

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Oros & Busch Application
Technologies, Inc.**

Hardin County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO-04**

**TO: Oros & Busch Application
Technologies, Inc.
P.O. Box 37
Defiance, MO 63341**

I. SUMMARY

This administrative consent order (order) is entered into between Oros & Busch Application Technologies, Inc. (Oros & Busch) and the Iowa Department of Natural Resources (Department). Oros & Busch hereby agrees to maintain the certification required to land apply manure and pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Eric Wiklund, 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

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

Oros & Busch

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. On April 26, 2009, Jeffrey Vansteenburgh, Environmental Program Supervisor with the Department, responded to a complaint alleging that there were dead fish in the South Fork of the Iowa River. The complainant stated that manure was removed from Prestage Farms of Iowa (Prestage Farms) and land applied by employees of Oros & Busch to a portion of a field located at the SE quarter of Section 5, Buckeye Township. Mr. Vansteenburgh observed runoff from this field enter a grassed waterway on the east side of County Road D. The runoff had a dark color and a manure odor was present. The grassed waterway discharges to the Iowa River.

2. On April 27, 2009, Mr. Vansteenburgh and Eric Wiklund, an environmental specialist with the Department, returned to the site to meet with Danny and Rhonda Leerar.¹ Mr. and Mrs. Leerar informed the Department that on April 23, 2009, Scott Alexander, Ryan Urton and Albert Frehner, employees of Oros & Busch, land applied manure to the above reference field.

3. Scott Alexander, Ryan Urton and Albert Frehner became certified manure applicators on July 1, 2009.

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. Scott Alexander, Ryan Urton and

¹ Mr. and Mrs. Leerar were hired by Prestage Farms to complete its manure management plan

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

Oros & Busch

Albert Frehner became certified on July 1, 2009, therefore they were not certified at the time of the April 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. Oros & Busch land-applied manure, which resulted in discharge of manure from the field to grassed waterway. Therefore the above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the Department orders and Oros & Busch agree to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. In the future all employees of Oros & Busch shall be properly certified to haul, apply or otherwise handle manure; and
2. Oros & Busch shall pay a penalty of \$4,025.00 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 issuance of an administrative consent order with an administrative penalty. The administrative penalty is determined in accordance with the following:

Economic Benefit – An economic benefit is obtained from costs delayed. Prior to the April application, Oros & Busch should have paid the certification fee of \$1,025.00 for its three applicators that are the subject of this order. That expense was delayed. For that reason, \$1,025.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

Oros & Busch

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. Applying manure without proper certification increases the risk of a manure discharge and damage to the environment. Based on the above considerations, \$1,000.00 is 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. Moreover, Oros & Busch is a company that specializes in manure application, yet it failed to ensure that its employees were properly certified. Based on the above considerations, \$2,000.00 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 Oros & Busch. By signature to this order, all rights to appeal this order are waived.

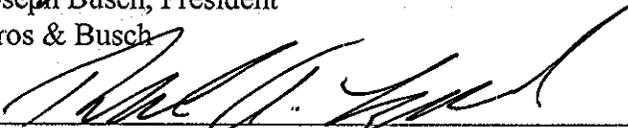
VIII. NONCOMPLIANCE

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.



Joseph Busch, President
Oros & Busch

Dated this 8 day of
January, 2010.



RICHARD A LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27 day of
Jan., 2010.

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