

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

IN THE MATTER OF:

**J.W. READY MIX AND
CONSTRUCTION, INC.
Sac County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO- 24

TO: J.W. Ready Mix and Construction, Inc.
Patricia Wirtjers, Registered Agent
3111 270th St.
Sac City, Iowa 50583

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and J.W. Ready Mix and Construction, Inc. (J.W. Ready Mix) for the purpose of resolving issues regarding J.W. Ready Mix's failure to become certified as a commercial manure service, and its failure to certify all employees engaged in hauling manure as commercial manure service representatives. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeff Prier, Field Office #3
Iowa Department of Natural Resources
1900 North Grand Ave., 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
Windsor Heights, Iowa 50324
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

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to

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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.

III. STATEMENT OF FACTS

1. On February 17, 2010, DNR Field Office 3 received a complaint indicating that an uncertified manure applicator, J.W. Ready Mix, was hauling manure from the Schnell Family Farm south on Rolf Ave. into Sac City and then west on Highway 20 in Sac County, Iowa.

2. Jeff Prier, DNR Field Office 3 environmental specialist, visited the site on the same day and confirmed that manure was being hauled by Jason Kreft, an employee of J.W. Ready Mix. Mr. Kreft stated that he had never heard of the commercial manure service program and did not know he had to be a certified representative to apply manure. Mr. Kreft stated that he had hauled one load that day and was preparing to haul another. Mr. Prier noted that J.W. Ready Mix failed to have signage on the side of the applicator vehicle indicating certification. Mr. Prier informed Mr. Kreft of the different options for becoming a certified commercial manure service representative. Mr. Kreft stated he would become certified as soon as possible.

3. Later that same day, Mr. Prier sent J.W. Ready Mix and Mr. Kreft an information packet on applicator certification and stockpiling dry manure.

4. On February 19, 2010, DNR issued a Notice of Violation letter to J.W. Ready Mix for failing to be a certified commercial manure service before hauling and applying manure from an animal confinement facility. The Notice of Violation also cited J.W. Ready Mix's failure to ensure that all employees hauling and applying manure were certified commercial manure service representatives. The subrule 567 IAC 65.19(1) was enclosed in the letter reiterating J.W. Ready Mix's responsibility to have commercial manure service certifications for both the business and its employees. The Notice of Violation ordered J.W. Ready Mix to follow through with its stated intention to contact the Sac County Extension office to schedule certification appointments.

5. On the same day, Mr. Kreft informed Mr. Prier that he and two other company employees had watched the informational video and sent in the certification paperwork. Mr. Kreft assured Mr. Prier that J.W. Ready Mix would put the proper signage on the applicator vehicles as soon as the stickers were made and a service number was issued.

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

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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 J.W. Ready Mix was 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. Prier's inspection it was determined that Jason Kreft, an employee of J.W. Ready Mix, was not properly certified to be hauling manure. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.19(8)(e) requires that any vehicle used by a certified commercial manure service or representative to haul manure shall display the certification number, name, and address of the certified commercial manure service representative on the side of the tank or vehicle. Mr. Prier's inspection revealed that J.W. Ready Mix's truck did not have the certification number displayed and Mr. Kreft's name and address were not posted on the side of the truck. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and J.W. Ready Mix agrees to do the following:

1. J.W. Ready Mix shall obtain proper manure applicator certification for its business and all employees engaged in the practice of hauling manure;
2. J.W. Ready Mix shall display proper certified applicator signage on the company equipment; and
3. J.W. Ready Mix shall pay an administrative penalty of \$2,500.00, within 30 days of the date the Director signs this administrative consent 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 of the regulations for transportation of manure for land application 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

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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 consent order with an administrative penalty of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – J.W. Ready Mix and employee Jason Kreft improperly hauled and applied manure without certification as a commercial manure service and commercial manure service representative. J.W. Ready Mix 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. J.W. Ready Mix would have paid \$100 for Mr. Kreft's certification, \$100 each for two more company employees, and \$200 for the commercial manure service. Thus, J.W. Ready Mix delayed a total cost of \$500.00, which 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 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. J.W. Ready Mix'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. Based upon these considerations, \$1,500.00 is assessed for this factor.

Culpability – J.W. Ready Mix 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. J.W. Ready Mix had hauled loads of dry poultry manure from various sites in the area, thus the company should have been aware of the manure applicator certification requirements. Therefore, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of J.W. Ready Mix. For that reason, J.W. Ready Mix waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order

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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 13 day of
May, 2010.

J.W. Ready Mix Const, Inc.
J.W. Ready Mix and Construction, Inc.
Patty Winters, Pres.
Kelli Book, Jeff Prier, Field Office 3, EPA, VIII.D.4

Dated this 7th day of
May, 2010.