

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:  <b>Crop Production Services, Inc.</b>  Dubuque County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2007-WW-08
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TO: Thomas Warner, President  
2084 Windish Dr.  
P.O. Box 1467  
Galesburg Il 61402-1467

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Crop Production Services, Inc. (Crop Production) and the Iowa Department of Natural Resources (DNR). Crop Production hereby agrees to cease all illegal discharges to waters of the State, to permanently fix the cause of the illegal discharge and to pay a penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:  
Doug Hawker  
IDNR Field Office #1  
909 West Main, Suite 4  
Manchester, IA 52057  
Ph: (563) 927-2640  
Fax: (563) 927-2075

Relating to legal requirements:  
Carrie Schoenebaum, Attorney II  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-0824

Payment of penalty to:  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Attn: Carrie Schoenebaum

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**II. JURISDICTION**

This Order is issued pursuant to 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 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties. This Order is also issued pursuant to Iowa Code section 481A.151 and 571 IAC 113.5 which authorize the DNR to require restitution for destruction of wild animals.

**III. STATEMENT OF FACTS**

1. Crop Production owns and operates an agricultural chemical supply facility located at the NW 1/4 of the NE1/4 of Section 31, T89N, R2W (New Wine Township), Dubuque County, Iowa. This property is locally known as 214 4<sup>th</sup> Avenue NE Dyersville, IA 52040 (214 4<sup>th</sup> Ave). Crop Production, among other things, stores and distributes nitrogen fertilizer at this facility.
2. On October 30, 1996, Crop Production was issued an order by the DNR for a prohibited wastewater discharge and for failure to report a hazardous condition.
3. On January 29, 2007, at approximately 1:27 PM Rodney Tucker of the DNR Emergency Response Section, received a phone call from Terry Bockenstedt of Crop Production. This phone call reported that Crop Production had a fertilizer spill.
4. On January 29, 2007, at approximately 2:00 PM Doug Hawker an Environmental Specialist of the DNR, received a phone call from Mr. Tucker informing him that Crop Production had just reported a liquid fertilizer spill. This spill was estimated to be between one and two thousand gallons of a product known as 8-0-0-10. Crop Production reported that liquid fertilizer had leaked from a fiber glass storage tank at its bulk facility which is located at 214 4<sup>th</sup> Ave. NE Dyersville, IA. It was reported that the fertilizer spilled within a concrete containment structure, but the containment structure had somehow sprung a leak. Further, the material was bubbling up out of the ground just outside the containment area, the material had flowed across the adjacent city street and that some of the material had entered into a city storm sewer which discharges to the North Fork Maquoketa River.
5. Approximately 15 minutes after receiving Mr. Tucker's phone call Mr. Hawker and Don Chase an Environmental Specialist of the DNR, dispatched to the site. Because they were concerned that the spill would result in a fish kill once they arrived in the town of Dyersville they checked the North Fork Maquoketa River. Upon checking the river they observed that the river was mostly covered with ice with only a few open spots. The open spots revealed clear running water. Mr. Hawker used a sample bucket to capture water and test it for ammonia nitrogen. To

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test for ammonia nitrogen Mr. Hawker used a Hach Field test. This test did not detect any ammonia nitrogen in the water.

Next, Mr. Hawker and Mr. Chase drove to Crop Production. Once there, they met with Mr. Bockenstedt and Gary Mensen of Crop Production, who showed them the leaking tank and containment area. Mr. Bockenstedt and Mr. Mensen explained that earlier that day the fiberglass tank had been filled with fertilizer and apparently a leak developed in the bottom of the tank. Further, it was explained that fertilizer was observed bubbling to the surface just outside the containment area.

Agricultural (Ag) lime had been brought to the site as quickly as possible and had been dumped over the bubbling fertilizer in an attempt to slow the flow, while the remaining liquids within the containment area were pumped into another empty tank. Mr. Hawker observed work crews using floor dry and Ag lime to soak up spilled fertilizer from the street. Efforts had been made to stop the flow into a nearby storm sewer inlet, but Crop Production reported that an unknown quantity of material had been discharged into this inlet.

