

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

IN THE MATTER OF:

**SWINE GRAPHICS ENTERPRISES,  
LLLP (f/k/a SWINE GRAPHICS  
ENTERPRISES, LP)**

**Clarke County, Iowa  
AFO #61303**

ADMINISTRATIVE CONSENT ORDER  
NO. 2016-AFO- 24

TO: Lyle Andresen, Environmental Manager  
Swine Graphics Enterprises, LLLP  
1960 205<sup>th</sup> Avenue  
Osceola, Iowa 50213

Mike Blaser, Registered Agent  
BrownWinick Law Firm  
666 Grand Avenue, Suite 2000  
Des Moines, Iowa 50309

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Swine Graphics Enterprises, LLLP (f/k/a Swine Graphics Enterprises, LP) (Swine Graphics) for the purpose of resolving water quality violations resulting from a manure discharge at a Swine Graphics' animal feeding operation in Clarke County, Iowa. 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:**

Jeff Theobald, Field Office 5  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 200  
Windsor Heights, Iowa 50324  
Phone: 515/725-0373

**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

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**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 a violation 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.

**III. STATEMENT OF FACTS**

Swine Graphics neither admits nor denies paragraphs 2, 3, 5 and 6 of this Section III [Statement of Facts] and enters into this Administrative Consent Order for settlement purposes only.

1. Swine Graphics owns and operates an animal feeding operation located at 1124 Bobcat Street, Grand River, Iowa (Section 29, Doyle Township, Clarke County). The facility is referred to as ADL VI Sow Farm and consists of five confinement buildings with below building pits that drain to two lagoons. The facility is a 3,827 head (1,530.8 animal units) swine operation.

2. On April 4, 2016, DNR Field Office 5 received a complaint from Leanne Boles indicating that a pond on her property was full of manure. She explained that the Swine Graphics facility was located just north of her property. She stated she believed the manure was coming from the facility. Ms. Boles stated that she and her husband discovered the manure in the pond on the previous day when they went to the pond. They contacted the onsite personnel at the Swine Graphics facility and informed them that the pond looked and smelled like manure. The site manager at the facility indicated that the pond was likely turning over for the spring.

3. On the same day, Jeff Theobald and Bill Gibbons, DNR Field Office 5 environmental specialists, investigated the complaint. Mr. Theobald and Mr. Gibbons observed the pond and confirmed that it was inundated with manure. They observed a manure/water mixture being discharged from the pond.

4. Mr. Theobald and Mr. Gibbons met with Lyle Andresen, Swine Graphics, at the facility. Mr. Andresen stated that the cause of the manure release at the facility had been discovered. He explained that the transfer pipe from the buildings to the lagoons had been breached at the aerator control house, located next to the northeast corner of the east lagoon. The field office personnel tracked the flow of manure from the pipe south through a marshy area below the lagoons to a ravine and eventually to the Boles' pond. Mr. Andresen indicated that between March 30 and 31, 2016 the employees at the facility pulled the plugs for one building and three rooms. He

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estimated that between 125,000 and 250,000 gallons of manure had been released. Swine Graphics personnel promptly plugged the overflow pipe to the pond and started to repair the broken transfer pipe at the facility.

5. The field office personnel spoke to Terry Boles who indicated that before the manure release the pond was not discharging, but once the manure entered the pond the discharge from the pond began. The field office personnel tracked the discharge from the pond to an unnamed tributary for two miles before entering the Thompson River.

