

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

IN THE MATTER OF:

DANE KUPER

Mitchell County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-10

TO: Dane Kuper
39901 Foothill Avenue
Saint Ansgar, Iowa 50472

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dane Kuper for the purpose of resolving animal feeding operation violations related to manure application certification and separation distances. This administrative consent order requires Mr. Kuper to: 1) ensure he is properly certified to handle, transport, and apply manure and 2) pay an administrative penalty in the amount of \$2,500.00.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeremy Klatt, DNR Field Office 2
Iowa Department of Natural Resources
2300 15th Street 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 50319-0034
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 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

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Dane Kuper owns and operates an animal feeding operation located at 1980 410th Street; Osage, Iowa (Section 34, Mitchell Township, Mitchell County). The facility houses 875 head of cattle in a confinement building.

2. On July 20, 2023, Spencer Humphrey, DNR Field Office 2 environmental specialist, conducted an inspection of Mr. Kuper's facility. During the inspection, Mr. Humphrey reviewed the manure application records for the facility and noted that Mr. Kuper had applied dry manure from the facility between 2018 and 2023. Mr. Humphrey also noted that the confinement building was constructed approximately 40 feet from a well.

3. On August 1, 2023, Mr. Humphrey spoke to Mr. Kuper about his applicator certification. Mr. Kuper stated he had routinely applied dry manure from the facility since 2013 and was unaware of the certification requirements. Mr. Kuper became a certified confinement manure applicator on July 26, 2023, but had not been previously certified as a confinement manure applicator.

4. On August 8, 2023, DNR issued a Notice of Violation letter to Mr. Kuper for the violations. The letter informed Mr. Kuper the matter was being referred for further enforcement. DNR has issued a variance for the well at the facility.

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. During the DNR Field Office 2 inspection and review of Mr. Kuper's manure application records it was discovered that Mr. Kuper has land applied dry manure from his facility since 2013 without being properly certified as a confinement site manure applicator. The above-mentioned facts indicate violations of this provision.

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3. 567 IAC 65.11(4) requires that confinement buildings be constructed at least 100 feet from a deep well or 200 feet from a shallow well. During the DNR Field Office 2 inspection, it was noted that the confinement building was constructed approximately 40 feet from the well. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Dane Kuper agrees to do the following:

1. Dane Kuper shall ensure he is properly certified before handling, transporting, and applying manure from his animal feeding operation; and
2. Dane Kuper shall pay an administrative penalty in the amount of \$2,500.00 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 \$2,500.00. 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. Kuper gained an economic benefit of applying dry manure for his facility without being properly certified between 2013 and 2023. The fee for confinement site applicators is \$100.00 for a

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period of three years and the applicator is required to attend training and a \$25.00 education fee each year. Mr. Kuper avoided these fees and gained an economic benefit of at least \$500.00. 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. Manure applicator certification is an integral part of the animal feeding operation program and violations of that regulations threaten the integrity of the animal feeding operation program and water quality program. Based on the above-mentioned facts, \$1,000.00 is assessed for this factor.

Culpability – Mr. Kuper had a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his its conduct is subject to DNR's rules. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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



DANE KUPER

Dated this 6 day of
February, 2024.