

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

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IN THE MATTER OF:	)	
	)	
Cargill, Incorporated	)	ADMINISTRATIVE
1 Cargill Drive	)	CONSENT ORDER
Eddyville, IA 52553	)	
	)	2009-WW- 18
DNR ID Number: 6800100	)	

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**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Cargill, Incorporated (Cargill) hereby agree to the following Administrative Consent Order (Order). Cargill agrees to have an Iowa licensed engineer perform a risk assessment of the Wacker-to-Cargill wastewater conveyance system, pay an administrative penalty of \$3,000; and \$35,664.83 in fish restitution. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Charles Furrey  
Iowa Dept. of Natural Resources, FO #5  
401 SW 7<sup>th</sup>, Suite 1  
Des Moines, Iowa 50309  
Ph: 515/725-0218

**Relating to legal requirements:**

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8934  
tamara.mullen@dnr.iowa.gov

**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 I (water quality) and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorizes the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

The Department finds the following statement of facts:

1. Cargill is an international producer and marketer of food, agricultural, financial, and industrial products and services. Cargill is headquartered in Minnesota, but it has a major corn wet milling plant in Eddyville, Iowa. The Eddyville plant is also equipped with a wastewater treatment plant, providing treatment to both its own wastewater and that generated by its industrial neighbors, to include Wacker Chemical Company (Wacker).
2. Wastewater generated by Wacker is pumped through a force main to Cargill for processing.
3. On August 22, 2008, Cargill employee Tammy Schacher noticed an accumulation of dead fish in Miller Creek below the pedestrian bridge between Cargill's parking lot and the plant. She notified Shawn Peters, Cargill's environmental manager, who counted approximately 30 dead fish sometime after 8:00am.
4. Cargill's initial investigation the morning of August 22, 2008 identified wastewater bubbling up from the ground and flowing to Miller Creek, resulting in a brownish sheen on the stream surface. Cargill notified Wacker to shut off its wastewater force main pumps, and it did so around 9:30am that morning.
5. Cargill collected stream samples and did field testing for total residual chlorine (TRC), BOD<sub>5</sub>, total carbon (TC), and chemical oxygen demand (COD) up and downstream from the spill site. At 10:25am the TRC samples ranged from 0.1 mg/L upstream to 0.2 mg/L downstream; the TC sample was 77 mg/L.
6. Cargill contacted Department Field Office (FO) #5 around 10:30am that morning to report a possible fish kill in Miller Creek. In turn, FO #5 notified the Department's Fisheries Bureau.
7. Mr. Mark Flammang, Fisheries Biologist, and Mr. Bruce Ellison and Mr. Iaian Bock, both Fisheries technicians, investigated the fish kill from 1:00pm to 7:30pm on August 22, 2008.
8. The force main was repaired by 1:30 on the afternoon of August 22, 2008. The force main broke in an area southeast of Cargill's wastewater treatment

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facility. The line at the breaking point is buried approximately five feet below the ground. The release occurred due to a failed pipe joint weld. The pipe is made of high density polyethylene. Cargill resumed treatment of Wacker's wastewater.

9. On August 23, 2008, Mr. Charles Furry of FO #5 met with Mr. Antonio Carrillo, Wacker's Site Manager, and Mr. Chad Cormeny, Wacker's Facility Compliance Coordinator. Wacker's wastewater collection tank and pumping facilities were inspected and wastewater samples were taken.
10. On August 29, 2008 the Fisheries investigation was complete. A total of 3,134 fish were killed with a value of \$34,774.16. Including the investigation costs of \$853.67, a total restitution value of \$35,664.83 is assessed.
11. On September 19, 2008 Cargill submitted a written spill report in accordance with 567 I.A.C. 131.2 describing the pipe's break, resulting release, and Cargill's internal investigation. The spill report states that the material released into Miller Creek between the time of discovery of the fish kill and the time of the Wacker notification would have been at most 25% of the flow, or approximately 750 gallons of wastewater.
12. Cargill admits in its spill report that it has responsibility for the care and maintenance of the wastewater lines on Cargill's property. Because the break occurred on its property, Cargill has assumed responsibility for the break and resulting release.
13. On December 15, 2008 the Department received UHL's sample analyses, with the following results:

Parameter	Concentration
Acetone	180 ug/L
Chloroform	< 5 ug/L
Toluene	89 ug/L
Total Kjeldahl Nitrogen	5.8 mg/L
Total Dissolved Solids	8,000 mg/L
TSS	37 mg/L
Chloride	51 mg/L
Ammonia Nitrogen	0.57 mg/L
Total Biological Oxygen Demand	8,200 mg/L

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Chemical Oxygen Demand	9,400 mg/L
TOC	4,000 mg/L
1-Decanol	260 mg/L

The UHL report also stated that positive detects were made for sodium, magnesium, aluminum, manganese, iron, antimony, barium, and uranium.

14. On January 13, 2009 FO #5 transmitted the Fisheries Bureau's "Report of Investigation of the Fish Kill" to Cargill. This report cited Cargill for violations of state law and also included the Fisheries staff's fish kill investigation summary memo.
15. The letter also informed Cargill this matter would be referred to the Department's Legal Services Bureau for enforcement.

