

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**BRANDON DIEDRICH dba  
DIEDRICH AG**

Worth County, Iowa

ADMINISTRATIVE ORDER

NO. 2010-AFO- 51

TO: Brandon Diedrich  
Diedrich Ag  
3996 Raven Avenue  
Kensett, Iowa 50448

**I. SUMMARY**

This Order requires you to: 1) ensure that all employees are properly certified at all times when transporting, handling, storing, or applying manure and 2) 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 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

**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, to:**

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

**Payment of Penalty to:**

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

**II. JURISDICTION**

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 1 and Iowa Code chapter 459 and the rules promulgated or permits issued pursuant to that part; 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. Brandon Diedrich owns and operates Diedrich Ag. Diedrich Ag is a manure transporting company.
2. On May 26, 2010, DNR Field Office 2 received a complaint regarding a stockpile of chicken litter at an abandoned farm site located in the Northeast ¼ of Section 20, Barton Township, Worth County, Iowa. The complainant stated that Brandon Diedrich was hauling the manure.
3. On May 27, 2010, Jeremy Klatt, DNR Field Office 2 environmental specialist, spoke with Brandon Diedrich on the telephone. Mr. Diedrich stated the manure was being hauled from Rembrandt Enterprises and the intent was to stockpile the manure until after the fall harvest. Mr. Diedrich stated he had four trucks hauling manure from Rembrandt Enterprises to the site. Mr. Diedrich drove one of the trucks and three of his employees drove the other three trucks. The three employees were Dan Dodd, Jon Simmons, and Wade Eastman.
4. Following the telephone conversation with Mr. Diedrich, Mr. Klatt checked the certification status of each of the drivers, and none of the drivers were certified to haul manure. Mr. Diedrich's certification expired on March 1, 2006. He did take the refresher course on September 23, 2009, but failed to submit the form and certification fee to the DNR. Mr. Dodd and Mr. Eastman had never been certified; although they took the certification course on September 23, 2009, but failed to submit the forms and certification fees to the DNR. Mr. Simmons' certification expired on March 1, 2010.
5. On June 9, 2010, DNR issued a Notice of Violation letter to Brandon Diedrich for failing to be properly certified to haul manure and for failing to properly certify his employees. The letter stated that the matter was being referred for further enforcement. Following the receipt of the letter, Mr. Diedrich and his employees completed the certification requirements immediately.

**IV. 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. 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 investigation it was determined that Brandon Diedrich dba Diedrich Ag was hauling

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

3. 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 investigation it was determined that Mr. Simmons, Mr. Dodd, and Mr. Eastman, employees of Brandon Diedrich dba Diedrich Ag were not properly certified to be hauling manure. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders Brandon Diedrich dba Diedrich Ag to do the following:

1. Ensure that all employees are properly certified at all times when transporting, handling, storing, or applying manure; and
2. Pay an administrative penalty of \$5,000.00 within 60 days of receipt of this Order, subject to the appeal rights stated in Section VII.

**VI. PENALTY**

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

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 at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty of \$5,000.00. The administrative penalty assessed by this administrative order is determined as follows:

Economic Benefit – Mr. Diedrich gained an economic benefit over other employers whose employees are certified applicators. Mr. Diedrich delayed the payment of the certifications. Therefore, \$100.00 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

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by statute. Despite the high penalties authorized, the DNR has decided to handle to violations administratively at this time, as the most equitable and efficient means of resolving the matter. The certification program is an important component of the regulatory laws relating to animal feeding operation, and failure to comply threatens the integrity of this program. Hauling manure without proper certification increases the risk of a manure spill. Therefore, \$2,900.00 is assessed for this factor.

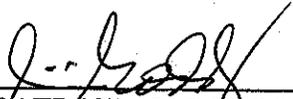
Culpability – All commercial manure applicators have a duty to remain knowledgeable of the DNR's requirements. Moreover, the certification requirements have been widely publicized in this industry. As a commercial manure service owner, Mr. Diedrich is responsible for making sure that his employees follow the certification requirements. Therefore, \$2,000.00 is assessed for this factor.

### VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.4(1), 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 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.

  
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PATRICIA L. BODDY, INTERIM DIRECTOR  
Iowa Department of Natural Resources

Dated this 18 day of  
October, 2010.

#1831-CMS; Kelli Book; Field Office 2 (Jeremy Klatt); EPA; VIII.D.4