

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

**IN THE MATTER OF:**

Fredericksburg Farmers Cooperative  
110 North Jefferson  
Fredericksburg, IA 50630

**ADMINISTRATIVE ORDER**

2009-WW- 16  
2009-HC- 02  
2009-AQ- 18

**I. SUMMARY**

This Administrative Order (Order) requires Fredericksburg Farmers Cooperative (FFC) to take the following actions: conduct a site assessment for ammonia; create and implement a Spill Prevention Control and Counter Measure Plan; implement employee training and create a protocol requiring testing of all wash water for ammonia and other chemicals prior to discharge; pay \$40,690.75 in fish restitution; and pay \$10,000 in an administrative penalty. See Section V and VI for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Amber Sauser  
Iowa Dept. of Natural Resources FO#1  
909 West Main Suite #4  
Manchester, IA 52057  
Ph: 563/927-2640

**Relating to legal requirements:**

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8934

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality) and the rules promulgated pursuant to that part; 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 I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 455B.386, which authorizes the assessment of a penalty for the violation of notification provisions contained in Iowa Code chapter 455B, Division IV, Part 4 (hazardous condition); Iowa Code section 481A.151 which authorizes the collection of restitution costs for harm to wildlife; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. FFC is a full-service agricultural cooperative located in Fredericksburg, Iowa.
2. On August 20, 2008 Department Field Office (FO) #1 received a report of dead fish in the East Fork Wapsipinicon River in Fredericksburg. Environmental specialist Amber Sauser investigated that day. The Fisheries Bureau was also informed and began its fish count as well.
3. Ms. Sauser noted dead fish under the HWY 18 Bridge and a nearby foot bridge. From there, she proceeded upstream, arriving at FFC. While visually inspecting FFC, Ms. Sauser noted a pool of water near three bulk tanks approximately 10 feet from a sand point well. Ms. Sauser did not observe either an air gap device or a back-flow preventer between the tanks and the well. A strong ammonia odor was present and a field test indicated high values of ammonia.
4. Ms. Sauser also noted numerous storm water runoff channels flowing from this water pool northeast towards a creek which runs along the north side of FFC. This creek eventually empties into the East Fork Wapsipinicon River. All of the runoff channels contained white residue and an ammonia odor; one was still wet. Water and soil field test kits were positive for ammonia.
5. Ms. Sauser followed the still-wet storm water channel to the creek. Field tests indicated ammonia in the soil along this route although the creek itself came back negative. Dead worms and larvae were seen on the creek banks. The entire area had a very strong ammonia odor. Ms. Sauser decided she would complete her testing the next day to allow the ammonia to fully mix with the water and to avoid prolonged personal exposure to the ammonia odors.
6. Accordingly, Ms. Sauser contacted Mr. James A. Erickson, the FFC manager, to inform him she would return on August 21, 2008 to continue her investigation.
7. On the morning of August 21, 2008, Ms. Sauser and Mr. Erickson met at FFC. Mr. Erickson stated that on Tuesday, August 19, 2008, FFC had dumped a 1,500-gallon shuttle tank filled with an estimated 600 gallons of water in order to winterize the tank; no pre-dump testing had been performed. Mr. Erickson stated the ammonia residue found in the various water and soil locations may be the result of incidental venting from anhydrous tanks throughout the year.
8. Because rain was forecast for that day, Ms. Sauser urged Mr. Erickson to immediately remove the contaminated soils from around the creek so as to not exasperate the fish kill. FFC did so by excavating the contaminated soil and vacuuming the tainted-water pools; product from both efforts were land applied both at agronomic rates.

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9. Also on August 21, 2008, Ms. Sauser walked the creek upstream, away from FFC, to ensure no other sources for the ammonia was present. The following locations were field tested, all coming back negative for ammonia:
- a. Interscction of Plum Street and West Jackson Avenue
  - b. Bridge at 260<sup>th</sup> Street
  - c. Corner of 260<sup>th</sup> Street and Ridgeway
  - d. 370-foot stretch of bank from the bridge on Washington Avenue to FFC; testing completed at a tile outlet north of the Aveka Plant, which is located on the east side of FFC.

No dead fish or larvac were observed at any of the above locations. Ms. Sauser only noticed dead fish and larvac starting at five feet below FFC's storm water runoff area. Approximately fifty feet further downstream, dead fish were present.

