

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

IN THE MATTER OF:

**KEVIN DEWEERD**  
**Lyon County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2012-AFO- 06

TO: Kevin DeWeerd  
1644 330<sup>th</sup> Street  
Hudson, South Dakota 57034

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kevin DeWeerd for the purpose of resolving issues regarding Mr. DeWeerd's failure to have proper certification to transport manure. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Cindy Martens, Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall – 1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Height, Iowa 50324  
Phone: 515/281-8563

**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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KEVIN DEWEERD

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

**III. STATEMENT OF FACTS**

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

1 Winding Creek Coop is a confinement hog facility with 2,600 gestation hogs and 800 grow to finish hogs for a total animal unit capacity of 1,360. The facility is located at 1696 Buchanan Avenue; Larchwood, Iowa 51241 ( SW ¼ of Section 12, Centennial Township, Lyon County). Kevin DeWeerd was hired as an independent driver to haul manure in Winding Creek Coop's semi tanker from the facility to the application site.

2 On November 4, 2010, Cindy Martens, environmental specialist senior for DNR Field Office 3, conducted a routine manure applicator check in Section 8, Logan Township, Lyon County, Iowa. Koch Farms Custom Hauling was land applying manure from the Winding Creek Coop facility to the field. Koch Farms Custom Hauling and its applicator were properly certified. Kevin DeWeerd was driving the semi tanker from the facility to application field. Mr. DeWeerd was not certified as a commercial manure service representative

3. DNR files indicate that Mr. DeWeerd attended a confinement applicator course in Rock Rapids, Iowa the following day on November 5, 2010, but to date has not submitted the paperwork or the fees to the DNR.

4 On February 2, 2011, DNR issued Notice of Violation letters to Mr. DeWeerd and Winding Creek Coop for transporting manure without proper certification. DNR informed both parties that the matter was being referred for further enforcement.

5. Following the receipt of the letter, Mr. DeWeerd contacted Ms. Martens regarding the letter. Mr. DeWeerd stated that on some days he hauls over 20 loads of manure.

**IV. CONCLUSIONS OF LAW**

Mr. DeWeerd 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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KEVIN DEWEERD

2. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. During Ms. Martens' inspection it was determined that Mr. DeWeerd was not properly certified to be hauling manure. Mr. DeWeerd was engaged in the business of transporting manure for a fee. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.19(8)(e) requires that any vehicle used by a certified commercial manure service or representative to haul manure shall display the certification number, name, and address of the certified commercial manure service representative on the side of the tank or vehicle. Ms. Martens' inspection revealed Mr. DeWeerd's vehicle had no signage at all. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Kevin DeWeerd agrees to do the following:

1. Kevin DeWeerd shall be properly certified to transport manure and shall have proper signage on his vehicle when transporting the manure; and
2. Kevin DeWeerd shall pay an administrative penalty of \$2,500.00, in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

\$104.32 due February 15, 2012;	\$104.16 due February 15, 2013;
\$104.16 due March 15, 2012;	\$104.16 due March 15, 2013;
\$104.16 due April 15, 2012;	\$104.16 due April 15, 2013;
\$104.16 due May 15, 2012;	\$104.16 due May 15, 2013;
\$104.16 due June 15, 2012;	\$104.16 due June 15, 2013;
\$104.16 due July 15, 2012;	\$104.16 due July 15, 2013;
\$104.16 due August 15, 2012;	\$104.16 due August 15, 2013;
\$104.16 due September 15, 2012;	\$104.16 due September 15, 2013;
\$104.16 due October 15, 2012;	\$104.16 due October 15, 2013;
\$104.16 due November 15, 2012;	\$104.16 due November 15, 2013;
\$104.16 due December 15, 2012;	\$104.16 due December 15, 2013;
\$104.16 due January 15, 2013;	\$104.16 due January 15, 2014.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KEVIN DEWEERD

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.” Kevin DeWeerd saved time and money by not being properly certified to transport manure. He avoided the expenses of the training and certification fees, as well as the signage fee. An estimated economic benefit of \$100.00 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 certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Mr. DeWeerd’s failure to be properly certified threatens the integrity of the water quality program. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Mr. DeWeerd has 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. The manure certification program and its requirements have been widely publicized throughout the animal feeding industry. Therefore, \$1,400.00 is assessed for this factor.

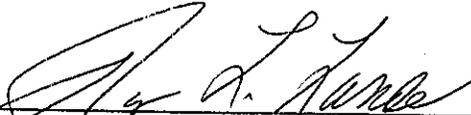
IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: KEVIN DEWEERD

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Kevin DeWeerd. For that reason Kevin DeWeerd 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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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 9<sup>th</sup> day of  
August 2012, 2012.

  
\_\_\_\_\_  
Kevin DeWeerd

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 2012.

Kelli Book, Cindy Martens - Field Office 3, EPA, VIII.D.4