

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

IN THE MATTER OF:

JAMES TOOMSEN

Franklin County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2024-AFO-35

TO: James Toomsen
589 Quail Avenue
Geneva, Iowa 50633

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and James Toomsen for the purpose of resolving an animal feeding operation violation related to manure application certification. This administrative consent order requires Mr. Toomsen 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:

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

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III. STATEMENT OF FACTS

Mr. Toomsen neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Toomsen Land & Livestock owns and operates an animal feeding operation located at 1646 Hardin Road; Iowa Falls, Iowa (Section 34, Grant Township, Franklin County). The facility houses 2,008 head of swine grow to finish in two confinement buildings (803.20 animal units).

2. On October 27, 2023, Isaiah Lary, DNR Field Office 2 environmental specialist, conducted an inspection of the Toomsen Land & Livestock facility. During the inspection, Mr. Lary reviewed the manure application records for the facility and noted that James Toomsen applied manure from the facility from November 2018 through 2022. The DNR's manure applicator database indicated that Mr. Toomsen was not properly certified to apply manure during that time period. In November 2023, Mr. Toomsen became properly certified following the inspection.

3. In December 2023, Mr. Lary spoke to Mr. Toomsen and Mr. Toomsen confirmed that he applied manure for Toomsen Land & Livestock for the past four to five years. He stated that he was not aware of the certification requirements.

4. On January 9, 2024, DNR issued a Notice of Violation letter to Mr. Toomsen for the certification violation. The letter informed Mr. Toomsen the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

Mr. Toomsen neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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 manure application records it was discovered that Mr. Toomsen land applied manure from the Toomsen Land & Livestock facility from 2018 through 2022 without being properly certified as a confinement site manure applicator. The above-mentioned facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders and James Toomsen agrees to do the following:

1. James Toomsen shall ensure he is properly certified before handling, transporting, and applying manure from the Toomsen Land & Livestock facility; and
2. James Toomsen 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. Toomsen gained an economic benefit of applying liquid manure for his facility without being properly certified from 2018 through 2022. 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. Toomsen avoided these fees and gained an economic benefit of at least \$100.00. 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

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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 of a manure related discharge during application. Manure applicator certification is an integral part of the animal feeding operation program and violations of that regulation threatens 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. Toomsen had a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Therefore, \$400.00 is assessed for this factor.

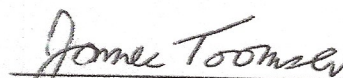
VII. WAIVER OF APPEAL RIGHTS

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



JAMES TOOMSEN

Dated this 12th day of
December, 2024.