

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Hawkeye Renewables, LLC

Hardin County, Iowa

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

TO: Jay Eaton Esq.
700 Walnut, Suite 1600
Des Moines, IA 50309-3899

I. SUMMARY

This administrative consent order (order) is entered into between Hawkeye Renewables, LLC (Hawkeye Renewables) and the Iowa Department of Natural Resources (Department). Hawkeye Renewables hereby agrees to continue recovery of the released ethanol and to pay an administrative penalty. In the interest of avoiding litigation, the parties have entered into this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Jeremy Klatt, Environmental Specialist

IDNR Field Office #2
2300 15th St SW P.O. Box 1443
Mason City, IA 50401
641/424-4073

Relating to legal requirements:
Carrie Schoenebaum,
Attorney at Law
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

Hawkeye Renewables neither admits nor denies the following statement of facts and enters into this agreement for settlement purposes only:

1. Hawkeye Renewables, owns and operates a dry-mill ethanol plant near Iowa Falls. The legal description for this property is Section 23, T89N, R21W, Hardin County Iowa. Operations at this plant began in October of 2004, and in 2006 the plant was expanded. The plant is permitted to produce 115 million gallons of ethanol annually. Hawkeye Renewables is currently processing approximately 100 million gallons of Ethanol annually. Some operations are performed 24 hours a day 7 days a week.

2. On February 15, 2008, Hawkeye Renewables released approximately 29,000 gallons of ethanol (of which 2.5% was gasoline) while loading a railcar with ethanol for transport. This release was timely reported to the Department. Hawkeye Renewables reported that the release occurred because the hose used to fill the railcar was not properly attached and the safety interlock failed.¹ Hawkeye Renewables failed to notice this until after the 40 minute fill cycle was completed.

3. Hawkeye Renewables responded to the release by applying Dried Distiller Grains as absorbent, vacuuming the ethanol and excavating the contaminated soil. The excavated soil was properly disposed of in a landfill which was approved by the Department. Much of the released ethanol was recovered.

4. On February 20, 2008, Mr. Klatt observed that a recovery trench had been created by Hawkeye Renewables.² The Department took samples of the water located on site and down stream from Hawkeye Renewables' facility between February 15, 2008, and October 9, 2008. These samples were sent to the University of Iowa Hygienic Lab (UHL) for analysis. The results of the water samples establish that ethanol left Hawkeye Renewables' property via a county drain tile which drains to Dago Lake, Monarch Pond and the Iowa River, and ethanol and other pollutants were present in these waters during the sample period. The results are as follows:

¹ A safety interlock is designed to prevent load-out from starting if the loading spout is not secured.

² A recovery trench is a method used to recover contaminated water.

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February, 15, 2008:

Sample Location: Tile intake, time of sample 12:30 pm

Ethanol: 120000 mg/L

Chemical Oxygen Demand (COD): 35000

Benzene: 420 ug/L

Toluene: 550 ug/L

Ethylbenzene: ND

Total Xylenes: ND

Sample Location: Manhole, time of sample 1:15 pm

Ethanol: 13000 mg/L

COD: 33000 mg/L

Benzene: 1100 ug/L

Toluene: 1900 ug/L

Ethylbenzene: 160 ug/L

Total Xylenes: 810 ug/L

Sample Location: Manhole, time of sample 2:15 pm

Ethanol: 23000 mg/L

COD: 52000 mg/L

Benzene: 1300 ug/L

Toluene: 2400 ug/L

Ethylbenzene: 180 ug/L

Total Xylenes: 920 ug/L

Sample Location: Dago Lake, time of sample 2:00 pm

Ethanol: 4200 mg/L

COD: 10000 mg/L

Benzene: 180 ug/L

Toluene: 310 ug/L

Ethylbenzene: 27 ug/L

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Total Xylenes: 140 ug/L.

Sample Location: Culvert to Iowa River, time of sample 3:00 pm

Ethanol: .07 mg/L

COD: 52 mg/L

Benzene: ND

Toluene: ND

Ethylbenzene: ND

Total Xylenes: ND

February 20, 2008:

Sample Location: Dago Lake, time of sample 2:20 pm

Ethanol: 2.9 mg/L

COD: 140mg/L

Benzene: ND

Toluene: ND

Ethylbenzene: ND

Total Xylenes: ND

Sample Location: Monarch Inlet, time of sample 1:30 pm

Ethanol: 97 mg/L

COD: 340mg/L

Benzene: 6 ug/L

Toluene: 13 ug/L

Ethylbenzene: ND

Total Xylenes: 5 ug/L

Sample Location: Monarch Outlet, time of sample 1:15 pm

Ethanol: 78 mg/L

COD: 270mg/L

Benzene: 5 ug/L

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Toluene: 12 ug/L
Ethylbenzene: ND
Total Xylenes: ND

Sample Location: Culvert to Iowa River, time of sample 2:00 pm
Ethanol: 42 mg/L
COD: 280mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

February 21, 2008:

Sample Location: Culvert to Iowa River, time of sample 11:40 am
Ethanol: 66 mg/L
COD: 200mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

February 26, 2008:

Sample Location: Culvert to Iowa River, time of sample 4:30 pm
Ethanol: .88 mg/L
COD: 120mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

March 4, 2008:

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Sample Location: Tile flow from under railroad track, time of sample 1:30 pm

Ethanol: 26,000 mg/L

COD: 120,000 mg/l.