While work crews continued their cleanup efforts Mr. Bockenstedt, Mr. Chase and Mr. Hawker walked north about 1/3 of a block to the point that the storm sewer discharges into the North Fork Maquoketa River. At that location the snow was stained which indicated that the fertilizer had entered the river. The river was 100% ice covered above this point which prevented Mr. Hawker from obtaining an upstream water sample. Thus, Mr. Hawker and Mr. Chase proceeded downstream to see whether or not they could detect any ammonia nitrogen in the river. About 40 feet downstream of the storm sewer outlet field sample 1 was taken; this sample detected ammonia nitrogen in the river. Approximately 200 feet downstream from the storm sewer outlet field sample 2 was taken. This sample showed a high concentration of ammonia nitrogen in the water. At this sample point the water temperature was 32 degrees Fahrenheit and the pH was 8.4. Approximately 100 yards from the point of field sample 2 dead fish were observed floating downstream through the rapidly moving water. Next, Mr. Hawker and Mr. Chase walked further down stream and took field sample 3. This sample showed a high concentration of ammonia nitrogen. In addition, they observed a continual flow of dead minnows and chubs floating past them in a rapid current. Because of the dead fish Mr. Hawker called Karen Osterkamp, Fisheries District Supervisor of the DNR, and informed her of his observations. Ms. Osterkamp told Mr. Hawker that she and DNR Biologist Scott Gritters would come to the site. During the next 45 minutes Mr. Chase and Mr. Hawker continued to take field samples of the water and observed dead fish. Field samples 4 and 5 were taken throughout the downtown area of Dyersville through the Highway 20 bridge. These samples indicated a higher concentration of ammonia nitrogen. In addition, dead fish were observed throughout the area.

Once Ms. Osterkamp and Mr. Gritters arrived they went to the location of field sample 6, which is in Rockville. Here an ice spud was used to pound a hole in the ice beneath the bridge. No

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ammonia nitrogen was detected at this location. Next, they went to the site of field sample 5; dead fish were again observed at this location.

6. On January 30, 2007, the investigation continued. Mr. Hawker and Mr. Chase returned to the location of field sample 4 and retested the water. The test results did not show any ammonia nitrogen in the water. Mr. Hawker and Mr. Chase were joined by Ms. Osterkamp and Mark Winn a Natural Resources Technician 2 of the DNR. As a group they went to the area of field sample 5 and retested the water; the results showed that the water was free of ammonia nitrogen.

Field sample 7 was taken approximately 9.5 miles downstream from the spill location. This field sample indicated ammonia nitrogen concentration much greater than 3.0 mg/l, but the color change was slightly less than that which was observed in Dyersville on the previous afternoon. Dead fish were observed at this location and a dead fish count was conducted.

Mr. Hawker, Mr. Chase, Ms. Osterkamp and Mr. Winn proceeded downstream to approximately 2 miles north of Cascade, which is 17 miles from the original spill location. Here field sample 8 was taken. This sample indicated that no ammonia nitrogen was present. In addition, neither dead nor alive fish were observed. At approximately 11:30 AM, field sample 9 was taken; this sample did not indicate that any ammonia nitrogen was present in the water. At approximately 1:00 PM another sample was taken at the site of field sample 9, this time a high level of ammonia nitrogen was detected.

7. On January 31, 2007, Mr. Hawker, Mr. Chase and Mr. Winn met at the location of field sample 8. Here, another sample was taken and the results indicated that the ammonia nitrogen level was still greater than 3.0 mg/l. They observed that the ammonia nitrogen slug had reached this point, however, neither dead nor alive fish were observed. Next they went to the site of field sample 10, which is approximately 2.5 river miles downstream from the Highway 136 bridge. At this location they did not observe dead or alive fish; however, the field sample indicated that ammonia nitrogen levels were greater than 3.0 mg/l. This shows that the ammonia nitrogen slug had reached the town of Cascade which is approximately 20 river miles downstream of Crop Production.

Later that day, they went to the site of field sample 9 and again checked for ammonia nitrogen. This test showed that the water was free of ammonia nitrogen.

8. On February 1, 2007, Mr. Chase and Mike Wade an Environmental Specialist Senior of the DNR, returned to Crop Production. During this visit, Mr. Bockenstedt provided a written report with additional information on the quantity of material that was lost from the storage tank.

