

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

IN THE MATTER OF: RIVERSTONE GROUP, INC. General Permit No. 5. IAG 140242	ADMINISTRATIVE CONSENT ORDER NO. 2009-WW- 21
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TO: Riverstone Group, Inc.
Attn. Charles Ellis, President
1701 5th Ave.
Moline, IA 61265

I. SUMMARY

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (Department) and Riverstone Group, Inc. (Riverstone). The order is entered into for the purpose of resolving Riverstone's violations of the terms and conditions of its wastewater General Permit No. 5 and applicable water quality standards established in Department rules. The order assesses a penalty and requires Riverstone to upgrade its quarry dewatering disposal system, develop and implement an effective operations and maintenance plan to prevent future violations. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Russell Royce, Environmental Specialist
Department Field Office #6
1004 West Madison
Washington, IA 51301
Ph: 319.653.2135

Relating to legal requirements:
David L. Wornson, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg
Des Moines, IA 50319
Ph: 515/242-5817

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, Part 1, and the rules promulgated or permits issued under those provisions, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Riverstone Group, Inc. (formerly known as Moline Consumers Company) (hereafter Riverstone) owns and operates a stone quarry located at 400 Territorial Rd., LeClaire, Iowa. Riverstone disposes of mining wastewater under the provisions of an NPDES authorized General Permit No. 5 issued by the Department pursuant to rules in chapter 567 IAC 64. The Department granted Riverstone authority to discharge wastewater under this General Permit effective October 4, 2001. Prior to issuance of the General Permit No. 5, Riverstone operating under the term of an individual NPDES permit number 6-82-00-1-03.

2. The Department has responded to a number of citizen complaints based on visual observation of discharges of mining wastewater to the McCarty Creek and claimed violations of the General Permit No. 5 permit conditions and applicable rules.

a. The Department received a complaint in July 1996 regarding poor water quality and negative impacts on aquatic life in McCarty Creek. The Department conducted a facility inspection on August 5, 1996. The investigator did not substantiate the complaints but documented 3 effluent violations between January 1996 and May 1996. A notice of violation was issued.

b. The Department conducted a routine inspection in June 1997 and recommended changes to Riverstone's cleaning procedures for its primary basin due to the high potential for involuntary discharge of pollutants to McCarty Creek during cleaning. The facility agreed to make the recommended changes in cleaning protocol. No actual violations were noted.

c. The Department received two complaints in February 1998. The Department's investigation found discoloration of McCarty Creek and sediment in the creek adjacent to Riverstone's rock washing operation. Samples and photos were taken. The Department issued a notice of violation based on these complaints and the follow-up investigation.

d. Prior to 1999, the wash plant was located on a portion of land that partially adjoined McCarty Creek. Over the period from 1999-2000, Riverstone moved the wash plant to its existing location and reclaimed the land along the river greatly reducing the potential for any discharge of waste water to the stream. Over the next several years, Riverstone redesigned its plant and waste water storage, recycling and disposal system to its existing design.

3. The Department conducted a facility visit on March 4, 2009. The inspector observed a significant negative impact to McCarty Creek and took photos. (Exhibit A attached). The inspector observed a highly turbid flow from Riverstone's discharge pipe that was severely discoloring the creek. The quarry manager was instructed to cease the discharge which he did. The Department issued a notice of violation. Riverstone later explained that this event was in their opinion an isolated incident due to the fact that the plant superintendent was in the process of deepening a sump pond which required that he lower the water level. The superintendent failed to monitor what was an obvious discharge of discolored waste water. Riverstone admits that this discharge was improper and took action to reprimand the superintendent.

