

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**JOE KLUKOW dba RK Transport Inc.
Winnebago County, Iowa**

**ADMINISTRATIVE ORDER
NO. 2009-AFO-15**

TO: Joe Klukow
RK Transport Inc.
1749 480th
Buffalo Center, Iowa 50424

I. SUMMARY

The administrative order requires you and your employees to become certified manure applicators and to pay a penalty of \$5,000.00, subject to your appeal rights stated in this administrative order.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Jeff Prier, 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 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

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Appeal, if any, addressed to:

Director of Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative 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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ISSUED TO: JOE KLUKOW dba RK TRANSPORT INC.

III. STATEMENT OF FACTS

1. Joe Klukow owns and operates RK Transport Inc., a trucking company that also provides a commercial manure application service. Tyler Henn is an employee for RK Transport Inc.
2. On October 31, 2008, Jeff Prier, DNR Field Office 3 environmental specialist, conducted a manure applicator inspection at Daybreak Foods, a confinement facility located in Section 2, Estherville Township, Emmet County. Tyler Henn was hauling dry litter from Daybreak Foods. Mr. Henn stated he was not a certified manure applicator and was unaware of the certification program. Following the inspection, Mr. Prier spoke to Joe Klukow. Mr. Klukow stated that neither his employees nor his company was properly certified.
3. On November 22, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Klukow and RK Transport Inc. for hauling manure without being properly certified. The letter required Mr. Klukow to become certified and informed him the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.314A prohibits a person from engaging in the business of a commercial manure service unless the DNR issues a commercial manure service license to the person. Subsection (11) of Iowa Code section 459.102 defines "commercial manure service" as "a sole proprietor or business association ... engaged in the business of transporting, handling, storing, or applying manure for a fee." During Mr. Prier's inspection it was determined that RK Transport Inc. was hauling manure but was not a licensed commercial manure service. The above-mentioned facts indicate a violation of this provision.
2. Subsection (1) of Iowa Code section 459.315 states that a person shall not act as a commercial manure service representative unless the person is certified. Subsection (2) of Iowa Code section 459.315 states that a person who is required to be certified as a commercial manure service representative must be certified each year. Subsection (12) of Iowa Code section 459.102 defines a "commercial manure service representative" as a 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 Mr. Prier's inspection it was determined that Tyler Henn, employee of RK Transport Inc., was not properly certified to be hauling manure. The above-mentioned facts indicate violations of these provisions.

V. ORDER

THEREFORE, the DNR orders Mr. Klukow and RK Transport Inc. to do the following:

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1. Mr. Klukow and RK Transport Inc. and all of its employees involved in transporting, handling, or applying manure shall immediately become certified in accordance with Iowa Code sections 459.314A and 459.315; and
2. Mr. Klukow and RK Transport Inc. shall pay an administrative penalty of \$5,000.00, within 60 days of receipt of this administrative order, subject to appeal rights stated in Section VII of this administrative 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 Environmental Protection Commission (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 order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Klukow and RK Transport Inc. saved time and money by not being properly certified to handle manure. In addition to the company not being certified, the employees were not properly certified; therefore saving additional time and money. \$500.00 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 applicator certification program is an important component of the animal feeding operation regulations. The program was established to educate manure applicators on how to properly apply manure and how to properly respond to a manure spill. Applying manure without proper training and certification increases the risk of a manure applicator or a manure spill degrading the environment. Mr. Klukow's failure to have his company and his employees properly certified threatens the integrity of the water quality program because compliance with the rules is required of all commercial manure applicators. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Mr. Klukow 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.

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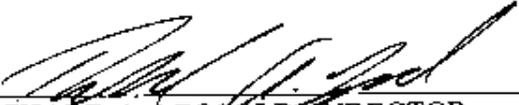
The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. Therefore, \$2,000.00 is assessed for this factor.

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 administrative order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this administrative 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 Section V of this administrative order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative order. Failure to comply with this administrative 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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 1 day of
May, 2009.

No facility ID#: Kelli Book, Jeff Prier at Field Office 3, EPA, VIII.D.4