

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

<b>IN THE MATTER OF:</b>  <b>SCHULT ENTERPRISES, LLC, MICHAEL SCHULT d/b/a SCHULT ENGINEERING</b>	<b>ADMINISTRATIVE CONSENT ORDER 2007-HC-01</b>
---	--

<b>TO: Schult Enterprises, LLC Reg. Agent, Michael R. Schult 1907 Swan Dr. Camanche, IA 52730</b>	<b>Michael Schult d/b/a Schult Engineering 120 Lost Grove Rd. Princeton, IA 52768</b>
---	---

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Schult Enterprises, LLC (Schult Enterprises) and Michael Schult, d/b/a Schult Engineering (Schult Engineering), enter into this consent order for the purpose of resolving regulatory violations and monetary penalties associated with a failure to properly report the occurrence of a hazardous condition and an unpermitted discharge of pollutants to water of the state. In the interest of avoiding litigation, the parties to this agreement have agreed to the terms as provided below:

Schult Enterprises and Schult Engineering are jointly and severally responsible to pay an administrative penalty of \$4,000. A payment of \$2,000 by check mad out to the "Iowa Department of Natural Resources" is due no later than July 13, 2007. The balance of the \$2,000 assessment is waived upon timely completion of spcified pollution control measures.

For further details, see Division V below.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**  
Kurt Levetzow  
Iowa Department of Natural Resources  
Field Office 6, 1004 West Madison  
Washington, Iowa 52353  
Ph: 319/653-2135

**Relating to appeal rights:**  
David Wornson, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-5817

57930 JUL16'07 PM 4:17

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
SCHULT ENTERPRISES, LLC AND MICHAEL SCHULT**

**II. JURISDICTION**

This order is issued pursuant to Iowa Code sections 455B.174(3) and 455B.175(1) which authorize 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 promulgated or permits issued pursuant thereto. Iowa Code sections 455B.382-384 authorize the Department to take actions necessary to abate hazardous conditions. Iowa Code section 455B.109 and agency rules in chapter 567 Iowa Administrative Code (I.A.C.) 10 authorize the Director to assess administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B.

**III. STATEMENT OF FACTS**

1. Schult Enterprises, LLC (Schult Enterprises) is the owner of property located at 120 Lost Grove Road, Princeton, Iowa. Michael Schult, d/b/a Schult Engineering and Pattern Company, (Schult Engineering) operates a metal fabrication and machining business at this location. As part of its business, Schult Engineering uses metal cutting coolants and lubrication chemicals (lubricating chemicals) including a chemical known as TRIM E206.
2. The Department field office has investigated three incidents since May of 2006 involving the spilling and release of lubricating chemicals from metal storage containers which has entered a storm water intake and discharged through a storm water outfall to the Mississippi River.
3. On May 15, 2006, the Department investigated a citizen complaint alleging that chemicals were leaking from an open dumpster on the Schult Enterprises property, entering a storm water intake and discharging a whitish colored substance at the storm water outfall into the Mississippi River. The Department investigation concluded that lubricating chemicals were in fact leaking from an open dumpster used to store and dispose of metal cutting wastes, accumulating on site, entering a storm water intake and discharging to the Mississippi River at a storm water outfall. The inspector observed an oily and whitish colored chemical at the dumpster and the storm water intake.
4. Michael Schult submitted a report of corrective actions dated May 17, 2006. The report states Schult Engineering had installed a waterproof metal waste storage container and stated that efforts had begun to clean the affected area. The Department issued a notice of violation dated June 9, 2006 which advised that the discharge of pollutants to water of the state without a NPDES permit is a violation of Department rules. The letter acknowledged the corrective action taken by Schult Engineering and stated that due to this timely response the Department would not initiate further legal enforcement action at that time.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
SCHULT ENTERPRISES, LLC AND MICHAEL SCHULT**

