

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

IN THE MATTER OF:

**MAGNUM CUSTOM HAULING,
LLC and DEAL KEASLING**

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-01

TO: Jerome Jaeger
Magnum Custom Hauling, LLC
16434 300th Avenue
South English, Iowa 52335

Deal Keasling
306 W. Penn Street
What Cheer, Iowa 50268

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Magnum Custom Hauling, LLC (Magnum) and Deal Keasling for the purpose of resolving water quality violations resulting from a manure release during a transportation accident. This administrative consent order requires Magnum and Keasling to: 1) comply with all applicable manure applicator regulations and 2) pay a \$4,9750.00 administrative penalty.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Janet Gastineau, DNR Field Office 5
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/250-4291

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

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

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to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; 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. Magnum is a certified manure service and Deal Keasling was an employee of Magnum. Magnum had been hired by JTC Finisher to transport and land apply manure to a field in Marion County.

2. On June 20, 2023, Janet Gastineau, DNR Field Office 5 environmental specialist senior, was contacted by Jerome Jaeger, Magnum owner. Mr. Jaeger stated a train hit the manure spreader being pulled by Mr. Keasling. Manure was entering Coon Creek.

3. Ms. Gastineau travelled to the accident site and at the time of her visit, manure was not entering Coon Creek. However, representatives from the fire department and the county's emergency management office confirmed that manure had been flowing to Coon Creek. The water in the creek had a manure odor and manure was pooled around the tank. Mr. Keasling stated that the spreader tank held approximately 6,000 gallons of manure. He knew that his certification had expired, but provided his certification card that had expired on March 1, 2023. Mr. Keasling informed Ms. Gastineau that he geared up the tractor when he realized he would not be able to stop in time for the train. Ms. Gastineau provided clean up instructions to all parties involved, including the railroad, Magnum's insurance company, local law enforcement, and the county emergency management.

4. On June 27, 2023, Ms. Gatineau confirmed that cleanup of the spilled manure had occurred.

5. On June 23, 2023, DNR issued a Notice of Violation letter to Magnum for the violations. The letter informed Magnum that the violations were being referred for further enforcement.

6. On September 5, 2023, the written report was submitted by the railroad. The report indicated that approximately 5,500 gallons of manure was released.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

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2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the June 2023 investigation, DNR Field Office 5 confirmed that manure was released to Coon Creek. The above-mentioned facts indicate a violation of these provisions.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. During the June 2023 investigation, DNR Field Office 5 noted the manure release to Coon Creek caused a manure odor to the creek. The above-mentioned facts indicate a violation of the general water quality criteria.

4. 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.

5. 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 June 2023 investigation, DNR Field Office 5 noted that manure from the JTC Finisher facility was released to Coon Creek during the accident that occurred while Magnum and Mr. Keasling was transporting the manure. The above-mentioned facts indicate a violation of this provision.

6. DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Magnum and Mr. Keasling complies with the provisions listed in Paragraphs 1-2, Section V Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Magnum and Mr. Keasling agrees to do the following:

1. Ensure that all future handling, transferring, and land application of manure is done in accordance with the regulations and does not cause water quality violations;

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2. Magnum shall ensure that all employees are properly certified at all times of handling, transferring, and applying manure;
3. Mr. Keasling shall be properly certified as all times of handling, transferring, and applying manure; and
4. Pay an administrative penalty in the amount of \$4,975.00 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 \$4,975.00. Magnum and Mr. Keasling 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.” Magnum and Mr. Keasling gained an economic benefit by avoiding payment of the manure applicator fees for Mr. Keasling while he was still able to work as a manure applicator for Magnum. It is estimated the fees and training equaled \$975.00. Therefore, \$975.00 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 release resulted in the degradation of water quality. Manure applicators are required to obtain training and certifications to ensure they are properly trained. Transporting manure without the proper training and

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certification increases the risk a manure release. Compliance with the regulations are integral parts of the animal feeding operation programs and violations of the regulations threaten the integrity of the animal feeding operation regulations. Based on the information above, \$1,000.00 is assessed for this factor.

Culpability – Magnum and Mr. Keasling had a duty to know the regulations and to be aware that their actions are subject to the regulations. Mr. Keasling knowingly transported manure without being certified and he admitted that he sped up in an attempt to beat the train prior to the accident. Based on the information above, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Magnum and Deal Keasling. For that reason, Magnum and Deal Keasling waive 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Magnum Custom Hauling LLC
Magnum Custom Hauling, LLC

Dated this 11th day of
December, 2023.

Deal Keasling
Deal Keasling

Dated this 11 day of
December, 2023.