9. Mr. Hawker, documented the above information in an investigation report and on February 13, 2007, this investigation report, in conjunction with a Notice of Violation (NOV), was sent to

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Crop Production. This NOV informed Crop Production that it violated 567 IAC 61.3(2) (d) and Iowa Code section 455B.186 (1). Further, it required Crop Production to submit a plan of action within 30 days to the DNR. This plan of action should provide for adequate secondary containment until such time that the containment structure can be properly repaired.

After receiving the NOV, Crop Production consulted an engineer. On March 8, 2007, it informed the DNR that to complete a plan of action the tanks on site must be empty. Crop Production anticipates that the tanks will be emptied in June and at that time it will complete a plan of action.

This NOV also required that Crop Production submit a structural engineer's evaluation of the secondary containment structure and within 90 days submit a plan to repair the structure in a manner which will prevent future spills. On March 8, 2007, Crop Production informed the DNR that it had retained a structural engineer, John Crawford of Crawford Engineering. Nevertheless, Crop Production indicated that it can not complete the plan of action until the tanks are emptied in June. On April 2, 2007, Mr. Bockenstedt called Mr. Hawker and informed him that the containment structure had been temporarily sealed. On April 3, 2007, Mr. Hawker went to Crop Production and verified that the containment structure had been sealed.

10. A fish kill investigation was conducted by the DNR's Fisheries Bureau staff. Approximately 29.3 miles was affected by the spill and approximately 56,542 fish were killed which are valued at \$13,507.92 (plus investigation costs of \$1,452.17).

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Since no such permit has been issued for this facility, the foregoing facts establish that this provision has been violated.
2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.
3. Iowa Code subsection 481A.151(1) provides a person who is liable for polluting a water of the State in violation of state law is also liable to pay restitution to the DNR for injury to a wild animal by the pollution. The amount of the restitution shall also include the DNR's administrative costs for investigating the incident.

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**V. ORDER**

THEREFORE, the DNR hereby orders and Crop Production consents to do the following:

1. Cease and prevent the discharge of pollutants to waters of the State, except as authorized by a permit;
2. No later than August 31, 2007, submit a structural engineer's evaluation of the secondary containment structure;
3. No later than August 31, 2007, submit a plan of action which details how to prevent future spills and how to deal with future spills that occur outside of regular business hours;
4. Pay an administrative penalty of \$8,000.00 to the DNR within 30 days of the date the Director signs this Order, and
5. Pay fish restitution of \$14,960.09 within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$8,000.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:

- a. Economic Benefit. Crop Production saved time and money by not conducting weekly inspections of the containment. Had such inspections been done it is probable that the crack between the floor and the wall would have been noticed and repaired prior to this spill. In addition, at the time of the spill Crop Production did not have, on site, sandbags and Ag lime, thus it also saved money by not stockpiling such products. Therefore, \$1000.00 is assessed for this factor.
- b. Gravity of the Violation. 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

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most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by water quality analysis, and by visual observation of impact to the North Fork Maquoketa River including dead fish. In addition, Iowa law was violated: unauthorized discharge to waters of the State, and violation of water quality standards. For these reasons, \$6,000.00 is assessed for this factor.

c. Culpability. Crop Production did not have on site Ag lime or sandbags. Had these products been on site the leak would have been contained earlier. Crop Production made a conscious decision not to keep these materials on site. Moreover, Crop Production made a conscious choice not to conduct weekly inspections. If such inspections would have been done, it is likely that the crack would have been detected and repaired prior to the time of the spill. Therefore, \$1000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code sections 455B.175(1) and 481A.151, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. Iowa Code section 481A.151 authorizes a written notice of appeal to the Natural Resource Commission. This Order is entered into knowingly by and with the consent of Crop Production. By signature to this Order, all rights to appeal this Order are waived by Crop Production.

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**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The DNR reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

  
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Richard A. Leopold, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14 day of  
May, 2007.

  
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Thomas Warner President, Crop Production Services, Inc.

Dated this 3rd day of  
MAY, 2007.

EPA; Field Office 6; Carrie Schoenebaum; Doug Hawker; I. C. 1