6. The field office personnel collected laboratory samples and conducted field tests of the impacted areas. The laboratory sample results and field test results are shown below:

Location	Laboratory Sample for Ammonia (mg/L)	Field Test for Ammonia (0-3mg/L)
100 yards downstream of the Boles' Pond outlet	290	>3
Clark-Decatur Street Bridge of the Unnamed Tributary downstream of the outlet	N/A	>3
Unnamed Tributary to Thompson River before it entered into the River	44	>3
Thompson River upstream (~50 feet) of where the Unnamed Tributary entered the River	<0.050	~0.60
Thompson River downstream (~50 feet) of where the Unnamed Tributary entered the River	9.9	~3.0
2.5 miles downstream in Thompson River at the R15 Bridge	N/A	~0.36

7. On April 6, 2016, the field office personnel returned to the facility. Swine Graphics had started to pump the pond out. Mr. Andresen indicated that 256,000 gallons of the water/manure mixture was applied to a hay field. Swine Graphics also constructed two dams near the lagoons to prevent any more manure coming from the marshy area. Swine Graphics was pumping the water/manure mixture from the dammed areas of the lagoons. The field test in the river continued to show elevated ammonia levels; the field office personnel instructed Mr. Andresen to flush the ravine ✓

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area because of the field test result. On April 8, 2016, the field office personnel returned to the facility. Mr. Andresen stated that nearly 1.5 million gallons of the water/manure mixture had been pumped from the pond back into the facility's lagoons and land applied on the hay fields. The field tests in the area continued to show elevated ammonia levels. The field office personnel instructed Mr. Andresen to flush and clean the ravine. On April 13, 2016, the field office personnel returned to the facility. Swine Graphics had dredged the pond of mud and manure solids. The mud and manure would be spread once the pile dried. The ravine below the pond continued to have elevated ammonia levels. The field office personnel instructed Mr. Andresen to put the dam back up and re-flush the area. On April 18, 2016, the field office personnel contacted Mr. Andresen and he stated the ravine had not been flushed yet. He indicated that the pond was still being dredged. The field office personnel instructed him to have the ravine flushed. On April 21, 2016, the field office personnel spoke to Mr. Andresen and he stated that the ravine had been flushed and the ammonia levels were at 0.47 mg/L.

8. On April 14, 2016, DNR issued a Notice of Violation letter to Swine Graphics for the violations discovered during the field office investigation. The letter required Swine Graphics to submit a plan of action to the field office by May 20, 2016 detailing what changes would take place at the facility to ensure that future releases would not occur. The letter also informed Swine Graphics that the matter would be referred for further enforcement.

9. On May 12, 2016, the field office personnel returned to the facility. Mr. Andresen stated the water in the pond was being aerated to lower the ammonia levels. The field office personnel instructed Mr. Andresen that water could not be placed back into the pond until the ammonia levels were reduced. Mr. Andresen stated that Swine Graphics was constructing a containment system below the lagoons that could hold 1.5 million gallons of liquid as a safety precaution in the event of another manure release from the facility.

10. On May 19, 2016, Swine Graphics submitted its Plan of Action to the field office. Swine Graphics indicated that it was developing an Environmental Management System (EMS) that would include record keeping, inspection and training procedures. The EMS would first be used at ADL VI Sow Farm and could eventually be rolled out to other Swine Graphics facilities. Swine Graphics also stated that it had constructed a 1.5 million gallon secondary containment system downstream from the lagoons and barns designed to retain a discharge from the lagoons and/or the barns and prevent the discharge from leaving the property. The Plan of Action also included a proposed plan for monthly farm manager training, on-site manager training, and the development of a lagoon inspection checklist. Swine Graphics also submitted proposed Standard Operating Procedures for the inspection of the manure transfer lines and the lagoons.

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11. On September 2, 2016, Mr. Andresen emailed Mr. Theobald with a status update of the work done at the facility. The Boles pond was refilled during the week of July 4, 2016 and everything was reseeded by July 20, 2016. The construction of the emergency containment was completed on June 17, 2016. Mr. Andresen stated the water samples were clean and the pond would soon be restocked with fish.

#### IV. CONCLUSIONS OF LAW

Swine Graphics neither admits nor denies Paragraphs 2-5 of this Section IV [Conclusions of Law] and enters into this Administrative Consent Order for settlement purposes only.

