

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Golden Grain Energy, LLC
Wastewater Facility No. 6-17-00-127

**ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW-34**

TO: Walter Wendland President, CEO
Golden Grain Energy, LLC
14542 240th Street
Mason City, IA 50401

I. SUMMARY

This administrative consent order (order) is entered into between Golden Grain Energy, LLC (Golden Grain) and the Iowa Department of Natural Resources (Department). Golden Grain hereby agrees to comply with the effluent limits contained in its National Pollution Discharge Elimination System (NPDES) permit, to sample the effluent discharge for iron, IDS, and IRC every other week for 12 consecutive months and to pay a penalty of \$10,000.00. 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:

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
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

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 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.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Golden Grain Energy, LLC**

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts

1 Golden Grain owns and operates a dry mill ethanol plant located in the SE ¼ of Section 20, T 96 N, R 20 W in Cerro Gordo County, Iowa. It produces nearly 100 million gallons of ethanol yearly and has 45 employees. This plant discharges noncontact cooling water, reverse osmosis reject water, and water softener regeneration wastes to an unnamed tributary of Chelsea Creek which discharges to Willow Creek. Currently, there is no wastewater treatment system for the water and limits are to be achieved by modifying water treatment procedures.

2 Golden Grain discharges wastewater pursuant to NPDES No. 6-17-00-1-27 issued December 6, 2004, and amended August 7, 2007. The permit contains effluent limitations for the discharge of the following pollutants: total suspended solids (TSS), iron, potential hydrogen (pH), total dissolved solids (TDS) and total residual chlorine (TRC). This facility has had significant violations of all of these limits, except TSS

3 In 2005 Golden Grain reported violations in its monthly operation reports (MORs) in every month.¹ Specifically, iron limits were violated during 4 months: January, February, November and December. Potential hydrogen (pH) limits were violated during the month of December. TDS limits were violated during 5 months: June, August, September, November and December. TRC limits were violated during all 12 months.

In 2006 Golden Grain reported violations during 8 months. Specifically, iron limits were violated during the month of May. TDS limits were violated during 5 months: March, May, June, August and October. TRC limits were violated during 5 months: August, September, October, November and December.

In 2007 Golden Grain reported violations during 11 months. Specifically, iron limits were violated during 7 months: April, June, July, August, September, November and December. TDS limits were violated during 8 months: January, April, May, August, September, October, November and December. TRC limits were violated during 10 months: January, March, April, May, June, July, September, October, November and December.

In 2008 Golden Grain reported the following violations during 9 months. Specifically, iron limits were violated during 7 months: April, June, July, August, September, November and December. TDS limits were violated during 6 months: May,

¹ For the specific numeric violations please see the attached Filed Office Facility Compliance Report. The specific violations are highlighted.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Golden Grain Energy, LLC**

June, July, August, September and October. TRC limits were violated during 5 months: June, August, September, November and December.

To date, in 2009, Golden Grain has reported the following violations: TDS limits were violated in January and TRC limits were violated in March.

4. The Department conducted NPDES permit compliance inspections on the following dates: August 14, 2006, January 2, 2008, May 15, 2008, and February 13, 2009. During each inspection the Department documented the violations of effluent limits. An inspection report was mailed to the facility following each inspection; these reports document the violations.

5. On January 3, 2008, the Department sent a Notice of Violation (NOV) to Golden Grain because of effluent limit violations. This NOV required Golden Grain to submit a written response to the Department stating the measures it has taken or will take to comply with the effluent limits contained in its NPDES permit. In a letter dated January 24, 2008, Golden Grain informed the Department that to comply with TRC limits the company was in the process of installing a control system to automatically adjust the sodium bisulfate flow rate by changing the flow of the cooling tower blow-down rate. Golden Grain predicted that the system would be implemented by March 1, 2008. In the same letter Golden Grain stated that to comply with TDS limits it would increase the amount of blow-down from the cooling towers. Golden Grain believed that by reducing the number of cycles that the towers operate, the outfall should be reduced and it could therefore comply with the TDS limits. Lastly, Golden Grain stated that to comply with the iron limits it adjusted its operating procedures so that pumping of iron backwash tanks would occur more frequently. Golden Grain also began investigating whether the installation of an iron settling pond or a connection to the city sewer system would help bring the facility into compliance with the iron limits. In January of 2008, Golden Grain also adjusted its operating procedures to increase the frequency that iron sludge is removed from the iron filters.