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V. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part that if there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto, the Director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.186(1) prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. This section provides as follows:

A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. A pollutant whether treated or untreated shall not be discharged into any state owned natural or artificial lake.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60-69. Subrule 64.3(1) prohibits the operation of any waste disposal system contrary without or contrary to any condition of a permit. Subrule 64.1(4) states that any waste disposal system operation permit shall be issued as an NPDES permit under an EPA approved NPDES program if an NPDES permit is required for that disposal system. Rule 64.7 specifies the conditions that are to be included in an NPDES permit, including proper maintenance of the treatment facility (64.7(5)) and compliance with applicable effluent limitations as provided in chapters 567 IAC 61 and 62.

4. General Permit No. 5 established terms and conditions applicable to this facility. These terms and conditions include certain numeric effluent limitations (Part III), monitoring and reporting requirements (Part IV), proper operation and maintenance requirements and other standard conditions as specified in the permit.

5. The Commission has adopted "general" water quality standards which establish certain "narrative criteria" applicable to all surface waters. Sub-rule 567 IAC 61.3(2) in relevant part states:

General water quality criteria. The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times for the uses described in 61.3(1) "a."

a. Such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits.

c. Such waters shall be free from materials attributable to wastewater discharges or

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agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

6. Riverstone owns and operates this facility pursuant to a General Permit No. 5 and is responsible for compliance with the terms of the permit and applicable Commission rules. Riverstone has violated the general water quality standards in 567 IAC 61.3(2) and the standard conditions of General Permit No. 5 by failure to operate the wastewater disposal system as efficiently as possible and to provide the necessary trained staff to assure compliance with the permit conditions and applicable Commission rules. The discharge of pollutants to water of the state under terms not authorized by a permit constitutes a violation of the illegal discharge provisions of Iowa Code section 455B.186.

V. ORDER

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

1. By August 15, 2009, submit a plan to the Department field office in Washington, Iowa for upgrades to the existing wastewater disposal system sufficient to prevent effluent violations of the General Permit No. 5 numeric effluent limitations in Part III and the general water quality standards, including the turbidity standard in 567 IAC 61.3(2). Upon approval by the Department, implement the plan.

2. By August 15, 2009, submit a written operations and management plan to the Department field office in Washington, Iowa which establishes policy and procedures for how and when wastewater discharges will be released and monitored, including an employee training program designed to prevent Permit violations and violations of the general water quality standards, including the turbidity standards in 567 IAC 61.3(2). Upon approval by the Department, implement the plan.

3. Pay a penalty in the amount of \$3,000 by check payable to the "Iowa Department of Natural Resources" no later than August 30, 2009. Any payment shall be accompanied by a copy of the first page of this 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 the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the 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

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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 this Consent Order with the assessment of penalties.

Economic Benefit: The facility may have avoided costs necessary to either upgrade their waste water disposal system or to provide sufficient training and management of discharges of wastewater sufficient to comply with their General Permit No. 5 and Department general water quality standards. The Department has insufficient information at this time to assess this factor but reserves the right to do so.

Gravity: Riverstone appears to have undertaken significant upgrades and redesign of its wastewater collection and disposal system in 1999-2000 such that the pre-1999 complaints should not be factored into the gravity assessment. The March 4, 2009 discharge incident was a significant violation but it appears to have been an isolated incident. Applying an assessment of up to \$3,000, \$1,000 is assessed for this factor.


Culpability: The April inspection indicates that the discharge was likely ongoing and the failure of personnel to monitor the discharge and stop it at the point it was obviously discoloring the stream indicates negligent if not grossly negligent action or inaction. Applying an assessment of up to \$3,000, \$2,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), 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 Riverstone. By signature to this order, Riverstone waives all rights to appeal this order.

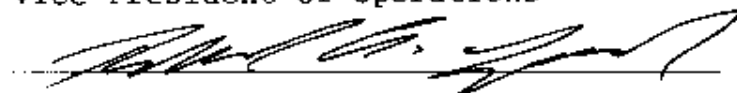
VIII. NONCOMPLIANCE

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 this order.



Riverstone Group, Inc.
By Its Authorized Representative
Marshall Guth
Vice President of Operations

Dated this 3 day of
August, 2009



Dated this 2 day of
August