

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

IN THE MATTER OF:

Fredericksburg Farmers Cooperative
110 North Jefferson
Fredericksburg, IA 50630

**ADMINISTRATIVE
CONSENT ORDER**
2009-WW- 33
2009-HC- 05
2009-AQ- 29

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Fredericksburg Farmers Cooperative (FFC) hereby agree to the following Administrative Consent Order (Order) concerning violations of Iowa's water quality, air quality, and hazardous condition reporting standards. In the interest of avoiding litigation, the parties have agreed to these provisions.

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
502 E 9th Street
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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative

III. STATEMENT OF FACTS

The parties hereby agree to the following 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 emptying 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative

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. Intersection of Plum Street and West Jackson Avenue
 - b. Bridge at 260th Street
 - c. Corner of 260th 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 larvae were observed at any of the above locations. Ms. Sauser only noticed dead fish and larvae 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 has already been cancelled.

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

Location	Result for Ammonia Nitration (NH ₃ -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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative

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 \$12,043.83 and required \$569.22 in investigation costs, for a total of \$12,613.05 in restitution.
14. The Department issued a unilateral order (2009-WW-16) on June 25, 2009, which FFC timely appealed by filing a petition for an administrative hearing. An administrative hearing, case number 09DNR020 was set for November 2009.
15. As the parties have reached a settlement, the Department is rescinding unilateral order 2009-WW-16 and replacing it with this Order, and furthermore, FFC agrees to dismiss its contested case proceeding.

IV. CONCLUSIONS OF LAW

The parties hereby agree 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 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 State has adopted federal effluent limitation standards by reference, and impose 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." 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 these provisions.
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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative

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 this provision.
8. Iowa Code section 455B.386 and 567 I.A.C. 131.2 requires 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 as defined 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 the law.
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.
11. The above-stated facts and conclusions of law show 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 \$12,613.05 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 34 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 these provisions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative

V. ORDER

THEREFORE, the parties agrees to the following:

1. FFC agrees to 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 the Director signing this Order.
2. FFC agrees to provide proof to the Department that it has acquired an ammonia field test kit within 60 days of the Director signing this Order.
3. FFC shall pay to the order of the "Iowa Department of Natural Resources" \$12,613.05 for fish restitution costs as described in this Order within 30 days of receipt of the Director signing this Order.
4. FFC shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$6,000 within 30 days of receipt of the Director signing this Order.

VI. PENALTY

Iowa Code sections 455B.146 and 455B.191 authorize 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 those provisions. 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 involved in paying for labor, hauling, and tipping fees for properly disposing of trade waste and plastic. Therefore, \$1,000 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative

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 investigate, document, and respond to the illegal discharge, resulting fish kill, and open burning violations that are the subject of this Order. As such, \$2,000 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, \$2,000 is assessed for this factor.

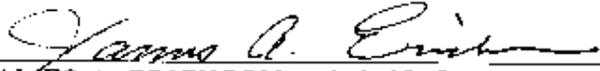
VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 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 FFC. 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. 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 and 455B.191.

50
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Fredericksburg Farmers Cooperative



JAMES A. ERICKSON on behalf of
FREDERICKSBURG FARMERS COOPERATIVE

Dated this 17th day of November, 2009



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24 day of Nov., 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