**IV. CONCLUSIONS OF LAW**

The Department finds that the following conclusions of law are applicable to this matter:

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 Pollution 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 Environmental Protection Commission (Commission) has adopted federal effluent limitation standards by reference, and imposed different standards when necessary to comply with 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." Industrial wastewater, such as that released into the environment in the present case, qualifies as a pollutant under this definition.
3. Miller Creek 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. . ."

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4. Although Cargill has a valid NPDES permit for its Eddyville location (permit number 6800100), the broken force main discharge point at issue here is not an approved point source outfall location under the NPDES permit's terms. Accordingly, the facts show there was a discharge of a pollutant into a water of the state without the authorization of a NPDES permit, a direct violation of these provisions.
5. Iowa Code section 455B.173 states that the 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 62.
6. 567 I.A.C. 62.3(2) states that all surface waters of the State "shall be free from substances attributable to wastewater discharges. . . acutely toxic to . . . animal life. . . [and] [f]rom substances in quantities which would produce undesirable or nuisance aquatic life." Cargill's industrial wastewater release which caused a fish kill is a violation of this provision.
7. 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.
8. The above-stated facts and conclusions of law show Cargill has polluted a water of the state in violation of the law. Accordingly, 571 I.A.C. 113 and 567 I.A.C. 133.6 authorize the Department to collect \$35,664.83 in fish restitution.

**V. ORDER**

THEREFORE, the Department hereby orders and Cargill agrees to the following:

1. Cargill shall pay to the order of the Iowa Department of Natural Resources an administrative penalty of \$3,000 within 30 days after issuance of this Order.

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2. Cargill shall pay fish restitution of \$35,664.83 to the order of the Iowa Department of Natural Resources within 30 days after issuance of this Order.
3. Cargill shall have an Iowa licensed engineer do a risk assessment of the Wacker-to-Cargill wastewater conveyance system and recommend improvements necessary to prevent future line breaks. The risk assessment must also include detailed analysis of the current transporting system. Cargill shall submit the risk assessment, along with its root cause analysis of this event, no later than August 1, 2009.
4. Cargill will propose to perform a pressure test in the manner required by line integrity and only where practical on the wastewater conveyance piping from Wacker, Ajinomoto, and Heartland to Cargill. Cargill will also propose to Wacker, Ajinomoto, and Heartland that flow meters be installed at each end of each line so as to be able to monitor flow which would be outside of normal flow ranges. A letter containing the proposal will be sent by Cargill to Wacker, Ajinomoto, and Heartland. A copy of the proposal letter is attached to this Order. Cargill will advise the Department of the response of Wacker, Ajinomoto, and Heartland to these proposals within 30 days of receiving each of the responses. If no response is received from Wacker, Ajinomoto, and Heartland, within 90 days from the date of the letter sent by Cargill making the proposal, Cargill will advise the Department of the lack of response.

**VI. PENALTY**

Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Additionally, Iowa Code section 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 in 567 I.A.C. chapter 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:** The Department is not assessing any economic benefit-based penalty.

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**GRAVITY:** The facts show this release resulted in over 3,134 fish dying in Miller Creek. The wastewater contained chemicals and metals acutely toxic to marine life. Therefore, \$3,000 is assessed for this factor.

**CULPABILITY:** The facts do not indicate there was any specific act or omission of Cargill that resulted in the force main breaking at this particular point or on this particular day. As such, the department is not assessing any penalty for culpability at this time.

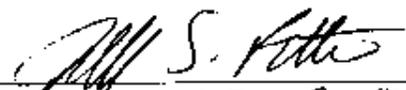
**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175, and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Cargill. By signing this Order all rights to appeal this Order are waived.

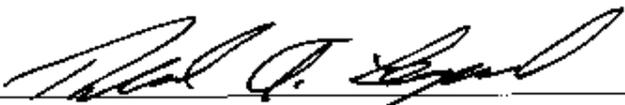
**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order and all violations arising out of the same facts and circumstances described in this Order. To the extent that there is any conflict between them, this Order supersedes the Notice of Violation dated January 13, 2009, and the Report of Investigation by the Iowa Department of Natural Resources dated January 15, 2009. This Order shall terminate upon Cargill's compliance with Section V except that Section VIII shall survive termination of 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.

CARGILL, INCORPORATED

By:   
Its: V.P. Corn Milling Plant Operations

Dated this 26 day of JUNE, 2009

  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13 day of July, 2009

Dear Ajinomoto, Heartland or Wacker:

The Iowa Department of Natural Resources has requested Cargill make a proposal to you to implement certain changes so as to minimize the chance of any future release arising out of a malfunction of the wastewater conveyance system between your facility and Cargill. Cargill has proposed to the Department that a pressure test, where practical, be performed on the lines from your facility to Cargill and that flow meters be installed at each end of the line so as to monitor flow. The purpose for these actions is to minimize any future releases of the type which has occurred in the past when there has been a break or rupture of the subject line.

The Department has asked that Cargill approach you and that you respond as to your position regarding implementing these measures. Cargill would be responsible for payment and installation of the flow meter and communication hardware at its end and you would be responsible for installation and payment of the flow meter and communication hardware at your end of the line. The pressure testing would be coordinated through Cargill during a time that would make sense for operations of both facilities at a shared cost to be determined by the parties. If agreed, the plan would be to conduct this testing before December 31, 2009.

We appreciate your consideration of this proposal and await your response. We have informed the Department that we will advise them of your response as soon as it is received or lack of response if we have heard nothing from you within 90 days from the date of this letter.

Cargill looks forward to your response.

Very truly yours,