10. Ms. Sauser and Mr. Erickson also discussed a large burn pile Ms. Sauser discovered on the northwest edge of FFC containing wood remains and miscellaneous plastic. Mr. Erickson said FFC primarily burns wood pallets to save landfill space and he had received a permit to burn from the City of Fredericksburg. Mr. Erickson was informed that burning trade waste (wood) and plastic was illegal and must immediately cease, regardless of the city-issued permit. Upon following up with the city, Ms. Sauser learned that the permit program had already been cancelled.

11. Ms. Sauser also collected official field samples on August 21, 2008. The results of the sampling were as follows:

Location	Result for Ammonia Nitration (NH <sub>3</sub> -N)
Bulk-tank water pool	780 mg/L
Shuttle tank release site (soil)	50 ppm
FFC's storm water runoff channel into creek	9.0 mg/L
Creek mouth (water)	1.7 mg/L
Creek mouth (soil)	160 ppm
Creek	240 mg/L

12. Ms. Sauser and Mr. Mike Wade, also of FO #1, returned to FFC on August 22, 2008. A sample was taken of the excavated soil pile. The result of this sampling was 9.0 mg/L for ammonia.

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13. The Department's Fisheries Bureau concluded its fish kill count on August 22, 2008. The release of ammonia-tainted water into the East Fork Wapsipinicon River killed 76,292 fish, valued at \$40,056.15 and required \$634.60 in investigation costs, for a total of \$40,690.75 in restitution.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) prohibit the discharge of "a pollutant" into "a water of the state" unless it is released pursuant to a valid permit issued by the Director. National Pollutant Discharge Elimination System ("NPDES") permits are issued to point sources pursuant to Iowa Code section 455B.197 and 567 I.A.C. chapter 64. The Department has adopted federal effluent limitation standards by reference, and requires compliance with additional standards when necessary to meet applicable water quality standards. *See* 567 I.A.C. 62.8(2).
2. A "pollutant" is defined in Iowa Code section 455B.171(18) as "sewage, industrial waste, or other waste." Iowa Code section 455B.171(15) defines "other waste" to include, among other things, "chemicals." Therefore, ammonia-tainted water constitutes "other waste" due to its chemical components.
3. The East Fork Wapsipinicon River is a "water of the state" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream, . . . watercourse, waterway, . . . drainage system, and any other body or accumulation of water . . . public or private, which are contained within . . . the state . . ."
4. FFC's release of ammonia-tainted water into the East Fork Wapsipinicon River constitutes a violation of Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) .
5. Iowa Code section 455B.173 states that the Environmental Protection Commission (Commission) shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The Commission has done so in 567 I.A.C. chapter 61.
6. 567 I.A.C. 61.3(2) states that all surface waters of the State "shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations . . . acutely toxic to . . . animal life. . . [and] [f]rom substances in quantities which would produce undesirable or nuisance aquatic life."
7. The ammonia-contaminated water released into a water of the state resulting in a fish kill is a violation of 567 I.A.C. 61.3(2) .

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8. Iowa Code section 455B.386 and 567 I.A.C. 131.2 require a person “storing, handling . . . or disposing of a hazardous substance” to notify the Department and the local police department of the “occurrence of a hazardous condition as soon as possible but not later than six hours after [its] onset . . . .” A hazardous condition is any situation involving the “actual, imminent, or probable spilling, leakage, or release of a hazardous substance onto the land or water of the state . . . which creates an immediate or potential danger to the . . . environment.” IOWA CODE § 455B.381. A “hazardous substance” includes any substance labeled as such under the Clean Water Act (CWA). *Id.* The CWA lists ammonia as a hazardous substance. *See* 40 C.F.R. § 117.3.
9. Therefore, FFC created a hazardous condition when it discharged ammonia-tainted water into the environment resulting in a fish kill. FFC’s failure to report this condition is a violation of Iowa Code section 455B.386 and 567 I.A.C. 131.2.
10. Iowa Code section 481A.151 states that any person who is liable for polluting water of the state in violation of state law shall be required to pay restitution for any resulting injury to wild animals. This section authorizes the Natural Resources Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these restitution assessments through contested case procedures under Iowa Code chapter 17A. The NRC has adopted these rules in 571 I.A.C. 113. 567 I.A.C. 133.6 also requires compensation for damages to natural resources, including fish loss.
11. The above-stated facts and conclusions of law set out that FCC has polluted water of the state in violation of state law. Accordingly, 571 I.A.C. 113 and 567 I.A.C. 133.6 authorize the Department to collect \$40,690.75 in fish restitution.
12. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 I.A.C. 20 through 35 relating to air quality.
13. 567 I.A.C. 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 567 I.A.C. 23.2(2) (variances) and 23.2(3) (exemptions).
14. At no time did FFC seek, nor was it ever granted, a variance to burn trade waste or plastic pursuant to 567 I.A.C. 23.2(2). Nor do the materials in this case qualify as being exempt under 567 I.A.C. 23.2(3) as trade waste (wooden pallets) and plastic do not fall within any of the enumerated categories. Accordingly, FFC’s burning is a violation of 567 I.A.C. 23.2(1).

