

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

IN THE MATTER OF:

**KINGSLEY SOW, L.L.C.**

**Plymouth County, Iowa  
AFO #61244**

**ADMINISTRATIVE CONSENT ORDER  
NO. 2020-AFO- 14**

**TO: Edean M. Murray, Registered Agent  
530 Erie Street, Box 27  
Storm Lake, Iowa 50588**

**Dave Wittry, Site Manager  
508 Market Street  
Audubon, Iowa 50025**

**Nurta Tech, Inc., Home Office  
894 630<sup>th</sup> Street, Box 1225  
Storm Lake, Iowa 50588**

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kingsley Sow, L.L.C. (Kingsley Sow) for the purpose of resolving water quality violations resulting from a manure discharge from its animal feeding operation in Plymouth County. This administrative consent order requires Kingsley Sow to: 1) operate and maintain all structures at its facility in compliance with all applicable DNR rules and regulations; 2) hire a professional engineer to evaluate the pump station and all piping at the facility, including the piping to the existing earthen basin; 3) submit a written evaluation, along with the plan for repair and improvement; 4) complete the repairs and improvements; and 5) pay an administrative penalty in the amount of \$5,500.00.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

**Tom Roos, DNR Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall – 1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177**

**Relating to legal requirements:**

**Kelli Book, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/210-3408**

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**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 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**

1. Kingsley Sow owns and operates a confined animal feeding operation located 28433 Polk Avenue, Kingsley, Iowa (Section 3, Elkhorn Township, Plymouth County). The operation has a capacity of 4,448 head of manure swine and 480 head of nursery pigs (1,827.20 animal units).

2. On February 27, 2020, Dave Wittry, Kingsley Sow manager, contacted DNR Field Office 3 to report a manure spill from the facility to a tributary of Johns Creek. Mr. Wittry stated that a section PVC pipe separated between the facility's lift station and earthen basin. The manure entered an intake and discharged along the north edge of the property where it ran through the field, under the road and into a tributary of Johns Creek.

3. On February 27, 2020, Doyle McKeever, DNR Field Office 3 environmental specialist, and Tom Roos, DNR Field Office 3 environmental specialist senior, began the investigation of the spill. They confirmed the release occurred at the facility's lift station and traced the release to the tributary. At the time of the investigation the manure flow had slowed and the DNR personnel requested the Kingsley Sow employees construct a dirt berm to prevent any further impact to the tributary. Kingsley Sow employees constructed the berm and began to pump manure from the tributary. It was later reported that Kingsley Sow was able to pump approximately 1,000 gallons of manure/water from the tributary.

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4. The field office staff observed the impacted areas of the tributary and collected laboratory samples. They noted that the tributary was turbid, so the staff was unable to conduct field tests of the tributary. No live or dead fish were observed in the impacted area of the tributary. The sample results are shown below:

<b>Location</b>	<b>E.Coli (mg/L)</b>	<b>Ammonia Nitrogen as N (mg/L)</b>	<b>BOD, 5 Day (mg/L)</b>	<b>Total Suspended Solids (mg/L)</b>
Kingsley Sow Field – flow path manure in field on the west side of Polk Avenue	>2,400,000	1,700	6,500	9,400
Kingsley Sow Creek – tributary east side of Polk Avenue	>2,400,000	2,300	8,800	7,400
Kingsley Sow Property Edge – 1,500 feet downstream of discharge point	24,000	33	46	34

5. On March 12, 2020, DNR issued a Notice of Violation and Notice of Referral letter to Kingsley Sow for the violations discovered during the February 2020 investigation. The letter informed Kingsley Sow that the matter was being referred for further enforcement.

6. Kingsley Sow entered into an Administrative Consent Order in November 2017 for a discharge of manure from the facility to the tributary of Johns Creek. The discharge occurred when a cleanout pipe was cut during mowing and the manure flowed to the tributary. Kingsley Sow agreed to operate the facility in compliance with DNR's rules and regulations; to develop a detailed plan of action to ensure that no further manure discharges occur at the facility and to pay a \$3,000.00 administrative penalty. The administrative penalty was paid in November 2017. The Plan of Action included semi-annual training sessions for the Kingsley Sow employees regarding the following topics: proper maintenance of earthen basin, proper mowing and weed control practices, conduct proper inspections, timely reporting of damaged equipment or piping, timely repairs of damaged equipment or piping, inspection for manure discharges, and proper handling of manure discharges. The field office approved this plan.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality

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standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the February 2020 investigation, DNR Field Office 3 observed that manure from the Kinsley Sow facility had entered the tributary of Johns 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 above-mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 459.103 provides that the 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.

5. 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 the February 2020 investigation, DNR Field Office 3 observed that manure from the Kinsley Sow facility had entered the tributary of Johns Creek. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Kingsley Sow agrees to do the following:

1. Kingsley Sow shall operate and maintain all structures at its facility in compliance with all applicable DNR rules and regulations;
2. Kingsley Sow shall hire a professional engineer to evaluate the pump station and all piping at the facility, including the piping to the existing earthen basin. The written evaluation, along with the plan for repair and improvement, shall be submitted to DNR Field Office 3 for approval within 60 days of the date the Director signs this administrative consent order. The repairs and improvements shall be completed within 60 days of written approval from DNR Field Office 3;

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3. Kingsley Sow shall pay an administrative penalty in the amount of \$5,500.00 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.

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 \$5,500.00. 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. Kingsley Sow has gained an economic benefit by avoiding the costs associated with proper equipment and maintenance of the lift station at the facility. It is estimated that Kingsley Sow has gained an economic benefit of at least \$500.00 and that amount 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. The release of manure resulted in violations of the animal feeding operation regulations. The violations threaten the integrity of the animal feeding operation regulations. Therefore, \$2,000.00 is assessed for this factor.

**Culpability** – Kingsley Sow has a duty to know the regulations and to be aware that its actions are subject to the regulations. Kingsley Sow was issued a previous administrative consent order in 2017 for a similar release of manure to the tributary resulting in water quality violations. As part of the 2017 administrative consent

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order, the facility was to take steps to ensure that future discharges would not occur. Based on the information above, \$3,000.00 is being assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

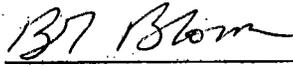
This administrative consent order is entered into knowingly and with the consent of Kingsley Sow. For that reason, Kingsley Sow waives the right to appeal this administrative consent order or any part thereof.

**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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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Dated this 26th day of  
May, 2020.

  
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KINGSLEY SOW, L.L.C.

Dated this 22 day of  
May, 2020.

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