IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: FEEDLOT SERVICE CO. Pottawattamie County, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2010-SW- 32

TO: **Lyle W. Ditmars**
Attorney for Feedlot Service Co.
Po box 1078
Council Bluffs IA 51502-1078

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Feedlot Service Co. and the Iowa Department of Natural Resources (Department) in order to resolve past violations related to the land application of paunch manure. To resolve the violations documented herein, Feedlot Service Co. agrees to comply with the terms and conditions set forth in this Order.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Kirk Mathis
IDNR Field Office #4
706 Sunnyside Lane
Atlantic, IA 50022
Ph: 712-243-1934

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Feedlot Service Co., incorporated December 12, 1980, is engaged, inter alia, in the business of the management and disposal of paunch manure generated by one or more packing plants in Omaha, Nebraska. Paunch manure is the undigested material from the stomach and intestines of slaughtered cattle. Feedlot Service Co. mixes paunch manure with hay or corn stalks for use as a cattle feed pursuant to a permit issued by the Iowa Department of Agriculture. Loads of paunch manure that are unsuitable for use as a feedstock are land applied pursuant to Department land application permit no. 78-SDP-17-96P-LAN.

2. On January 26, 1995, Feedlot Service Co. received a special use permit from Pottawattamie County for the land application of paunch manure.

3. On November 6, 1995, the Department investigated a complaint in regard to the storage and application of paunch manure by Feedlot Service Co. This investigation disclosed that Feedlot Service Co. had failed to obtain a Department permit for the land application of paunch manure. It was also determined that Feedlot Service Co. was in violation of the permit issued by Pottawattamie County. Paunch manure had been stored too close to a creek and for longer than allowed by the permit. A letter notifying Feedlot Service Co. of these violations was sent on November 7, 1995.

4. On February 6, 1996, the Department issued permit no. 78-SDP-17-96P-LAN to Feedlot Service Co. authorizing the land application of paunch manure.

5. On April 3, 1996, the Department investigated a complaint in regard to the storage and application of paunch manure by Feedlot Service Co. It was determined that Feedlot Service Co. had violated the permit by applying paunch manure within 200 feet of a drainage ditch and within 200 feet of Keg Creek. The paunch manure had been applied to frozen ground and had not been incorporated. Feedlot Service Co. was also determined to have violated the permit by applying paunch manure on a slope greater than 10%. This claim was and is disputed by Feedlot Service Co. A letter notifying Feedlot Service Co. of these violations was sent on April 18, 1996.

6. On June 5, 1996, and June 7, 1996, inspections were conducted by the Pottawattamie Office of Planning and Development in regard to paunch manure application by Feedlot Service Co. The Department participated in the June 7th inspection. Pottawattamie County sent a letter to Feedlot Service Co. on July 11, 1996. The letter documented multiple violations observed on June 5th and further described violations in April 1996 and November 1995. Violations included the failure to incorporate paunch manure, land application too close to a creek or waterway, illegal storage, and

land application on slopes greater than 10%. These alleged violations were and are disputed by Feedlot Service Co.

7. On June 17, 1996, the Department sent a letter to Feedlot Service Co. documenting the conditions observed on June 7th. The letter provided further information intended to assist Feedlot Service Co. in conducting land application without causing environmental problems or nuisance complaints. A memorandum dated August 14, 1996, documents the conditions observed on July 17, 1996. The memo notes that two to three weeks' worth of paunch manure was being stored onsite. Paunch manure had been applied on slopes greater than 9%. Feedlot Service Co. has and does dispute these allegations.

8. On October 7, 1996, the Department sent a letter to Feedlot Service Co. indicating that paunch manure is solid waste and could not, at that time, be stored on site for more than 72 hours. On October 28, 1996, the Department received a response from Feedlot Service Co. The letter indicated that paunch manure would not be stored onsite longer than 72 hours and a land application permit would be obtained.

9. On August 3, 2001, the Department received a complaint alleging violations by Feedlot Service Co. in regard to paunch manure application in Pottawattamie County. The Department investigated the complaint on August 7, 2001. It appeared that the paunch manure had been applied to land with a slope of greater than 10% in violation of the permit and applicable regulations. Feedlot Service Co. disputes these contentions. A letter was sent to Feedlot Service Co. on August 8, 2001.

10. On December 24, 2001, the renewal application was due for the Feedlot Service Co. land application permit. No application was received.

11. On March 24, 2002, the Feedlot Service Co. land application permit expired.

12. On December 2, 2002, the Department notified Feedlot Service Co. of the expiration of the land application permit.

13. On July 16, 2003, the Department reissued land application permit no. 78-SDP-17-96P-LAN to Feedlot Service Co.

14. On March 23, 2004, the Department notified Feedlot Service Co. that it had failed to file the required annual certified professional agronomist report.