**V. ORDER**

THEREFORE, the Department hereby orders FFC to do the following

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1. FFC shall conduct a site assessment for ammonia pursuant to a plan approved by the Department in the area including the sand-point well near the bulk tanks identified above within 60 days of receipt of this Order.
2. FFC shall create and implement a Spill Prevention Control and Counter Measure Plan approved by the Department within 30 days of receipt of this Order to address proper handling and storing of chemicals and chemical-tainted water.
3. FFC shall implement employee training and create a protocol within 30 days of receipt of this Order that will require testing of all wash water for ammonia and other chemicals prior to discharge, and will also ensure that no discharge reaches a water of the state.
4. FFC shall pay to the order of the "Iowa Department of Natural Resources" \$40,690.75 for fish restitution costs as described in this Order within 60 days of receipt of this Order.
5. FFC shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$10,000 within 60 days of receipt of this Order.

**VI. PENALTY**

Iowa Code section 455B.191 authorize the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the water quality violations involved in this matter. Iowa Code section 455B.146 authorizes penalties of up to \$10,000 per day for the air quality violations involved in this matter. Noncompliance with Iowa Code section 455B.386 subjects a violator to a \$1,000 penalty.

**HAZARDOUS CONDITON VIOLATION: \$1,000**

Additionally, Iowa Code sections 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

**ECONOMIC BENEFIT:** FFC's economic benefit can be calculated based upon costs saved from its noncompliance. FFC saved costs associated with properly treating and disposing of contaminated water as well as those costs involved in paying for labor, hauling, and tipping fees for properly disposing of trade waste and plastic. Therefore, \$3,000 is assessed for this factor.

**GRAVITY:** The illegal discharge of ammonia-contaminated water from FFC polluted both soil and water, resulting in the death of more than 76,000 fish. Moreover, the release of this pollutant into a water of the state also poses risk to the inhabitants of Fredericksburg. Additionally, the unregulated open burning of solid waste can pose dangers to human health and the environment by releasing toxins and particulates into the air. Finally, tax dollars were expended to

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investigate, document, and respond to the illegal discharge, resulting fish kill, and open burning violations that are the subject of this Order. As such, \$3,000 is assessed for this factor.


**CULPABILITY:** All of the violations at issue in this Order were easily avoidable with minimal diligence: FFC could easily have educated itself regarding the state's open burning laws and could have conducted simple pre-disposal testing of wash water to ensure no contaminants were present. FFC's failure to take these minimal precautions resulted in severe damage to the State's aquatic wildlife and threatened public health. Accordingly, \$3,000 is assessed for this factor.

**VII. APPEAL RIGHTS**

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 I.A.C. 7. You may contact Tamara Mullen, attorney for the Department, at (515) 281-8934 for more information regarding appeal procedures and resolution of this Order.

**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 sections 455B.146, 455B.191 and 455B.391.

  
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RICHARD A. LEOPOLD, DIRECTOR, Deputy  
IOWA DEPARTMENT OF NATURAL RESOURCES

Patricia  
L. Beddy

Dated this 25 day of June, 2009

**Fredericksburg Farmers Cooperative:** Joe Sanfilippo; Dennis Ostwinkle; Amber Sauser; Tamara Mullen; I.C.1 and 6(a); IV.A and G; VII.C.1