

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

IN THE MATTER OF:

**C&D SERVICES, LLC**

#1647 CMS Plymouth County

ADMINISTRATIVE CONSENT ORDER  
NO. 2016-AFO- 07

TO: Chris DeRocher, Registered Agent  
C&D Services, LLC  
33609 260<sup>th</sup> Street  
LeMars, Iowa 51031

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and C&D Services, LLC (C&D Services) 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:**

Lois Benson, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand, Gateway North, 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) 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. C&D Services is a commercial manure service. Chris DeRocher is the certified manger and the service has five certified representatives.
2. On October 30, 2015, Mr. DeRocher contacted DNR Field Office 3 to report a manure spill. C&D Services was preparing to apply manure for the Steve Sitzman Site 3, Mr. DeRocher stated that while priming a hose a leak was discovered near the coupler. The hose was not under pressure and was shut off immediately. Mr. DeRocher estimated that only 500 to 1,000 gallons of manure had been spilled. He stated that most of the manure ended up in a bean field, but some of the manure flowed down the grass waterway and reached a tributary of Plymouth Creek.
3. Jennifer Christian and Lois Benson, environmental specialists with DNR Field Office 3, investigated the manure spill on the same day. The field office personnel first visited a bridge location on Highway K49, south of the entrance to the Plymouth Dairy facility. The water had a strong swine manure odor and a field test indicated an ammonia concentration of 7.5 mg/L. The field office personnel also collected a laboratory sample from this location and the laboratory sample result indicated an ammonia concentration of 51 mg/L.
4. The field office personnel proceeded to a downstream bridge north of the Plymouth Dairy facility. There was no odor in the water and the water was clear. The field test indicated an ammonia concentration of 0.2 mg/L.
5. The field office personnel met with Mr. DeRocher at the location of the spill. He stated that he had constructed a small dam in the grass waterway to stop the flow of manure. Mr. DeRocher stated he had walked the length of the tributary and only observed one area of foam. He believed this was the only area of the tributary with manure. Mr. DeRocher explained that C&D Services had borrowed extra hose because the job required a greater length of hose than what C&D Services had and the hose had a small one inch hole near the coupler, which caused the manure release.
6. After meeting with Mr. DeRocher, the field office personnel went upstream of the K49 bridge. The water was clear and odorless. The field test detected no ammonia.
7. On November 19, 2015, DNR issued a Notice of Violation letter to C&D Services for the violations discovered by DNR Field Office 3 in October 2015. The letter indicated the violations would be referred for further enforcement.

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**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 3's investigation it was determined while C&D Services was preparing to land apply manure that an equipment failure resulted in manure being released into a tributary of Plymouth Creek. The above-mentioned facts indicate a violation of these provisions.

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 field office personnel noted turbid water, a manure odor and elevated pollutants. The above mentioned facts indicate violations of the general water quality criteria.

4. Based on the fact C&D Services 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 C&D Services implements the requirements set forth in Paragraphs 1-2, Section V [Order] of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and C&D Services agrees to do the following:

1. C&D Services 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. Within 30 days of the date the Director signs this administrative consent order, C&D Services shall develop a Plan of Action detailing a preventative maintenance program for equipment. The Plan of Action shall also detail how employees will be trained in proper operation of the equipment. It shall also include information on how C&D Services will control and contain any manure release including a detailed plan on how manure will be contained in the event of a release. A copy of the Plan of Action shall be submitted to DNR Field Office 3 within 45 days of the date the Director signs this administrative consent order and the Plan of

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Action shall be implemented by C&D Services immediately upon receipt of approval from DNR Field Office 3; and

3. C&D Services 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 benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” C&D Services gained a minimal economic benefit from borrowing a hose to complete the project rather than to buy more hose or turn down the project. Based on the above-mentioned information \$100.00 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 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. Therefore, \$700.00 is assessed for this factor.

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FIELD OFFICE 3

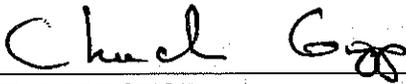
Culpability – C&D Services has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. C&D Services constructed a dam to stop the flow of the manure and immediately notified the DNR of the manure release. Therefore, \$200.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of C&D Services. For that reason C&D Services 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.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 14<sup>th</sup> day of  
March, 2016.

  
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C&D SERVICES, LLC

Dated this 29 day of  
January, 2016.

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