5. The Department received a citizen complain on December 14, 2006 alleging that "machine cutting fluid" had spilled at the facility, entered the storm water intake and discharged to the Mississippi River. At the time of inspection, Michael Schult toured the facility with the Department inspector and explained that an employee had allowed a mixture of cutting chemical and water to overflow from a 250 gallon mixing unit. The overflow entered a storm water intake and eventually into the Mississippi River at the storm water discharge point. The Department issued a notice of violation dated December 22, 2006 citing the prior May 2006 incident. The notice required Schult Engineering to develop a "standard operating procedure" to better manage onsite use and storage of chemicals and to prevent future spills and storm water discharges. Michael Schult submitted a written report dated January 11, 2007 which included a "Hazardous Materials Handling" policy.
6. The Department received a third citizen complaint at 9:07 AM on March 9, 2007 alleging that the complainant had observed a sheen along the shore of the Mississippi River that appeared to emanate from the storm water intake at the Schult Enterprises property and discharge at the storm water outfall on the river. Digital photos taken by the complainant at about 9:00 AM were submitted to the Department and alleged to document a sheen on the river and evidence of the source of the discharge at the Schult Engineering facility.
7. The Department conducted an onsite investigation on March 10, 2007. Based on reports of Mr. Schult, the inspector determined that an undetermined amount of hydraulic oil leaked from a fork lift owned and operated by a third party under contract with Schult Engineering while unloading and installing a piece of equipment for the Schult Engineering operation. Mr. Schult reported that on March 12, 2007, he had applied oil dry to the area of the spill. The inspector reported that on the following Thursday and Friday, he observed run off from the oil dry into the storm water intake apparently due to rains and discharge to the river through the storm water outfall. The inspector observed evidence of run off into the gutter as well.
8. The Department issued a notice of violation dated March 15, 2007 summarizing the facts and the violations.
9. Schult Enterprises and Schult Engineering have consulted with a qualified environmental consultant and agreed to construct and install equipment at the storm water intake to prevent and delay release pollutants from entering the storm water system and discharging to the Mississippi River.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.386 requires that any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the Department and the local police department or sheriff of the occurrence of a hazardous condition.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
SCHULT ENTERPRISES, LLC AND MICHAEL SCHULT**

The notice shall be as soon as possible but no later than six hours after the occurrence of the hazardous condition or the discovery of it. A person violating this reporting requirement is subject to a civil penalty of not more than one thousand dollars. The Department has adopted rules at 567 I.A.C. 131 implementing this reporting requirement. The rules require submittal of a hazardous condition report within thirty (30) days of the occurrence.

2. Hazardous substance is defined broadly to mean any substance or mixture of substances that presents a danger to the public health or safety and includes but is not limited to, a substance that is toxic, corrosive or flammable, or that is an irritant or generates pressure through decomposition, heat or other means. See further, Iowa Code section 455B.381(5) and 567 I.A.C. 131.1.
3. A hazardous condition is defined in Iowa Code section 455B.381(4) to be any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment and includes a hazardous waste or hazardous substance disposal site as defined in Iowa Code section 455B.411(4). See also 567 I.A.C. 131.1.
4. Iowa Code section 455B.186 prohibits the discharge of a pollutant into water of the state unless the discharge is pursuant to a permit issued by the Director of the Department. Pollutant is broadly defined to include "...sewage, industrial waste, or other waste." Sewage includes water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present. Industrial waste is defined to include any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource. Other waste includes heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste. See Iowa Code sections 455B.171(9), (15), (18), and (29).
5. Department rule 567 I.A.C. 62.1 prohibits the discharge of any pollutant into a navigable water unless authorized by an NPDES permit issued by the Department.
6. Iowa Code section 455B.175 authorizes the Director to issue an order requiring any person who has violated or is violating Iowa Code 455B, Division III, Part I to desist from further violations and to take corrective action. Persons are defined in Iowa Code section 455B.171(16). Schult Enterprises, Schult Engineering and Michael Schult are persons as defined.
7. Iowa Code sections 455E.4 and 455E.5 state the legislative goal of preventing contamination of groundwater from any source to the maximum extent practical. The

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
SCHULT ENTERPRISES, LLC AND MICHAEL SCHULT**

Department has adopted rules applicable to corrective action necessary to meet the legislative objectives as stated in Iowa Code sections 455E.4 and 5, Iowa Code section 455B.383 (hazardous conditions) and the unpermitted discharge of pollutants to water of the state as provided in section 455B.186. See 567 I.A.C. 133.1. Department rule 567 I.A.C. 133.4(1) requires responsible persons to take corrective action sufficient to remove the source, repair the cause of the release and cease the contaminating practices immediately upon discovery.

7. Schult Enterprises and Schult Engineering failed to timely notify the Department of a hazardous condition arising out of the May 15, 2006, December 14, 2006 and March 9, 2007 spill events and to take appropriate preventative actions to abate the hazardous condition and prevent the unpermitted discharge of pollutants to water of the state in violation of the above stated law.

