

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

IN THE MATTER OF:

**LOGAN SWARTZ dba S & K
CUSTOM**

#1841 CMS Hardin County

ADMINISTRATIVE CONSENT ORDER
NO. 2016-AFO-04

TO: Logan Swartz
S & K Custom
1957 160th Street
Hampton, Iowa 50441

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Logan Swartz dba S & K Custom for the purpose of resolving violations resulting from a manure discharge that resulted in water quality violations. 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:

Adam Shaffer, Field Office 2
Iowa Department of Natural Resources
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: (641) 424-4073

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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LOGAN SWARTZ dba S & K CUSTOM

III. STATEMENT OF FACTS

1. Logan Swartz dba S & K Custom is a commercial manure service. Logan Swartz is a certified manure applicator.

2. On October 20, 2015, Mr. Swartz contacted DNR Field Office 2 to report a manure discharge to a tributary of the South Fork Iowa River in Hardin County. S & K Custom was hired by Iowa Select Farms to pump and apply manure for the Iowa Select Winter Finisher facility. Mr. Swartz stated an umbilical hose ruptured in a road ditch next to an open storm water tile intake at the intersection of M Avenue and 250th Street in Hardin County. Mr. Swartz stated the pump was turned off as soon as the hose ruptured; he estimated 1,000 gallons of manure was released. Mr. Swartz determined where the tile line entered the tributary and constructed a dam where the stream water could be pumped into an adjacent field and incorporated. The manure began discharging to the tributary approximately an hour and a half after the hose ruptured. By this time the pumping activity had already begun and the pumping continued through the night.

3. On October 21, 2015, a representative from Iowa Select Farms contacted DNR Field Office 2 to provide an update of the cleanup effort. He stated the tributary was now clean. He stated the field test conducted at the tile outfall indicated an ammonia concentration of 0.8 ppm; the field test conducted approximately 75 yards downstream indicated an ammonia concentration of 0.2 ppm; and the field test conducted at the dam, approximately a quarter mile downstream, indicated an ammonia concentration of 0.3 ppm. The Iowa Select Farms representative stated that S & K Custom pumped the area all night and then flushed the tile line with 10,000 gallons of water. DNR Field Office 2 told the Iowa Select Farms representative that S & K Custom could stop pumping but the dam could not be removed until the field office staff evaluated the tributary.

4. On October 21, 2015, Jeremy Klatt and Adam Shaffer, DNR Field Office 2 environmental specialists, went to the Iowa Select Winter Finisher facility and met with Mr. Swartz. He showed the field office personnel the area in the road ditch where the hose ruptured. The field office personnel observed barn lime ponded next to the tile intake. The barn lime was being used to soak up the manure. As it began to rain the rainwater, barn lime and manure combined in a ponded liquid. The field office personnel conducted a field test of the ponded liquid that indicated an ammonia concentration greater than 3 ppm. The field office personnel instructed Mr. Swartz to excavate the impacted area of the road ditch to prevent further manure contaminated water from entering the tile line. Mr. Swartz agreed to excavate the area.

5. The field office personnel continued to the area where the dam was constructed. They noted the ponded water behind the dam was clean and the field test of the ponded water indicated an ammonia concentration of less than 0.5 ppm.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LOGAN SWARTZ dba S & K CUSTOM

The water in the channel below the dam was also tested and ammonia was not detected.

6. The field office personnel went to the tile line outfall areas. The outfall was discharging clear water and the field test of the outfall water indicated an ammonia concentration of 1.0 ppm. The field office personnel walked along the tributary and conducted field tests along the way to the dam area. The ammonia levels decreased as they approached the dam area. They did not observe any evidence of manure remaining in the tributary. The field office personnel allowed for the dam to be removed.

7. On October 29, 2015, DNR issued a Notice of Violation letter to Mr. Swartz and S & K Custom for the violations discovered by DNR Field Office 2 in October 2015. The letter required a written report of the release to be submitted within 30 days of receipt of the letter. The letter also indicated the violations would be referred for further enforcement. On November 16, 2015, Mr. Swartz submitted the written report.

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 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 2's investigation it was determined manure was released to the tributary when the hose ruptured. The above-mentioned facts indicate a violation of these provisions.

3. 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. During DNR Field Office 2's investigation it was determined manure was released to the tributary when the hose ruptured. The above-mentioned facts indicate a violation of this provision.

4. Iowa Code section 459.311 and 567 IAC 65.2(7) state that manure from an animal feeding operation or its manure control facilities shall be disposed of in a manner which will not cause surface water or groundwater pollution. During DNR Field Office 2's investigation it was determined manure was released to the tributary

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LOGAN SWARTZ dba S & K CUSTOM

when the hose ruptured. The above-mentioned facts indicate a violation of these provisions.

5. Based on the fact Logan Swartz dba S & K Custom has no previous violations, the DNR has determined that there is no likelihood that the violations identified in this administrative consent order will recur if Logan Swartz dba S & K Custom implements the requirements set forth in Paragraphs 1-2, Section V [Order] of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Logan Swartz dba S & K Custom agrees to do the following:

1. Logan Swartz dba S & K Custom shall ensure that all handling, transferring and land application of manure is done in a manner that does not result in a manure discharge to a water of the state;
2. Logan Swartz dba S & K Custom shall cover all tile intakes during future manure application activities; and
3. Logan Swartz dba S & K Custom shall pay an administrative penalty in the amount of \$1,000.00 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 \$1,000.00. 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LOGAN SWARTZ dba S & K CUSTOM

benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Logan Swartz dba S & K Custom gained a minimal economic benefit by not properly covering all storm water tiles before starting manure application activities. Based on the above-mentioned information \$50.00 is being assessed.

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 2 documented a manure release to a tributary that posed a potential risk to the environment. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$750.00 is assessed for this factor.

Culpability – Logan Swartz dba S & K Custom has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. However, Mr. Swartz constructed a dam to stop the flow of the manure and immediately notified the DNR of the manure release. Therefore, \$200.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Logan Swartz dba S & K Custom. For that reason Logan Swartz dba S & K Custom 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LOGAN SWARTZ dba S & K CUSTOM



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 27th day of
February, 2016.



LOGAN SWARTZ dba S & K CUSTOM

Dated this 19 day of
February, 2016.

Kelli Book, DNR Field Office 2, EPA, VIII.D.1 and VIII.D.3