Benzene: 700 ug/L

Toluene: 1300 ug/L

Ethylbenzene: ND

Total Xylenes: 840 ug/L

Sample Location: Culvert to Iowa River, time of sample 4:30 pm

Ethanol: 1.8 mg/L

COD: 47 mg/L

Benzene: ND

Toluene: ND

Ethylbenzene: ND

Total Xylenes: ND

March 6, 2008:

Sample Location: Manhole, time of sample 4:00 pm

Ethanol: .31 mg/L

COD: 170 mg/L

Benzene: ND

Toluene: ND

Ethylbenzene: ND

Total Xylenes: ND

Sample Location: Monarch Inlet, time of sample 12:45 pm

Ethanol: 19 mg/L

COD: 56 mg/L

Benzene: ND

Toluene: ND

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Ethylbenzene: ND
Total Xylenes: ND

Sample Location: Culvert to Iowa River, time of sample 12:30 pm
Ethanol: ND
COD: 33 mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

March 10, 2008:

Sample Location: Culvert to Iowa River, time of sample 12:30 pm
Ethanol: ND
COD: 42 mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

March 21, 2008:

Sample Location: Tile flow from under railroad track, time of sample
11:30 am
Ethanol: 11,000 mg/L
COD: 30,000 mg/L
Benzene: 610 ug/L
Toluene: 650 ug/L
Ethylbenzene: 50 ug/L
Total Xylenes: 270 ug/L

Sample Location: Storm Sewer Outfall, time of sample 12:00 pm

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Ethanol: ND
COD: 20 mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

March 28, 2008:

Sample Location: Tile flow from under railroad track
Ethanol: 1300 mg/L
COD: 25,000 mg/L
Benzene: 640 ug/L
Toluene: 850 ug/L
Ethylbenzene: 70 ug/L
Total Xylenes: 330 ug/L

Sample Location: Dago Lake
Ethanol: 1.2 mg/L
COD: 36mg/L
Benzene: ND
Toluene: ND
Ethylbenzene: ND
Total Xylenes: ND

Sample Location: Monarch Inlet
Ethanol: ND
COD: ND
Benzene: ND
Toluene: ND
Ethylbenzene: ND

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Total Xylenes: ND

October 9, 2008:

Sample Location: Tile flow from under railroad track

Ethanol: 1.1 mg/L

COD: 150 mg/L

5. On March 28, 2008, Jeremy Klatt, Environmental Specialist for the Department, met with the owner of Monarch Pond. The owner of the pond showed Mr. Klatt a dead bull frog and stated that he had seen many dead bull frogs that spring.
6. On April 16, 2008, the Department sent a Notice of Violation to Hawkeye Renewables for an unauthorized discharge of a pollutant to a water of the State.
7. On October 23, 2008, the Department sent a letter to Hawkeye Renewables that contained the UIIL sample results from October 9, 2008, and informed Hawkeye Renewables that due to the elevated levels of Ethanol and COD the recovery trench should not be closed and recovery must continue.

IV. CONCLUSIONS OF LAW

Hawkeye Renewables neither admits nor denies the following conclusions of law and enters into this agreement for settlement purposes only:

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibits 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 the discharge referenced herein, 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 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.

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The above stated facts demonstrate that Hawkeye Renewables violated these legal requirements.

V. ORDER

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

1. Hawkeye Renewables shall continue to recover and properly manage the water from under the railcar load-out area until it receives Department approval to close the recovery trench; and
2. Pay a penalty of \$10,000 within 30 days of the Director of the Department signing this order.

VI. PENALTY

Hawkeye Renewables neither admits nor denies the following and enters into this agreement for settlement purposes only:

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:** Because the Department has decided to handle this matter administratively at this time no penalty is assessed for this factor.
3. **Gravity of the Violation:** The impact from the unpermitted discharge of 29,000 gallons of ethanol constitutes an immediate and continuous danger to the environment, as well as the public's health and safety. Once Hawkeye Renewables discovered the extent of the spill it took the necessary steps to mitigate further degradation to the environment. Therefore, \$6,000.00 is assessed for gravity.
4. **Culpability:** Filling a rail car with thousands of gallons of ethanol is an activity that poses a substantial environmental threat and therefore, demands the highest level of care. For a release of this magnitude to go undetected, for so long, shows failure on behalf of Hawkeye Renewables to apply the appropriate standard of care. If an employee would merely have checked on the filling of the railcar once during the fill cycle, the amount of

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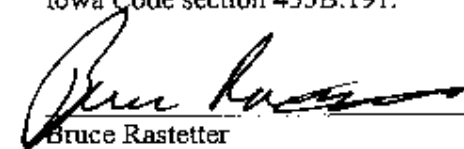
ethanol released to the waters of the State would likely have been substantially reduced. While the Department believes that Hawkeye Renewables did not apply the appropriate standard of care, the Department does not believe that this matter involves any intentional wrongdoing. Therefore, \$4,000.00 is 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 Hawkeye Renewables. By signature to this order, all rights to appeal this order are waived.

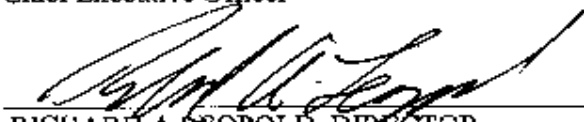
VIII. NONCOMPLIANCE

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.



Bruce Rastetter
Chief Executive Officer

Dated this 11th day of
September, 2009.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22 day of
Sept., 2009.

Hawkeye Renewables, Field Office 2, Carrie Schoenebaum; Jeremy Klatt, I.C.1., & I.C.6.a.