

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: S&P HAULING, INC. Corwith, Iowa	ADMINISTRATIVE ORDER NO. 2009-AFO-24
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TO: Mark Shipman, Registered Agent
S&P Hauling, Inc.
2203 160th Street
Corwith, Iowa 50430

I. SUMMARY

This Order requires S&P Hauling, Inc. (S&P) to (1) have all employee applicators properly certified to haul, apply, or otherwise handle manure; 2) apply manure to fields in a manner that will not cause surface or groundwater pollution in the future; and 3) pay a penalty of \$10,000.00 within 60 days of the receipt of this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to appeal rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This 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

1. S&P is a commercial manure applicator service. RW Swine Management hired S&P to haul manure from its 8,400 head confinement feeding operation located in the NE ¼ of Section 1, Ell Township, Hancock County, Iowa. According to the manure management plan for RW Swine Management, 2.7 million gallons of manure is produced at the facility annually. In January 2008, S&P land-applied manure from the RW Swine Management facility to land in the S ½ of the NW ¼ of Section 13, Concord Township, Hancock County. The land is owned by Scott Ollenburg.

2. On January 28, 2008, Jeremy Klatt, DNR Field Office 2 environmental specialist, observed S&P land-applying manure from RW Swine Management to Mr. Ollenburg's field. He observed that the applicators were attempting to incorporate the manure, but the ground was frozen. Mr. Klatt informed Mark Shipman, S&P manager, that the attempt to incorporate would not be sufficient and to be aware of the manure application separation distances. Mr. Klatt observed a tile intake in the northwest corner of the field and informed Mr. Shipman there was a good chance that manure would run off into the intake during the spring thaw. Mr. Shipman stated he would not apply within 50 feet of the intake. Mr. Klatt would check the site again during the spring thaw to document potential runoff. Mr. Shipman indicated that Ann Graham, Shaunya Zinnel, Aaron Smith, Bob Thompson, and Nick Hylink were handling the manure application and were all properly certified. Following the visit, DNR determined that Mr. Thompson and Mr. Hylink attended the applicator training course for 2007, but the DNR had never received applications for the certifications and certification cards were never issued to Mr. Thompson or Mr. Hylink by the DNR.

3. On March 13, 2008, Mr. Klatt and Eric Wiklund, DNR Field Office 2 environmental specialist, returned to the Ollenburg field to observe possible snowmelt runoff from the S&P manure application in January. They observed runoff flowing into the surface intake at the northwest corner of the field at a rate of 1 to 2 gallons per minute. The runoff had a manure odor. Mr. Klatt and Mr. Wiklund collected laboratory samples of the runoff from the Ollenburg field. There was also runoff entering the tile intake from the field to the north of the intake. This field had not received manure from S&P in January. Mr. Klatt and Mr. Wiklund collected laboratory samples of the runoff from the field north of the intake for comparison purposes. The results indicated the following:

Sample Location	Ammonia (NH ₃ - N)	Total Kjeldahl Nitrogen (TKN)	Nitrate (NO ₃ - N)	Biological Oxygen Demand (BOD)	Total Suspended Solids (TSS)	E-Coli Bacteria
Ollenburg Field	12 mg/L	20 mg/L	5.9 mg/L	75 mg/L	140 mg/L	< 10 CFU/100mL
Field North of Intake	0.94 mg/L	5.6 mg/L	8.1 mg/L	11 mg/L	41 mg/L	20 CFU/100mL

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Mr. Klatt and Mr. Wiklund also observed a large surface intake located in the road ditch adjacent to the Ollenburg field. The intake was buried in snow and not visible during Mr. Klatt's January inspection. Snowmelt runoff from the Ollenburg field was flowing into the intake at a rate of 5 to 10 gallons per minute. The runoff appeared to be entering the intake at two locations. Mr. Klatt and Mr. Wiklund collected laboratory samples from the two locations as well as from ponded water at the edge of the field near the intake. All three samples had a manure odor. The results indicated the following:

Sample Location	Ammonia (NH ₃ - N)	Total Kjeldahl Nitrogen (TKN)	Nitrate (NO ₃ - N)	Biological Oxygen Demand (BOD)	Total Suspended Solids (TSS)	E-Coli Bacteria
Ponded Water in the Field	31 mg/L	39 mg/L	2.3 mg/L	210 mg/L	95 mg/L	<10 CFU/100ml
Runoff from Northeast	30 mg/L	39 mg/L	1.7 mg/L	220 mg/L	80 mg/L	10 CFU/100ml
Runoff from West	31 mg/L	37 mg/L	1.7 mg/L	220 mg/L	64 mg/L	<10 CFU/100ml