8. Schult Enterprises and Schult Engineering are persons responsible for the unpermitted discharge of pollutants into water of the state arising out of the May 15, 2006, December 14, 2006 and March 9, 2007 spill events in violation of Iowa Code section 455B.186.

**V. ORDER**

THEREFORE, the Department orders and Schult Enterprises and Schult Engineering agree to the following.

1. Schult Enterprises and Schult Engineering are responsible to construct the pollution control technology recommended by their consultant at the storm water intake which is designed to prevent and delay the entry of pollutants into the storm water system. The construction is expected to be completed with sixty to ninety days from execution of this order. Schult Enterprises and Schult Engineering shall also purchase a magnetic cover for the storm water intake as recommended by the consultant and use the cover to prevent and delay surface spills from entering the storm water intake.

2. Schult Enterprises and Schult Engineering are jointly and severally required to pay an administrative penalty of \$4,000. A payment of \$2,000 by check made to the order of the "Iowa Department of Natural Resources" no later than July 13, 2007. The Department agrees to waive the remaining balance upon completion of the actions specified in paragraph one (1) above.

**VI. PENALTY**

Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000.00 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. Iowa Code section 455B.386 authorizes a penalty of no more than \$1,000 for failure to timely notify public officials of the

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
SCHULT ENTERPRISES, LLC AND MICHAEL SCHULT**

occurrence of a hazardous condition. See Chapter 567 I.A.C. 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is through a negotiated administrative consent order with a penalty. The penalty rationale is summarized below.

**ECONOMIC BENEFIT:** The economic benefit associated with discharges to the Mississippi can be measured by the avoided costs of providing labor, absorbent materials and consulting fees to properly respond to the spills as described in this order sufficient to prevent their entry into the storm water intake and the river outfall. The estimated cost of compliance is in the range of \$500.

**GRAVITY:** In each of the three incidents, the spills were not timely reported to public officials as required by law but were reported by citizens who observed evidence of the spill and discharge to the river. The Iowa Code authorizes a penalty up to \$1,000 for failure to report a hazardous condition. Each incident could be a separate violation. For this factor, \$500 is assessed. In addition, the Department has documented three incidents since May 2006 in which aboveground spills were allowed to enter the storm water intake and discharge to the river. These are separate violations. Although the seriousness of the spill and the harm to the surface water quality may be characterized as moderate, applying a range up to \$3,000, \$1,500 is assessed for this factor. The gravity assessment is \$2,000.

**CULPABILITY:** Schult Enterprises and Schult Engineering had received two prior notices of violation all having to do with aboveground spills entering the storm water intake and discharging to the river and failure to report. The March 2007 aboveground spill was observed by employees on the site and steps could have been taken to prevent run off into the storm sewer. Applying a range up to \$3,000, \$500 is assessed for the failure to report and \$1,000 for the unpermitted discharge violation. The total assessment for this factor is \$1,500.

**VII. WAIVER OF APPEAL RIGHTS**

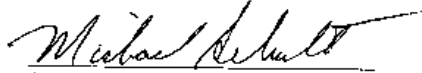
Department rules in 561 I.A.C. 7.5(1), as adopted by reference in chapter 567 I.A.C. 7, authorize a written notice of appeal of adverse agency action to the Commission. Schult Enterprises and Schult Engineering have voluntarily and knowingly entered into this agreement having been advised of the opportunity to seek legal counsel. By signature to this order, Schult Enterprises and Schult Engineering waive all rights to appeal this adverse agency action.

**VIII. NONCOMPLIANCE**

Failure to comply with this consent order may result in the imposition of further administrative enforcement and assessment of penalties or referral to the Attorney General to obtain appropriate relief in Iowa District Court pursuant to Iowa Code sections

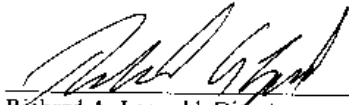
**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
SCHULT ENTERPRISES, LLC AND MICHAEL SCHULT**

455B.182, 455B.191 and 455B.391. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Schult Enterprises, LLC  
By: Michael Schult, Authorized Representative  
Michael Schult, d/b/a Schult Engineering

Dated this 12 day of July, 2007



Richard A. Leopold, Director  
Iowa Department of Natural Resources

Dated this 1 day of August, 2007

Field Office 6, David Wornson, IVA & B