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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **SWINE GRAPHICS ENTERPRISES, LLLP f/k/a SWINE GRAPHICS ENTERPRISES LP** **Union County, Iowa** **AFO#58653**	ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- 25

TO: Lyle Anderson, Environmental Manager
Swine Graphics Enterprises LP
1960 205th 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 the Swine Graphics animal feeding operation in Union 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:
Wendy Wittrock, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/2431934

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, IA 50324
Phone: 515/725-9572

Payment of penalty to:
Director of the 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 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 2-5 of this Section III [Statement of Facts].

1. Swine Graphics owns and operates an animal feeding operation located in Section 31, Sand Creek Township, Union County. The facility consists of four confinement buildings with below building pits. The facility is a 3,840 head (1,536 animal units) swine finisher operation.

2. On January 24, 2016, DNR Field Office 4 received a complaint regarding a manure discharge from the Swine Graphics facility. The complainant claimed there was a manure discharge from the below building pits of the north building at the facility. The complainant stated the manure discharge had been occurring for several hours.

3. On January 24, 2016, Wendy Wittrock and Erin Ogle, DNR Field Office 4 environmental specialists, investigated the complaint. They attempted to contact a representative from Swine Graphics but were unable to contact anyone with the facility at the time of the initial investigation. The field office personnel met with the complainant who showed them the location of the discharge. The group followed the discharge to the entrance of a pond south of the facility. The field tests indicated that the manure was entering the pond. The results of the High Ammonia Test Kit (field test that detects ammonia up to 300 mg/L) indicated ammonia levels between 250 mg/L and 300 mg/L and the results of the Low Ammonia Test Kit (field test that detects ammonia up to 10 mg/L) indicated that an ammonia of greater than 10 mg/L. The manure was not leaving the pond's outlet and was not discharging to the unnamed tributary of Grand River. Later in the evening a representative from Swine Graphics contacted Ms. Ogle. The representative stated the call was the first time Swine Graphics had heard of the discharge and representatives were at the facility assessing the situation.

4. On January 25, 2016, Ms. Wittrock and Mr. Ogle returned to the facility to continue the investigation and met with Lyle Andresen, Swine Graphics representative. Manure that had been on the snow covered ground had been scraped up and placed in the pits. At the time of the investigation, Swine Graphics had not been able to identify the cause of the manure overflow. Subsequently, Swine Graphics determined that the only plausible cause for the manure overflow was from a power-washing crew turning the sprinkler system in the barn on and leaving it on overnight, causing the pit to fill up and overflow. The water at the pond

entrance was turbid and discolored. The field office personnel collected laboratory samples from the pond entrance, the pond outlet and approximately 1,200 feet downstream from the pond outlet. The laboratory sample results are noted below.

Sample Location	**E. Coli (MPN/loom1)**	**Ammonia (mg/L)**	**Biological Oxygen Demand (SOD)** (mg/L)
Pond Entrance (Discharge Point)	2,000	120	270
Pond Outlet	< 10	.07	12
Downstream	10	< .05	< 2

5. On January 29, 2016, Ms. Ogle returned to the facility to observe the clean-up process after the snow melt. A field test at the pond outlet indicated an ammonia concentration of 1 ppm. Ms. Ogle noted that the manure that had reached the entrance of the pond had thawed. However, Swine Graphics had placed sand bags at the entrance of the pond to prevent the manure from entering the pond. Swine Graphics pumped approximately 100 gallons of manure and water from the pond and land applied the mixture of manure and snow melt. Ms. Ogle did not observe any manure flow during this visit and there was very little manure frozen under the ice near the pond entrance.

6. On February 18, 2016, DNR Field Office 4 issued a Notice of Violation letter to Swine Graphics for the violations discovered during the January investigation. On February 24, 2016, DNR Field Office 4 received the written Report of Hazardous Conditions from Swine Graphics.

IV. CONCLUSIONS OF LAW

Swine Graphics neither admits nor denies Paragraph 2 of this Section 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 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 4's investigation in January 2016, it was determined that manure from the Swine Graphics facility was discharged to a pond. 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 4's investigation in January 2016, it was determined that manure from the Swine Graphics facility was discharged to a pond. The above facts indicate violations of this provision.

4. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-3, Section IV [Conclusions of Law] will occur again if Swine Graphics implement the requirements set forth in and Paragraphs 1 and 2, 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 the Swine Graphics facility in compliance with all applicable rules and regulations;

2. Swine Graphics shall install and maintain a timer or timers with automatic shutdown capability on its sprinkler systems at the Swine Graphics facility to ensure that the manure storage pits will not overflow or discharge in the future due to sprinkler use; and

3. Swine Graphics 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." Swine Graphics gained an economic benefit by failing to properly maintain the manure storage pits by failing to monitor the pit levels. It is estimated that Swine Graphics gained a minimal economic benefit of at least $100.00 and that amount is being 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 4 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. Therefore, $500.00 is 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. Therefore, $400.00 is 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.

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 23rd day of November, 2016

SWINE GRAPHICS ENTERPRISES, LLLP

Dated this 9th day of Nov, 2016

Facility #58653; Kelli Book, DNR field Office 4, EPA, VIII.D.1a, VIII.D.3.a