

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**River Valley Cooperative
Cedar County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW-20**

**TO: Curtis Frick, President
21401 50th Ave
Walcott, IA 52773**

I. SUMMARY

This administrative consent order (order) is entered into between River Valley Cooperative (River Valley) and the Iowa Department of Natural Resources (Department). River Valley hereby agrees to cease all illegal discharges to waters of the state and to pay a penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Ryan Stouder
IDNR Field Office #6
2300 15th St SW P.O. Box 1443
Mason City, IA 50401
641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
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

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated 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

The parties hereby agree to the following statement of facts:

1. River Valley operates approximately 27 cooperatives throughout Iowa and Illinois. The cooperatives which are the subject of this order are located in Eldridge and Sanbury Iowa.¹

Eldridge Location

2. On May 16, 2007, River Valley filed a Hazardous Substance Incident Report (HSIR) with the Department. This report stated that at the Eldridge location (locally known as 200 S. 18th Street, Eldridge, Iowa) approximately 5,000 gallons of calcium lignisulfonate (tree sap) was spilled into a ditch and flowed into a cornfield. In the HSIR, River Valley stated that no waters of the State were impacted, it was excavating the contaminated soils, and will work with the owner of the corn field to excavate that soil as well.

3. On May 17, 2007, River Valley submitted a written follow up report which stated that a small bulldozer was used to contain the remaining tree sap which had flowed to a grassy marsh area that was not farmed. River Valley stated that by the time the Department received the report the tree sap should have either dried out or been absorbed by the soil.

4. On May 17, 2007, Compass Inc., on behalf of River Valley, prepared a written follow-up report to the HSIR. This report stated that an estimated volume of 5,000 gallons of calcium lignosulfonate was spilled.

5. On May 17, 2007, the Department received a complaint from the City of Eldridge stating that the water in Crow Creek was discolored. The City stated that the color of the creek was brown. Ryan Stouder, an Environmental Specialist with the Department, met with Dick Stange and Roger Harmsen of

¹ The legal description of the Eldridge location is Section 13, T-79-N, R-4-E, Sheridan Township. The legal description of the Sanbury location is Section 2, T-79-N, R-1-W, Farmington Township.

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River Valley, to conduct an on-site investigation. While on site, Mr. Stouder observed that the tree sap flowed from an above ground storage tank at River Valley south and south east to the head waters of an unnamed tributary of Crow Creek (tributary to Crow Creek). Crow Creek is a direct conduit of the Mississippi River. Mr. Stouder observed tree sap in the tributary to Crow Creek and in Crow Creek. He also observed that the water was black in color and detected a strong tree sap odor. Mr. Stouder took water samples at the surface tile intake (point of discharge), at the point in the tributary to Crow Creek where the wastewater from the tile intake flows into it (confluence), upstream from the confluence, and down-stream from the confluence.

The samples tested for biological oxygen demand five day (BOD₅), potential hydrogen (pH), total suspended solids (TSS), ammonia nitrogen, and chemical oxygen demand (COD). The purpose of testing for these specific pollutants was as follows: (1) BOD₅ is an indicator of the sugar material contained in the tree sap; (2) tree sap lowers the pH of water because it is acidic; (3) tree sap contains many impurities which results in high TSS in the receiving waters; (4) tree sap is organic matter therefore; it creates a high reading of ammonia nitrogen in the receiving waters; (5) A background reading of .5 ammonia nitrogen is considered normal in this type of waterway; and (6) organic material removes dissolved oxygen from water therefore, it results in a high COD reading.

The samples were sent to the University of Iowa Hygienic Lab (UHL) for analysis and the results are as follows:

May 17, 2007:

Sample Location: Surface tile intake (point of discharge)

BOD₅: 46500 mg/L

pH: 3.8 pH units

TSS: 54,000 mg/L

Ammonia Nitrogen as N: 77 mg/L

COD: 690,000 mg/L

Sample Location: Downstream from surface tile intake

BOD₅: 293 mg/L

pH: 7.2 pH units

TSS: 61 mg/L

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Ammonia Nitrogen as N: .23 mg/L

COD: 1,600 mg/L

Sample Location: stream

BOD₅: 287 mg/L

TSS: 18 mg/L

Ammonia Nitrogen as N: .23 mg/L

COD: 1,900 mg/L

Sample Location: Upstream from surface tile intake

BOD₅: 10 mg/L

TSS: 270 mg/L

COD: 66 mg/L

6. On July 2, 2004, a Notice of Violation (NOV) was sent to River Valley documenting the above discussed violations. The UHL sample results were attached to this NOV.