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 sections 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 5's investigation in April 2016, it was determined that manure from the Swine Graphics facility was discharged to a pond, then to an unnamed tributary, and eventually to the Thompson River. 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 5's investigation in April 2016, it was determined that manure from the Swine Graphics facility was discharged to a pond, then to an unnamed tributary, and eventually to the Thompson River. The above facts indicate violations of this provision.

4. 567 IAC 65.2(9) requires that a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release to notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Swine Graphics failed to notify the DNR of the manure release that occurred at the facility. The above mentioned facts indicate a violation of this provision.

5. 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 DNR personnel observed the pond

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filled with manure. The laboratory results indicated elevated pollutants. The above mentioned facts indicate violations of the general water quality criteria.

6. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-5, Section IV [Conclusions of Law] will occur again if Swine Graphics maintains the secondary containment system outlined in Paragraph 10, Section III [Statement of Facts] and implements the requirements set forth in Paragraphs 1-3, Section V [Order] of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and Swine Graphics agrees to do the following:

1. Swine Graphics shall operate and maintain all animal feeding operation structures and production areas at the facility in compliance with all applicable rules and regulations;
2. Swine Graphics shall implement, maintain and follow at the facility the weekly check list and Standard Operating Procedure that was submitted to the DNR on May 19, 2016. In addition, Swine Graphics shall incorporate the following actions into the Standard Operating Procedures: 1) inspect any above ground manure transfer lines during manure transfer; 2) inspect the area surrounding all above ground transfer lines during manure transfer; and 3) maintain records of the inspections on-site, available for review, on a one-year rolling schedule;
3. Swine Graphics shall maintain the secondary containment system referenced in Paragraph 10, Section III [Statement of Facts] and shall develop and implement a maintenance plan for the secondary containment system. The maintenance plan shall be submitted to DNR Field Office 5 within 30 days of the date the Director signs this administrative consent order; and
4. Swine Graphics shall pay an administrative penalty in the amount of \$8,500.00 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.

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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 \$8,500.00. 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.” While the failure of the manure transfer line could not be predicted, Swine Graphics gained an economic benefit by not previously adopting an inspection protocol during manure transfers. Therefore, \$500.00 is assessed for this factor.

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 5 documented a manure discharge that impacted a water of the state. The violations included in this administrative consent order threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all regulated animal feeding operations in this state. As mitigating factors, the manure release was accidental, Swine Graphics expended considerable efforts to remedy the situation, and voluntarily constructed a large secondary containment structure designed to prevent any possible future release from impacting a water of the state without DNR requiring it to do so. Therefore, \$3,000.00 is assessed for the violations listed in Paragraphs 2, 3 and 5 of Section IV Conclusions of Law; and \$1,000.00 is assessed for the violation listed in Paragraph 4 of Section IV Conclusions of Law for a total of \$4,000.00 assessed for this factor.

Culpability – Swine Graphics 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. Swine Graphics was notified of the manure release a day before the DNR was notified of the release and did not respond to the manure release and did not notify the DNR of the manure release. Therefore, \$2,000.00 is assessed for the violations listed in Paragraphs 2, 3 and 5 of Section IV Conclusions of Law and \$2,000.00 is assessed for the violation

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listed in Paragraph 4 of Section IV Conclusions of Law for a total of \$4,000.00 assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

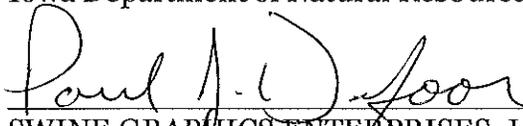
This administrative consent order is entered into knowingly and with the consent of Swine Graphics. For that reason Swine Graphics waives the right to appeal this administrative consent order or any part thereof.

**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 23<sup>rd</sup> day of  
November, 2016.

  
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SWINE GRAPHICS ENTERPRISES, LLLP  
(f/k/a SWINE GRAPHICS ENTERPRISES, LP)

Dated this 10<sup>th</sup> day of  
Nov, 2016.

Facility #61606; Kelli Book, DNR Field Office 5, EPA, VIII.D.1.a, VIII.D.3.a