

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

IN THE MATTER OF:

D & L SWINE, L.L.C.

**Osceola County, Iowa
Facility #58896**

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO-~~28~~

TO: David Marra, Registered Agent
D & L Swine, L.L.C.
210 Franklin Street, PO Box 815
Sanborn, Iowa 51248

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and D & L Swine, L.L.C. (D & L Swine) for the purpose of resolving water quality violations resulting from a manure discharge. 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:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall-1900 North Grand
Spencer, Iowa 53101
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: 515/725-9572

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 secure compliance with or prevent violations of Iowa Code chapter 455B, Division III, Part 1; 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. D & L Swine owns and operates a 1,800 head swine finishing confinement operation, located at 2447 Red Wink Avenue, Melvin, Iowa (NE 1/4 of Section 21, Goewey Township, Osceola County, Iowa). The facility utilizes an earthen manure storage basin and shallow pits under its two confinement buildings to retain liquid manure between periods of land application.

2. On May 5, 2015, David Marra, with D & L Swine, contacted DNR to report a manure spill at the above-mentioned facility. Mr. Marra stated that during a manure transfer a line to the lagoon became plugged and a tile riser broke allowing manure to be released to the ground. The manure flowed on the ground and pooled near a tile intake located at the southeast corner of the southern confinement building. Some of the manure entered the intake that went to an outlet to an unnamed tributary of the Floyd River. Mr. Marra estimated that 14,000 to 20,000 gallons of manure had been released. David Knoll, DNR Field Office 2 environmental specialist, responded to the report and spoke with Mr. Marra on the telephone. Mr. Knoll explained the need to stop the manure flow and to properly remove it from the waterway. Mr. Marra stated he hired Steve Kruse, a certified manure applicator, to assist in the manure cleanup. Mr. Marra also informed Mr. Knoll that dams had been constructed to prevent the contamination from flowing downstream. Mr. Knoll contacted Mr. Kruse who stated he had blocked the tile, placed three round bales in the unnamed tributary downstream, and begun to pump the contaminated water back into the lagoon. Mr. Kruse indicated that no contamination would flow beyond the round bales.

3. On May 6, 2015, Bryon Whiting, DNR Field Office 3 environmental specialist senior, and Michelle Sabatini, DNR Field Office 3 environmental specialist, visited the site to investigate the manure release. They met with Mr. Marra and Mr. Kruse during the investigation. Mr. Marra and Mr. Kruse stated that all the manure was contained. The field office personnel observed the area where the manure entered the tile intake. They also observed the manure laden water leaving the tile outlet and entering the unnamed tributary. The discharge was foamy and grayish in color. Mr. Whiting conducted field tests above and below the round bales. The field test above the round bales indicated an ammonia concentration greater than 300 ppm and the field test below the round bales did not indicate an elevated concentration of ammonia. Mr. Whiting also collected laboratory samples of the impacted area and the results indicated the following:

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Location	E.coli ([MPN]/100mL)	Ammonia (mg/L)	BOD (mg/L)
Pool of liquid on ground next to intake tile	>2,400,000	5,200	25,000
Tile outfall at box culvert	100,000	56	340
Unnamed tributary upstream of the round bales	16,000	56	360
Unnamed tributary downstream of the round bales	20	0.49	12

Based on the field test results, the field office personnel recommended that Mr. Kruse continue pumping the water from the unnamed tributary.

4. On May 7, 2015, Mr. Whiting and Ms. Sabatini returned to the facility. A field test indicated the ammonia concentration above the round bales was still greater than 300 ppm. Mr. Kruse would continue to pump the water until normal water quality levels returned to the area. The field office personnel observed that the repairs to the riser tile had been completed to prevent future manure spills. On May 8, 2015, Mr. Whiting returned to the facility. A field test indicated that the ammonia concentration was dropping but not low enough to discontinue pumping the water from the area.

5. On May 9, 2015, Mr. Whiting returned to the facility. The field test indicated the ammonia concentration had dropped to <20 ppm. Mr. Whiting collected laboratory samples of the impacted area and the results indicated the following:

Location	Ammonia (mg/L)	BOD (mg/L)
Tile outfall at box culvert	1.5	3
Box culvert downstream of the round bales	1.4	4

Pumping of the water from the unnamed tributary would continue until the forecasted rain the following morning. On May 10, 2015, Mr. Kruse informed Mr.

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Whiting that the round bales had been removed and the pumping has been discontinued as discussed the previous day. Mr. Kruse informed Mr. Whiting the pumping of the liquid from the basin had been temporarily suspended because the ground was saturated from the rainfall.

6. On May 12, 2015, Mr. Whiting returned to the facility and collected a laboratory sample of the impacted water and the results indicated the water quality in the impacted area had returned to normal.

7. On June 10, 2015, Mr. Whiting contacted Mr. Kruse. He stated that approximately 1 million gallons of water had been removed from the unnamed tributary and placed in the earthen storage basin. He stated that approximately 1 million gallons of water had been removed from the basin and land applied. Mr. Kruse stated that all cleanup activities had been completed at the time of the conversation. Mr. Kruse informed Mr. Whiting that the tile intake structure located adjacent to the facility had not been removed, but that a solid piece of PVC pipe had been placed over the tile intake structure to ensure no manure spilled on the ground could enter the tile intake. He also stated that the tile intake structure remained closed. Mr. Whiting visited the facility on June 16, 2015 and confirmed that the above-mentioned steps had been completed at the facility.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.104 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 65.2(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. DNR Field Office 3 documented a manure discharge from the D & L Swine facility to an unnamed tributary. The above facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Additionally, the water being discharged was foamy and discolored. The above mentioned facts indicate a violation of the general water quality criteria.

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4. DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 – 3 Section IV. Conclusions of Law will recur because the permanent remedies taken by the facility as noted in Paragraphs 4 and 7, Section III. Statement of Facts.

V. ORDER

THEREFORE, the DNR orders and D & L Swine agrees to do the following:

1. D & L Swine shall operate and maintain all animal feeding operation structures in compliance with all applicable DNR rules and regulations; and
2. D & L Swine shall pay an administrative penalty in the amount of \$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 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 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 \$500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” The manure release at the D & L Swine facility occurred as a result of a broken tile rise. Any economic benefit was minimal; therefore no economic benefit is being assessed.

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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 that 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. DNR Field Office 3 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Additionally, DNR Field Office 3 expended a large amount of staff time with follow-up visits to the facility. Therefore \$400.00 is assessed for this factor.

Culpability – D & L Swine 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. Therefore, \$100.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of D & L Swine. For that reason D & L Swine waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

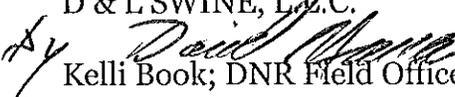
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties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



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 16th day of
September, 2015.



D & L SWINE, L.L.C.
By 
Kelli Book; DNR Field Office 3; EPA; I.C.1, VIII.D.1.a and VIII.D.3.a

Dated this 2nd day of
September, 2015.