

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Ryan Fehr & Jaime Schmidt d/b/a S&S Pumping Webster County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO- 21
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TO: Jaime Schmidt
1008 60th Ave
Ottosen, IA 50570

Ryan Fehr
3506 485th St
West Bend, Iowa 50597

I. SUMMARY

This administrative consent order (order) is entered into between Jaime Schmidt and Ryan Fehr d/b/a S & S Pumping (S & S Pumping) and the Iowa Department of Natural Resources (Department). In the interest of avoiding litigation, S & S Pumping hereby agrees to ensure that all of its employees maintain the certification required to land apply manure, display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the vehicle used to transport manure, and pay an administrative penalty.

Any questions regarding this order should be directed to:

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

Relating to legal requirements:
Carrie Schoenebaum, 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

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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 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. Jaime Schmidt and Ryan Fehr are co-owners of a commercial manure applicator service that does business as S & S Pumping. Jaime Schmidt is designated as the manager of S & S Pumping.

2. On March 27, 2009, while S & S Pumping was land-applying manure at the Nature of Iowa Finisher site, Jeremy Klatt and Clay Swanson, Environmental Specialists with the Department, conducted a manure applicator inspection.¹ During this inspection, Mr. Klatt and Mr. Swanson observed Joel Bjustrom, an employee of S & S Pumping, land-applying manure. The Department discovered that at the time of inspection, Mr. Bjustrom was not a certified manure applicator. Department records indicate that although Mr. Bjustrom took the certified manure applicator training class in 2008, a license application was never submitted to the Department.

During this inspection the Department also observed that 2 out of 3 tankers being used by S & S Pumping did not display the proper signage. Neither tanker displayed the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank.

3. On March 31, 2009, a Notice of Violation (NOV) was sent to S & S Pumping 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 certifications and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

¹ Nature of Iowa Finisher is located at 1624 Delaware Avenue, Bradgate, Iowa.

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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. Bjustrom was not a certified manure applicator at the time of the March 2009, application. Therefore, the above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.19(8) "c" states that

Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

The above stated facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the Department orders and S & S Pumping agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. S & S Pumping shall ensure that its employees are properly certified to haul, apply or otherwise handle manure;
2. S & S Pumping shall ensure that the proper signage is on its vehicles prior to hauling manure; and
3. S & S Pumping shall pay a penalty of \$5,000.00 within 30 days of the Director of the Department signing this 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 these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the

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issuance of this order with an administrative penalty. The administrative penalty assessed by this order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. Bjustrom has never been certified to haul or land apply manure. Nevertheless, in 2008 and 2009 he hauled manure for S& S Pumping. S & S Pumping saved time and money by failing to ensure that Mr. Bjustrom was properly certified to handle manure, and by failing to pay the applicable certification fees. S & S Pumping also saved time and money by failing to ensure that the vehicles used to haul manure had the proper signage. Therefore, \$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, at this time the Department has decided to handle the violations administratively, 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. Applying manure without proper certification increases the risk of a manure discharge and damage to the environment. Based on the above considerations \$2,000.00 assessed for this factor.

Culpability – Certified commercial manure services have a duty to ensure that all of their employees are properly certified and all of the vehicles used to haul manure have the proper signage. Commercial manure services also 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. Based on the above considerations, \$2,500.00 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 S & S Pumping. 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.

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Ryan Fehr
Ryan Fehr

Dated this 17 day of
June, 2009.

Jaime Schmidt
Jaime Schmidt

Dated this 17 day of
June, 2009.

Richard A. Leopold
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of
June, 2009.

Ryan Fehr, Jaime Schmidt, Field Office 2, Carrie Schoenebaum; ~~I.C.A. & I.C.O.A.~~

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