Sanbury Location

7. On October 1, 2008, River Valley filed a HSIR with the Department. This report stated that 4-6 inches of 28 % liquid nitrogen fertilizer was discovered in a secondary containment barrier area at the Sanbury location (locally known as 2223 290th Street Wilton, Iowa). This fertilizer had been pumped by a sump pump over the barrier berm and to the ground beyond that berm. It was estimated that 1500 gallons of fertilizer had been spilled.

8. On October 2, 2008, Mr. Stouder and Brian Lee, an Environmental Specialist with the Department, investigated the spill. Once on-site they met with Chad Peterson, the manager of the Sanbury location, who stated that the contaminated soil was being excavated. Mr. Stouder and Mr. Lee walked around the facility to identify the locations of the tile intakes. Mr. Peterson explained that at the point where the contaminated soils were being excavated a field tile runs underground. Nevertheless, Mr. Peterson stated that he did not think the fertilizer reached the tile line.

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Mr. Stouder observed that the fertilizer flowed north and north-west from River Valley's storage tank to a field tile which discharges to an unnamed tributary of Mud Creek. Mud Creek is a conduit for the Cedar River. Because of the suspected impact on the unnamed tributary to Mud Creek Mr. Stouder proceeded with an investigation of that water body.

He observed the unnamed tributary to Mud Creek from various bridges. At the 300th Street bridge he saw many dead fish, black sediment in the bottom of the stream and detected a strong ammonia odor. At the 310th Street bridge he observed many dead fish, and at the 325th Street bridge unstressed fish were observed. Mr. Stouder notified the Department Fisheries Bureau, about the fish kill so that fisheries personnel could conduct an investigation.

The Department environmental specialists performed field tests, collected laboratory samples, and took photographs at the following sites:

Site #1: Surface tile intake (point of discharge) which flows to an unnamed tributary of Mud Creek. No fish alive or dead were located at this location; a strong ammonia odor was present.

Site #2: Confluence of field tile discharge and unnamed tributary of Mud Creek (confluence). A strong ammonia odor was present.

Site #3: 10 feet upstream from confluence.

October 2, 2008:

Sample Location: Site #1—Surface tile intake (point of discharge)

Nitrate + Nitrite Nitrogen as N: 20 mg/L

Ammonia Nitrogen as N: 6.6 mg/L²

Sample Location: Site #2—Confluence

Nitrate + Nitrite Nitrogen as N: 23 mg/L

Ammonia Nitrogen as N: 8.9 mg/L

Sample Location: Site #3—10 feet upstream from confluence

Nitrate + Nitrite Nitrogen as N: 10 mg/L

² A background reading of .5 ammonia nitrogen is considered normal in this type of waterway.

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Ammonia Nitrogen as N: ≤ 0.05 mg/L

Following the investigation Mr. Stouder and Mr. Lee returned to the Sanbury location. Mr. Stouder recommended that River Valley sever the field tile immediately.

9. On October 3, 2008, Mr. Stouder and Bert Noll, an Environmental Specialist with the Department, conducted a follow up investigation. They met Paul Sleeper, a Natural Resources Biologist for the Department, at the Highway 6 Bridge. Mr. Sleeper stated that all of the fish in the unnamed tributary of Mud Creek (from 290th Street to the confluence with Mud Creek) were killed by the fertilizer discharge. Mr. Sleeper began the fish kill investigation at the location of Site #1, he worked his way downstream, dead fish were observed at all locations until he reached the confluence (Site #2). The area investigated encompassed 5.9 miles, Mr. Sleeper concluded 19,656 fish were killed, valued at \$5,075.72 (plus investigation costs of \$412.66).

Mr. Stouder and Mr. Noll returned to the Sanbury location and met with Mr. Peterson. Mr. Peterson stated that the excavation was ongoing and soils were being hauled to nearby fields, up gradient of the unnamed tributary of Mud Creek. Mr. Stouder observed puddles of ammonia water on the ground; he instructed Mr. Peterson that the puddles should be removed.

