAC 121 threatens the integrity of the regulatory program. Accordingly, \$2,000 is assessed for this factor.
- c) Culpability. The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The inadequate application and management depict a lack of consideration for the environment. Evidence was observed that paunch manure had migrated to the water's edge of Keg Creek. Additionally, Mr. Roane has previously violated these regulatory provisions under similar circumstances (see Administrative Consent Order No. 2021-SW-14, and 2021-WW-22). Accordingly, \$3,000 is assessed for this factor.

## VII. APPEAL RIGHTS


As this Order is entered by consent of the parties, there is no right of appeal.

## VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.307. Compliance with Section V (Order) of this Order constitutes full satisfaction of all

requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

  
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Fred Roane  
Dated this 8<sup>th</sup> day of November, 2023.

CC: DNR Field Office 4; Bradley Adams