

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**BRIAN LILL,  
Sioux County, Iowa**

ADMINISTRATIVE ORDER  
NO. 2009-AFO- 14

TO: Brian Lill  
235 Locust Street  
Brunsville, Iowa 51008

**I. SUMMARY**

The administrative order requires you to comply with the manure applicator certification requirements and to pay a penalty of \$4,000.00, subject to your appeal rights stated in this administrative order.

Questions regarding this administrative order should be directed to:

**Relating to technical requirements:**

Brandon Miner, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand Gateway North, Suite E17  
Spencer, Iowa 51301  
Phone: 712/262-4177

**Relating to legal requirements:**

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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**III. STATEMENT OF FACTS**

1. On October 16, 2008, Brian Lill was applying and hauling manure from a 4,800 head hog confinement operation owned by Casey Westergaard located in Section 21, Washington Township, Sioux County, Iowa.

2. On the same date, Greg Lammers reported a manure spill to DNR Field Office 3. Mr. Lammers stated that a honey wagon being operated by Brian Lill had turned over in the road ditch on 490<sup>th</sup> Street (NE ¼ of Section 28, Washington Township, Sioux County). The incident resulted in approximately 2,000 gallons of liquid hog manure being spilled in the road ditch. Mr. Lill contained the manure spill with dirt, straw bales, and a tarp.

3. Brandon Miner, DNR Field Office 3 environmental specialist, visited the spill site and contacted Mr. Lill by telephone on October 17, 2008. Mr. Lill stated at times he works for Greg Lammers as a manure applicator; but he was working independently at the time of the incident and was applying manure from Mr. Westergaard's facility.

4. Mr. Miner determined that Mr. Lill had taken the Certified Manure Service Applicator Course in LeMars, Iowa on January 4, 2008, but had not paid the required fee and had not submitted the registration form. Mr. Lill indicated he thought he was certified and that he would pay the fee as soon as possible.

5. On November 3, 2008, DNR Field Office 3 issued a Notice of Violation letter to Mr. Lill for not being certified to apply manure. The letter informed Mr. Lill the matter would be referred for further enforcement. On November 4, 2008, Mr. Lill submitted the registration fee and registration form to the DNR.

**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 a "commercial manure service" as a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee. Subsection (1), paragraph "a" 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), paragraph "b" of Iowa Code section 459.102 defines a "commercial manure service representative" as an 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. Miner's investigation, it was determined that Mr. Lill had taken the required class, but failed to submit the proper certification fee and registration form; therefore Mr. Lill was not considered to be certified to transport or apply manure.

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**V. ORDER**

THEREFORE, the DNR orders Mr. Lill to do the following:

1. Mr. Lill shall comply with manure applicator certification requirements in the future; and
2. Mr. Lill shall pay an administrative penalty of \$4,000.00, 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 \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Lill saved time and money by not being properly certified to haul and apply manure. He delayed the expenses of the applicator fees. \$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 applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Mr. Lill's failure to be properly certified threatens the integrity of the water quality program. Therefore, \$3,000.00 is assessed for this factor.

Culpability - Mr. Lill 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 applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. Therefore, \$1,900.00 is assessed for this factor.

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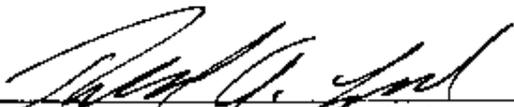
Mitigating Factors -- Mr. Lill did take the appropriate class and did submit the registration and fee immediately after being required to do so. Therefore, the penalty of \$5,000.00 is reduced by \$1,000.00 and the penalty assessed by the administrative order is \$4,000.00

**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.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 5 day of  
May, 2009.

No facility ID#; Kelli Book, Brandon Miner at Field Office 3, EPA, VIIL.D.4