The Department environmental specialists collected laboratory samples, field samples and took photographs at the following sites:

Site #1: The point at which the fertilizer was discharged to the field tile which flows to an unnamed tributary of Mud Creek. No fish alive or dead were located at this location.

Site #4: 1000 feet up stream from the confluence.

Site #5: Highway 6 bridge. The field test kit turned blood red which indicates the ammonia level is very high. Many dead fish caught in the rocks of the stream were observed.

Site # 6: Headwaters for unnamed tributary to Mud Creek.

The results of University of Iowa Hygienic Lab (UHL) samples are below:

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Sample Location: Site #1—Surface tile intake (point of discharge)

Ammonia Nitrogen as N: 3.1 mg/L

Sample Location: Site #4—1000 feet up stream from the confluence

Ammonia Nitrogen as N: ≤ 0.05 mg/L

10. On October 4, 2008, Mr. Stouder continued his investigation. He met with Mr. Peterson and observed that more excavation had occurred. Then he proceeded to the confluence of Mud Creek and the unnamed tributary of Mud Creek; approximately 100 feet down-stream from the confluence of these water bodies fish were observed and they appeared to be unstressed.

11. On October 9, 2008, Mr. Stouder called Mr. Peterson to discuss River Valley's efforts to stop the fertilizer discharges from continuing to occur. Mr. Stouder told Mr. Peterson to sever the field tile immediately.

12. On October 17, 2008, a NOV was sent to River Valley for the violations associated with the fish kill. The letter also informed River Valley that these violations were being referred to the Department's Legal Services Bureau for further enforcement.

V. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

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 Department. Because 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) "b", "c" and "e" state that
[s]uch waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. waters shall be free from substances attributable to wastewater

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discharges ... producing objectionable color, odor or other aesthetically objectionable conditions.

...
Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

Laboratory sample results and visual observations confirmed the discharged tree sap and fertilizer was not adequately treated. Moreover, River Valley did not have a permit for the discharge of these pollutants. Therefore, the above stated facts demonstrate that River Valley violated these legal requirements.

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 Department for injury to a wild animal by the pollution. The amount of the restitution shall also include the Department's administrative costs for investigating the incident.

V. ORDER

THEREFORE, the Department orders and River Valley agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. River Valley shall cease all illegal discharges;
2. Within 30 days, River Valley shall submit a Plan of Action (POA) to the Department that details spill prevention measures for its facilities in Iowa, and how hazardous materials will be contained. This POA must be approved by the Department;
3. River Valley shall implement the POA within 60 days of Department approval;
4. River Valley shall pay a penalty of \$10,000.00 within 30 days of the Director of the Department signing this order; and

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5. River Valley shall pay fish restitution of \$5,488.38 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 of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00 that 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 these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** River Valley saved time and money by failing to implement sufficient spill prevention and by failing to provide proper containment for hazardous substances. The unpermitted discharges which are the subject of this order occurred because of these deficiencies. Therefore, \$1,000.00 is assessed for economic benefit.

3. **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 Department has decided to handle the violations administratively at this time as the 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 waters of the State, 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, \$5,000.00 is assessed for this factor.

4. **Culpability:** River Valley failed to properly investigate the spills. In both instances, which are the subject of this order, River Valley reported to the Department that no waters of the State were impacted. As the facts discussed above demonstrate, these statements were wrong. If a proper spill investigation would have been conducted immediately following the spills it is likely that the impact to the waters of the State could have been avoided or reduced. Moreover,

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for releases of this magnitude to occur shows that River Valley did not employ the appropriate standard of care required when engaging in an activity that poses a threat to the environment. Therefore, \$4,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of River Valley. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this 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.

Curtis C. Frick Dated this 20 day of
Curtis Frick, President July, 2009.
Chief Executive Officer, River Valley Cooperative

Richard A. Leopold Dated this 24 day of
RICHARD A LEOPOLD, DIRECTOR July, 2009.
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River Valley, Field Office 6, Carrie Schoenebaum; Ryan Stouder, I.C.1., & I.C.6.a.