

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

IN THE MATTER OF:

CHAMNESS TECHNOLOGY, INC.

**ADMINISTRATIVE CONSENT ORDER
NO. 2016-WW- 21**

TO: Gary Chamness
2255 Little Wall Lake Road
Blairsburg, IA 50034

I. SUMMARY

This administrative consent order ("Order") is entered into between Chamness Technology, Inc. ("Chamness") and the Iowa Department of Natural Resources ("DNR") for the purpose of resolving a prohibited discharge to a water of the state. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz
Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Ph. 712-243-1934

Relating to legal requirements:

John Crotty
Legal Services Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph. 515-725-8249

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code 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 the rules adopted or permits issued pursuant thereto, and pursuant to Iowa Code 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. On January 7 and 8, 2016, DNR Field Office 4 received calls from concerned citizens alleging that improper application of fertilizer was occurring on fields southeast of Harlan, Iowa.

2. DNR staff visited the site in question on January 8, 2016. They observed liquid being land applied in the SE ¼ of Section 30 of Center Township by Robert Staiert. Mr. Staiert was applying the liquid under a contract with Chamness. The liquid was being pumped to the site through an umbilical hose from the wastewater lagoons at Essentia Protein Solutions.

3. DNR staff observed pools of darkly colored, odorous liquid in the land application field. They observed that application had occurred within 6-9 feet of the West Nishnabotna River.

4. DNR staff observed that the liquid being applied was running off into the river. Mr. Staiert began constructing a berm in the southwest corner of the application field in an attempt to prevent any further runoff.

5. DNR staff collected samples of the runoff liquid for lab analysis. Lab results showed the liquid had high levels of fecal coliforms, ammonia nitrogen, phosphorus, total Kjeldahl nitrogen, carbonaceous biological oxygen demand, and total dissolved solids.

IV. CONCLUSIONS OF LAW

DNR and Chamness agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission ("Commission").

2. The facts stated in Section III of this Order constitute violations of Iowa Code 455B.186.

V. ORDER

Therefore, DNR orders and Chamness agrees to do the following:

1. Chamness shall cease all discharges to waters of the state.
2. Chamness shall prepare a written contingency plan for each job involving the land application of liquids originating from a wastewater disposal system. The

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contingency plan shall set out alternative disposal or storage methods that shall be used in the event that weather conditions prohibit safe land application. The contingency plan shall be signed by a responsible company official and a copy shall be made available to each employee or contractor performing the application. A copy of any contingency plan shall be provided to DNR upon request.

3. Chamness shall pay an administrative penalty of \$5,000 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter.

2. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$5,000 for the violations described above. The following factors were considered in the assessment of this penalty:

a. Economic benefit. Chamness land applied liquid from the Essentia wastewater lagoons under inappropriate conditions. By doing so, Chamness avoided costs for hauling the liquid to a wastewater treatment facility or a suitable application area. \$1,000 is assessed for this factor.

b. Gravity of the violation. The unpermitted discharge of pollutants to a water of the state negatively affects the beneficial uses of Iowa's rivers and streams. \$1,000 is assessed for this factor.

c. Culpability. Chamness land applied liquid from a wastewater lagoon on partially frozen land. This application occurred within six to nine feet of the river bank. Chamness knew, or should have known, that runoff to a water of the state could occur. \$2,000 is assessed for this factor.

d. Aggravating factors. DNR took enforcement action against Chamness in 2008 for an illegal discharge to a water of the state and in 2010 for violating composting permit conditions, failing to timely report a discharge, and violating the terms of a prior order. The Iowa Attorney General's office took enforcement action against Chamness in 2011 for illegal discharges to a water of the state and for violating the terms of a prior order. \$1,000 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Chamness. By signing this Order, all rights to appeal this Order are waived.

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 455B.191.



Bruce Troutman for
CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES
Dated this 16 day of
November, 2016
chuck Gipp



CHAMNESS TECHNOLOGY, INC.
Dated this 23rd day of
OCTOBER, 2016

Field Office #4; John Crotty; EPA; I.C.1