15. On April 4, 2004, Feedlot Service Co. requested an extension of time to file the annual agronomist report.

16. On April 29, 2004, the required annual agronomist report was filed by Feedlot Service Co.

17. On May 27, 2004, the Department received a complaint alleging violations by Feedlot Service Co. in regard to paunch manure application in Pottawattamie County. The Department investigated the complaint on September 3, 2004. The Department notified Feedlot Service Co. of the requirement to submit quarterly reports.

18. On September 30, 2004, the Department issued a Notice of Violation to Feedlot Service Co. for failure to submit required quarterly reports.

19. On November 18, 2005, the Department notified Feedlot Service Co. that it had failed to file the required annual certified professional agronomist report.

20. On December 20, 2005, the Department conducted an inspection of the Feedlot Service Co. paunch manure land application site. Two or three small piles of very wet paunch manure were observed piled on the ground approximately 500 feet northeast of the land application site. Frozen liquid runoff from the piles was observed down-gradient from the piles. The permit requires all pre-application storage to be on the concrete pad.

21. On December 30, 2005, the Department received the required annual agronomist report.

22. On January 20, 2006, Feedlot Service Co. was sent a copy of the December 20, 2005, inspection report on January 20, 2006. The cover letter noted the alleged violation of paunch manure storage requirements.

23. On September 13, 2006, the Department renewed permit no. 78-SDP-17-96P-LAN.

24. On November 29, 2006, the Department notified Feedlot Service Co. that it had failed to file the required annual certified professional agronomist report. An extension to file the same was requested and granted.

25. On May 23, 2007, the Department notified Feedlot Service Co. that it had not yet filed the required annual certified professional agronomist report referred to in the Department's letter of May 29, 2006.

26. On June 1, 2007, the Department received the required annual agronomist report.

27. On June 14, 2007, the Department received a complaint alleging that Feedlot Service Co. had land applied paunch manure on a field that had received paunch manure earlier in the spring and had failed to incorporate the second application. The complaining party also indicated that paunch manure was being improperly stored in piles on the site. A second complaint of paunch storage was also received on this date.

28. On June 15, 2007, the Department investigated the complaints received on June 14th. Three sites were visited. Paunch manure stockpiles were observed approximately .4 mile west of the Feedlot Service Co. cattle feedlots. Materials other than paunch manure were observed being released from the piles, including grease, lard, and other unidentified materials. The liquid was flowing from the pile into an adjacent cornfield. Feedlot Service Co. disputes this allegation. A second paunch manure stockpile was observed on an authorized land application site. Part of the pile appeared to have been recently deposited and part of the pile appeared to have been at this location for at least several weeks. Multiple paunch manure stockpiles were also observed at a site not authorized for land application. The third site contained 30-40 loads of paunch manure. Feedlot Service Co. indicated that it was "composting" the paunch manure at the site. Feedlot Service Co. does not have a composting permit. Feedlot Service Co. was informed that it could not conduct composting without a permit, that the stockpiling was a violation of the permit conditions, and that the reported sources of the paunch manure were not authorized sources pursuant to the permit.

29. On July 6, 2007, the Department reinspected the three sites. The stockpile remained at the site near the Feedlot Service Co. cattle feedlots. The site had dried and some dirt scraping had appeared to have occurred around the piles. At the second property, the stockpile remained and there did not appear to be any change to the stockpile. At the third property the stockpiles remained and there did not appear to be any change to the stockpiles.

30. On July 20, 2007, the Department again visited the Feedlot Service Co. site near its cattle feedlots. The paunch manure piles remained. A liquid that appeared to consist of grease and other foreign matter was observed to be seeping out of a pile and flowing into an adjacent cornfield. One large pile had the appearance of finished compost. Feedlot Service Co. indicated that the finished compost had been delivered from a composting site in Bellevue, Nebraska.

31. On July 31, 2007, the Department issued a Notice of Violation to Feedlot Service Co. The Notice referenced permit violations related to the source of the paunch manure, the illegal stockpiling of paunch manure, and illegal composting without a permit. Feedlot Service Co. did and does dispute these charges.

32. On January 7, 2008, the Department received a complaint alleging improper land application by Feedlot Service Co.

33. On January 8, 2008, the Department investigated the complaint received on January 7th. The site of land application was located in a field bordered by 310th Street and Major Avenue, to the northwest of the Feedlot Service Co. cattle feedlots. It appeared that 60-70% of the field had been used which is unusual based upon the past practices of Feedlot Service Co. The paunch manure had been applied up to approximately 15-20 feet from a waterway. The permit requires a 15-foot buffer along waterways. Although little margin of error had been provided, it appeared that this provision was not violated.