Mr. Klatt and Mr. Wiklund located the outfall of the tile drainage system that the runoff was flowing into. The outfall was a bulkhead located in Section 15 of Concord Township. Mr. Klatt and Mr. Wiklund collected samples of the bulkhead as well as a location further downstream at Highway 18. The samples results were much lower than those collected near the Ollenburg field because of dilution from other sources of water entering the ditch. The results indicated the following:

Sample Location	Ammonia (NH ₃ - N)	Total Kjeldahl Nitrogen (TKN)	Nitrate (NO ₃ - N)	Biological Oxygen Demand (BOD)	Total Suspended Solids (TSS)	E-Coli Bacteria
Bulkhead	2.1 mg/L	7.3 mg/L	4.7 mg/L	33 mg/L	87 mg/L	2,900 CFU/100ml
Highway 18	0.92 mg/L	4.1 mg/L	9.2 mg/L	9 mg/L	25 mg/L	Not Analyzed

4. On March 24, 2008, Mr. Klatt spoke to Mr. Shipman regarding the inspection on March 13. Mr. Shipman stated that the January 2008 application event was not an emergency removal of manure from RW Swine Management and that S&P had removed manure from the facility in the fall of 2007. During the January 2008 application Mr. Shipman indicated that 400,000 gallons of manure were applied from the facility. Mr. Shipman also stated that Mr. Thompson and Mr. Hyink were properly certified. He stated they took the class and that he had sent in the certification

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forms to the DNR; however he did not have any documentation showing that the forms had been sent and neither of the gentlemen had received their certification cards.

5. On April 1, 2008, DNR Field Office 2 issued a Notice of Violation letter to S&P for the violations discovered during the January and March 2008 inspections. The letter included water quality and manure applicator violations. The letter indicated the matter was being referred for further enforcement. The letter was also sent to RW Swine Management and Scott Ollenburg.

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. 567 IAC 65.19(1) states 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. Mr. Thompson and Mr. Hylink were not certified applicators at the time of the January manure application. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure 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 waters of the state. S&P land-applied manure that resulted in a manure discharge from the field to the tile intakes. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. S&P land-applied manure that resulted in a manure discharge from the field to the tile intakes. The above-mentioned facts indicate a violation of this provision.

5. 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. DNR Field Office 2 observed high levels of manure runoff from the field and noted a manure odor at the runoff locations. The above-facts disclose a violation of one or more of these criteria.

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6. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 2 found evidence of the discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders S&P to do the following:

1. All S&P applicators must be properly certified to haul, apply, or otherwise handle manure;
2. S&P shall apply manure to fields in a manner that will not cause surface or groundwater pollution in the future; and
3. S&P shall pay a penalty of \$10,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorize 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 these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty assessed by this administrative order is \$10,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – S&P failed to ensure its employees were properly certified. S&P saved time and the fees associated with the certification by allowing employees to apply manure when not properly certified. Additionally, the January manure application was not necessary because the pits had been pumped in the fall 2007. Therefore, \$1,500.00 is assessed for this factor.

Gravity of the Violation – 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 violations

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cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. There was a release of manure that caused water quality violations. Additionally applying manure without proper certification increases the risk of a manure discharge and damage to the environment. Based on the above considerations, \$3,000.00 is assessed for the water quality violations noted in Section IV, Paragraphs 3, 4, 5, and 6 and \$1,500.00 is assessed for the certification violations noted in Section IV, Paragraph 2 for a total of \$4,500.00 assessed for this factor.


Culpability - All commercial manure services have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. S&P should have been aware of the increased risk of pollution due to the application of liquid manure on frozen ground. This was not an emergency situation, the pits had been pumped in the fall 2007 and the application could have waited until incorporation had been possible. Additionally, S&P failed to ensure its employees were properly certified. Based on the above considerations, \$3,000.00 is assessed for the water quality violations noted in Section IV, Paragraphs 3, 4, 5, and 6 and \$1,000.00 is assessed for the certification violations noted in Section IV, Paragraph 2 for a total of \$4,000.00 assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 459.603 and 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
June, 2009.

No Central Office File Number; DNR Field Office 2; Kelli Book; Ken Hesseinus; Gene Tinker; EPA;
VIII.D.3.a and VIII.D.4