

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

IN THE MATTER OF: Brad Eslick Webster County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO-29
---	---

TO: Brad Eslick
2657 390th Street
Dayton, IA 50530

I. SUMMARY

This administrative consent order (order) is entered into between Brad Eslick and the Iowa Department of Natural Resources (Department). Brad Eslick hereby agrees to cease all illegal discharges to waters of the state, maintain the certification required to land apply manure, apply manure in a manner which will not cause surface or groundwater pollution, and pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provision.

Any questions regarding this order should be directed to:

Relative to technical requirements:
Eric Wiklund, Environmental Specialist
IDNR Field Office #2
2300 15th St SW
Mason City, IA 50401
641/424-4073

Relative to legal requirements:
Carrie Schoenbaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure

REC'D JUL 28 2009
REC'D JUL 28 2009

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Brad Eslick

compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or Iowa Code Chapter 459 and the rules promulgated 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.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Brad Eslick's manure applicator certification expired December 31, 2006. This certification was not renewed until February 11, 2009. Despite the lapse in certification, on January 22, 2009, Mr. Eslick land-applied manure to a frozen, snow-covered field.
2. On January 23, 2009, the Department received an anonymous complaint alleging that Mr. Eslick was land applying manure to a field near 2657 390th Street, Dayton, Iowa. The complainant was concerned that the manure was not incorporated and therefore, will run off when the snow melts.
3. On February 9, 2009, Eric Wiklund and Dale Adams, Environmental Specialists with the Department, conducted a complaint investigation. Once on site they observed that runoff from the field was entering a nearby tile intake along the north side of 390th Street. Mr. Wiklund and Mr. Adams met with Mr. Eslick who stated that he and Charles Toyns had applied manure to the field in January of 2009 and that he was a certified manure applicator. Samples were collected at the road ditch located on the north side of 390th Street, the sample water had a strong manure odor. This ditch flows to a tile intake which discharges to Bluff Creek, a tributary of the Des Moines River. These samples were sent to the University of Iowa Hygienic Laboratory for analysis. The results indicate that manure entered the road ditch; the results are as follows:
February 9, 2009:
Sample Location: Road Ditch, time of sample 12:00 pm
Biological Oxygen Demand Five Day (BOD₅): 180 mg/L
Total Suspended Solids (TSS): 110 mg/L
Total Kjeldahl Nitrogen as N (TKN): 41 mg/L
Ammonia N: 31 mg/L
Nitrate + Nitrite: .75 mg/L
E.Coli: 700 conc/100 mL
4. On February 16, 2009, during a telephone conversation between Mr. Eslick and Mr. Wiklund, Mr. Eslick stated that he let his manure applicator certification lag because

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Brad Eslick

he did not haul manure in 2008. A Notice of Violation was sent to Mr. Eslick for the above discussed violations.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following 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. Eslick was not a certified applicator at the time of the January 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. Mr. Eslick land-applied manure, which resulted in a manure discharge from the field to a tile intake. 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. Mr. Eslick land-applied manure, which resulted in a manure discharge from the field to a tile intake. 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. Department Field Office 2 observed high levels of manure runoff from the field and noted a manure odor at the runoff location. The above-facts disclose a violation of one or more of these criteria.
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 issued by the Department. Department 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Brad Eslick

V. ORDER

THEREFORE, the Department orders and Mr. Eslick agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Mr. Eslick shall be properly certified to haul, apply or otherwise handle manure;
2. Mr. Eslick shall apply manure in a manner that will not cause surface or groundwater pollution in the future; and
3. Mr. Eslick shall pay a penalty of \$2,500.00 in compliance with the following payment plan:
 - \$833.34 due on July 30, 2009;
 - \$833.33 due on August 30, 2009; and
 - \$833.33 due on September 30, 2009;

If any of the above payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.

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 these rules, the Department 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. The administrative penalty assessed by this administrative consent order is \$2,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit - Because the fee associated with manure application certification was eventually paid by Mr. Eslick, at this time, the Department has decided not to assess a penalty 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.

IOWA DEPARTMENT OF NATURAL RESOURCES

~~ADMINISTRATIVE CONSENT ORDER~~

Brad Eslick

Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations 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, \$250.00 is assessed for the water quality violations and \$1,000.00 is assessed for the certification violations for a total of \$1,250.00 assessed for this factor.

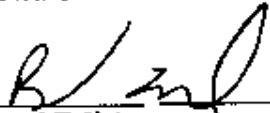
Culpability— All manure applicators have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. Mr. Eslick should have been aware of the increased risk of pollution due to the application of manure on frozen ground. Additionally, Mr. Eslick failed to ensure that he was properly certified. Based on the above considerations, \$1,250.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Mr. Eslick. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of 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 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.



Brad Eslick

Dated this 9 day of
July, 2009.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 28 day of
July, 2009.

Brad Eslick, Field Office 2, Carrie Schoenebaum; Eric Wiklund, I.C.1., & I.C.6.a.