34. On March 11 and 12, 2008, the Department investigated two complaints regarding the land application of paunch manure by Feedlot Service Co. on land located in the NW 1/4 of Section 12, Township 73 North, Range 44 West, Mills County, Iowa. The site of land application was confirmed. This is not an authorized site pursuant to permit no. 78-SDP-17-96P-LAN. Feedlot Service Co. alleged that the material which was land applied was composted paunch manure from its Bellevue, Nebraska, composting site. The appearance of the material was that of dry paunch manure. There was a slight odor of paunch manure. The Department visited the Bellevue, Nebraska, site. The compost piles viewed at the site appeared to be relatively fresh. The piles lacked any bulking agent or other carbon source. They were not fully composted. Although the composting operation is outside of Iowa, the compost must meet Iowa standards before it can be applied. Feedlot Service Co. was notified that the material that was determined to have been land applied in Iowa was not finished compost pursuant to the Department's requirements. A Notice of Violation was issued to Feedlot Service Co. on April 1, 2008. Feedlot Service Co. disputed the alleged violations.

35. On September 13, 2009, permit no. 78-SDP-17-96P-LAN expired pursuant to the terms thereof and renewal was not requested by Feedlot Service Co. The land application of materials by Feedlot Service Co. is now subject to 567 IAC 121.6 for application that is exempt from individual permitting requirements or such requirements as may be established by the Iowa Department of Agriculture and Land Stewardship if the material has been registered as a fertilizer or soil amendment.

IV. CONCLUSIONS OF LAW

The Department of Feedlot Service Co. agree that the following Conclusions of Law are applicable to this matter:

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1. Iowa Code Section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-123.

2. The Commission has adopted 567 IAC Chapter 121 "Land Application of Wastes" for the purpose of establishing rules for disposal of solid waste through land application.

3. Pursuant to 567 IAC 121.7, prior to any land application of solid waste not exempted in 121.5 and 121.6, a permit must be obtained by the waste generator in accordance with the requirements set forth therein. Pursuant to this provision, Feedlot Service Co. has previously obtained permit no. 78-SDP-17-96P-LAN.

4. Pursuant to permit no. 78-SDP-17-96P-LAN - Special Provision #8, any necessary pre-application storage was required to be conducted on the concrete pad designated in the permit. Storage at the site of application is prohibited. The above-stated facts, if as alleged, establish violations of this provision.

V. ORDER

The Department orders and Feedlot Service Co. hereby agrees to the following:

1. For any material not registered with the Iowa Department of Agriculture and Land Stewardship as a fertilizer or soil amendment, Feedlot Service Co. shall land apply the solid waste material in conformance with Rule 567 IAC 121.6 and shall land apply such material in compliance with Rule 121.6 on the same calendar day as the material is delivered to the site of land application. Feedlot Service Co. Is specifically prohibited from stockpiling or storing any material at the site of land application unless the material is an approved fertilizer or soil amendment and such stockpiling has been authorized by the Iowa Department of Agriculture and Land Stewardship.

2. Feedlot Service Co. shall pay an administrative penalty in the amount of $1,000.00 at the time of execution of this Order to resolve the alleged past violations documented herein.

VI. PENALTY

1. Iowa Code Section 455B.307(3) provides for civil penalties of up to $5,000.00 per day for solid waste violations.

2. Iowa Code Section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties of 567 IAC Chapter 10. The administrative penalty assessed by this Order is determined as follows.

a. Economic Benefit. Feedlot Service Co. has achieved an economic benefit by the violation of law documented in this Order. Feedlot Service Co. is paid to accept paunch manure. The acceptance of paunch manure from unauthorized sources and in amounts greater than could be stored on the concrete pad or land applied in a timely manner allowed Feedlot Service Co. to realize additional income without incurring the costs related to constructing additional storage, amending the permit, or obtaining a composting permit. Compliance with composting permit requirements would necessitate additional expenditures which have been avoided by Feedlot Service Co. However, during the pendency of this enforcement action, Feedlot Service Co. has expended funds to landfill materials that could have otherwise been land applied in conformance with the applicable regulations. Because the cost of such landfilling has greatly reduced or negated any prior economic benefit, no fine is assessed for this factor.

b. 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 the type of violation. The rules applicable to the land application of wastes are designed to prevent the contamination of the waters of the state and to limit human exposure to the wastes. The stockpiling of wastes has resulted in the uncontrolled runoff of grease, oil and other pollutants from the area of stockpiling. The failure to comply with applicable regulations threatens the waters of the state and poses a risk to human health and the environment. However, the Department has not documented any pollution reaching a water of the state. In light of these considerations and in order to resolve this matter consensually, no penalty is assessed for this factor.

c. Culpability. Feedlot Service Co. has been land applying paunch manure for over ten years. Violations have been documented throughout this period. The Department has provided compliance assistance and information to Feedlot Service Co. on multiple occasions but Feedlot Service Co. has continued to violate the applicable regulations and permit. Due to these considerations and the multiple days of violation, a penalty of $1,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

Iowa Code Section 455B.308 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 Feedlot Service Co. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code Section 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address alleged subsequent violations.

Dated this 25 day of August, 2010

RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 12 day of april, 2010

FEEDLOT SERVICE CO.

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