

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

IN THE MATTER OF:

DUSTIN RECK

Lyon County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2024-AFO-13

TO: Dustin Reck
1227 Kingbird Avenue
Little Rock, Iowa 51243

I. SUMMARY

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

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Heath Gravert, DNR Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
Spencer, Iowa 51301-2200
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

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. On November 2, 2023, Heath Gravert, DNR Field Office 3 environmental specialist, was conducting a routine manure applicator certification check and observed two tractor/tank combinations applying liquid manure to a field adjacent to the DeBoer Brothers' confinement feeding operation located at 3960 160th Street; George, Iowa (Section 2, Liberal Township, Lyon County). The facility is owned by G&S Farms. Dustin Reck is an employee of G&S Farms.

2. During the inspection, Mr. Gravert spoke to Mr. Reck who was in the field refilling the manure tank for land application. Mr. Reck stated the applicators were not a certified manure applicator service, but rather worked under G&S Farms as confinement site applicators. Mr. Gravert asked Mr. Reck if he was certified to apply manure and Mr. Reck was not sure if his certification was up to date.

3. On November 7, 2023, Mr. Gravert reviewed the DNR's manure applicator certification database and determined that Mr. Reck's manure applicator certification had expired on December 31, 2022. Mr. Gravert contacted Mr. Reck and informed him of the violation. Mr. Gravert also spoke to Brandon DeBoer with G&S Farms and informed him of the uncertified applicators at the facility and informed him that the violations generally involve a monetary penalty.

4. On November 9, 2023, Mr. Gravert reviewed the training records for Mr. Reck and noted that he had completed the education component of the certification requirements on September 15, 2023, but had not sent his certification payment to the DNR.

4. On November 15, 2023, DNR issued a Notice of Violation letter to Mr. Reck for the certification violation. The letter informed Mr. Reck the matter was being referred for further enforcement with a monetary penalty.

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.

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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 3 inspection and review of the manure applicator certification records, it was discovered that Mr. Reck was land applying manure without being properly certified as a confinement site manure applicator. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Dustin Reck agrees to do the following:

1. Mr. Reck shall ensure he is properly certified before handling, transporting, and applying manure from an animal feeding operation; and
2. Mr. Reck shall pay an administrative penalty in the amount of \$1,500.00 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 \$1,500.00. 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. Reck gained an economic benefit of applying manure for several years without being properly certified. The fee for confinement site applicators is \$100.00 for a period of three years and the applicator is required to attend training and a \$25.00 education fee each year. Mr.

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Reck avoided these fees and gained an economic benefit of at least \$150.00. 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, \$850.00 is assessed for this factor.

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

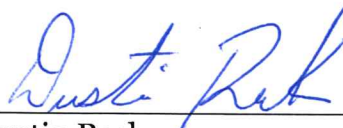
VII. WAIVER OF APPEAL RIGHTS

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

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources


Dustin Reck

Dated this 2nd day of
February, 2024.