

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: CBJ TRANSPORT, LLC Cerro Gordo County, Iowa	ADMINISTRATIVE ORDER NO. 2010-AFO-14
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TO: CBJ Transport, LLC c/o Richard Howe, Registered Agent 2824 104 th St. Urbandale, Iowa 50322	CBJ Transport, LLC c/o Chris Hagen, Owner 3675 Dogwood Ave. Joice, Iowa 50446
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I. SUMMARY

This Order requires you to pay a penalty of \$5,000.00 within 60 days of the receipt of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 712/262-4177

Relating to appeal rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This 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 September 10, 2009, Jeremy Klatt of DNR Field Office #2 received a complaint indicating that there was a significant amount of chicken manure on Lark Avenue near the intersection with County Highway B60 in Cerro Gordo County.

2. Mr. Klatt visited the site on the same day and confirmed that manure was on the highway for more than 20 miles in Cerro Gordo and Franklin Counties. He followed the manure to the off ramp on Interstate 35 at County Highway C13, and from there the manure trail continued north on Lark Avenue. Mr. Klatt traced the manure to a field owned by Milton Heyde on Killdeer Avenue, where he noted four stockpiles in the south half of Section 26, Lincoln Township, Cerro Gordo County, Iowa. Mr. Klatt took photographs of the manure at the site to document his observations.

3. Mr. Klatt spoke with Mr. Heyde by telephone on September 10 and confirmed that the stockpiles were on his property. Mr. Heyde said that he would have the manure hauler call Mr. Klatt.

4. On September 11, 2009, Chris Hagen, the owner of CBJ Transport, LLC (CBJ Transport) called Mr. Klatt. He stated that the manure had been hauled from Sparboe's Coulter Pullet Farm, 1375 Heather Avenue, Latimer, Franklin County, Iowa. Mr. Hagen and an employee of CBJ Transport, Craig Downing, had hauled the manure. According to the DNR's files both Mr. Hagen's and Mr. Downing's certifications were expired at the time of Mr. Klatt's investigation on September 10. Mr. Hagen's certification expired on March 1, 2009, and Mr. Downing's certification expired on March 1, 2008. CBJ Transport has never been certified as a commercial manure service.

5. On September 17, 2009, Mr. Klatt called Mr. Hagen and informed him that the violation would be referred to the DNR's Legal Services Bureau for an enforcement action with a penalty for hauling manure without proper certification.

6. On September 18, 2009, a Notice of Violation letter was sent to Mr. Hagen stating that transporting manure for land application without proper certification is a violation. Enclosed with the letter was a copy of the DNR rule prohibiting illegal transportation of manure for land application. The letter also stated that proper precautions were not taken in the transportation of the manure, and required that necessary measures must be taken to prevent manure spillage on the road in the future.

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. 567 IAC 65.1 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. During Mr. Klatt's inspection it was determined that CBJ Transport was

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hauling manure but was not a licensed commercial manure service. The above-mentioned facts indicate a violation of this provision.

2. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, 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. Klatt's inspection it was determined that Chris Hagen and Craig Downing, employees of CBJ Transport, were not properly certified to be hauling manure. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders CBJ Transport to do the following:

1. Pay a penalty of \$5,000.00 within 60 days of receipt of this Order, subject to appeals rights stated in Section VII.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize 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 DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty. The administrative penalty assessed by this Order is \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Hagen was previously certified as a commercial manure representative for a different company, but his certification expired in March of 2009. The business he owns, CBJ Transport, has never been certified as a commercial manure service. Craig Downing, an employee of CBJ Transport, was also previously certified as a commercial manure representative for a different company, but his certification expired in March of 2008. CBJ Transport saved time and money by not being properly certified to apply manure, since the cost of certifying a commercial manure service is \$200 each year. Additionally, it costs \$100 (\$75 certification fee, and \$25 education fee) to certify an employee each year, so CBJ Transport would have had to pay \$100 for Mr. Downing's certification and only the \$25 education fee for Mr. Hagen as manager of the commercial manure service. Thus, CBJ Transport avoided a total cost of \$325.00, which is being assessed for this factor.

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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 this 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 program was put in place to educate manure applicators on how to properly handle manure, and how to properly respond to a manure spill. Hauling manure without proper training/certification increases the risk of a manure spill degrading the environment. CBJ Transport's failure to be properly certified threatens the integrity of the regulatory program, because compliance with manure applicator certification rules is required of all commercial manure services in the state. Additionally, CBJ Transport failed to properly handle the manure as it was being transported. Manure was spilled on the road for more than 20 miles between the farm and the application site. This spill created a potential environmental hazard to the water quality in the area. Therefore, \$2,675.00 is assessed for this factor.

Culpability - CBJ Transport has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Mr. Hagen and Mr. Downing had both previously been certified and were therefore aware of the manure applicator certification requirements. Therefore, \$2,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this 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. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order. Failure to comply with this Order may result in the imposition of further administrative penalties 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 23 day of
March, 2010.