6. During the February 13, 2009, inspection of Golden Grain, the Department documented that Golden Grain had not pumped the iron backwash from the tanks since March of 2008. Significant violations of the iron limits have therefore occurred. The Department also documented that the TDS limits were being exceeded. The Department told Golden Grain to alter the cooling tower blow-down rate as necessary to meet the limit. On March 5, 2009, another NOV was mailed to Golden Grain because of the violations discovered during the inspection. This NOV informed the company that the matter was being referred to the Department's Legal Services Bureau for possible enforcement action.

CONCLUSIONS OF LAW

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

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Golden Grain Energy, LLC**

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate non-compliance with this provision.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules. The effluent limits contained in Golden Grain's permit were violated. The above stated facts demonstrate non-compliance with these provisions.

3. Golden Grain's NPDES permit requires that it properly operate and maintain its facility. Standard Condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of treatment and control which have been installed or are used by the permittee to achieve compliance with the terms and conditions of the permit." The significant effluent limit violations demonstrate that these provisions were violated.

V. ORDER

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

1. Golden Grain shall sample the effluent discharge for iron, TDS, and TRC every other week for a period of 12 consecutive months beginning no later than 30 days after the Director of the Department signs this order.
2. Golden Grain shall comply with the limits contained in its NPDES permit.
3. Golden Grain shall pay a penalty of \$10,000.00 within 30 days of the Director of the Department signing this order.

In lieu of payment of the full administrative penalty, Golden Grain may elect to pay \$2,500.00 to the Department as an administrative penalty and \$7,500.00 to Cerro Gordo County Conservation Board (CGCCB) to be used as a Supplemental Environmental Project (SEP). If Golden Grain elects to enter into the SEP then Golden Grain shall submit documentation showing that the full amount was paid to the CGCCB. Such

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Golden Grain Energy, LLC**

documentation shall be supplied to the Department within 30 days of the date the Director of the Department 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 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 penalties.

2. **Economic Benefit:** Golden Grain saved considerable time and expense by not complying with the effluent limits contained in its permit. Specifically, the company did not allocate the necessary time to determine why the effluent limits were continuously violated, nor did it allocate the necessary time to abate the violations. Golden Grain continued to operate despite knowingly violating its permit limits. Compliance with permit limits can always be achieved through a reduction in operation or ceasing operations. Consequently, every dollar earned by Golden Grain while operating in non-compliance, should be calculated as an economic benefit. In 2008, Golden Grain reported to the United States Securities and Exchange Commission the following Gross Profits: 2006—\$45,071,843; 2007—\$23,872,321; and 2008—\$20,987,346. These profits make it clear that the economic benefit is well above the Department's \$10,000.00 administrative limit. Nevertheless, the Department has decided to handle this matter administratively. The penalty assessed for this factor is \$1,000.00.

3. **Gravity of the Violation:** Golden Grain has continuously failed to comply with the effluent limits contained in its NPDES permit. Effluent limits are the core of an NPDES permit and the backbone of the regulatory program. The limits have been established to ensure that environmental degradation will not occur. The failure by Golden Grain to comply with its limits has resulted in a substantial release of pollutants to a water of the state. In addition, 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 the type of violation. As indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above cited violations is with administrative penalties, which are lower than those that could be obtained through court action. Therefore, \$4,000.00 is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Golden Grain Energy, LLC**

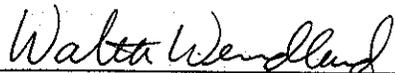
4. **Culpability:** Golden Grain has reported continuous violations of the effluent limits contained in its NPDES permit since 2005. The iron limit violations could have been avoided by the company adjusting its operating procedures so that pumping of iron backwash tanks would occur more frequently. Golden Grain knew this but failed to implement the necessary measures. Moreover, the inspection conducted by the Department in February of 2009, revealed that pumping of iron backwash tanks had not occurred since March of 2008. Further, TDS effluent limits have been repeatedly violated since 2005. Golden Grain was aware of how to reduce the TDS concentration in the discharge to below the permit limit, but it did not implement the necessary measures. In sum, Golden Grain reported all of the violations which are the subject of this order and Golden Grain had knowledge of how to alleviate the violations; but significant violations persisted. Thus, it is apparent that Golden Grain did not apply the appropriate standard of care required by the law. Because of this, \$5,000.00 is assessed for this factor.

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 Golden Grain. By signature to this order, all rights to appeal this order are waived.

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.



Walter Wendland President, CEO

Dated this 27 day of
November, 2009.



Richard A. Leopold, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of
Dec., 2009.

Golden Grain Energy, LLC- Wastewater Facility No. 6-17-00-127, Field Office 2, Carrie Schoenebaum; Jeremy Klatt, I.B.2 c.