

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Ag Processing Inc a cooperative

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-WW-15**

**TO: Martin P. Reagan CEO and
General Manager,
Ag Processing Inc a cooperative
12700 W Dodge Rd
Omaha, NE 68154**

I. SUMMARY

This administrative consent order (order) is entered into between Ag Processing Inc a cooperative (AGP) and the Iowa Department of Natural Resources (Department). AGP hereby agrees to comply with its Storm Water National Pollution Discharge Elimination System General Permit #1 (Storm Water NPDES permit), keep soybean meal and unauthorized pollutants originating from the coal dome storage area out of the drainage ditch and the City of Eagle Grove's (City) storm sewer and to pay a penalty of \$10,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of 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
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

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455B 109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

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

1. AGP owns a soybean refinery located at Section 27, T 91 N, R 26 W in Wright County, Iowa. "AGP is a farmer-owned cooperative engaged in the procurement, processing, marketing and transportation of grains and grain products. AGP also operates nine soybean processing plants" six of these plants are located in Iowa. (Information from AGP's website found at http://www.agp.com/about_us.shtml). According to AGP's website, it is the "largest cooperative soybean processing company in the world." *Id.* Pursuant to its Storm Water NPDES permit and the Storm Water Pollution Prevention Plan (PPP) contained within that permit AGP is authorized to discharge storm water to the City's sewer system.
2. AGP allowed soybean meal from its soybean refinery to collect in its storm water collection system. The decaying of the soybean meal in that system produced high biological oxygen demand (five day) (BOD₅). AGP subsequently discharged the water high in BOD₅ from its storm water collection system to a drainage ditch which flows to an unnamed tributary of the Boone River. AGP has also allowed the discharge of total suspended solids (TSS) from its coal pile in excess of the amount allowed in its Storm Water NPDES permit (permit limit is 50 mg/L). The TSS was discharged into three surface intakes which flow into the City's sewer system, which flows to drainage ditch 94, which flows to a tributary of the Boone River.
3. On January 2, 1992, Department Field Office #2 received a complaint alleging that water in a drainage ditch north of AGP's Eagle Grove facility smelled like sewage and that the water in the ditch was green. Glenn Carper and Dennis Ostwinkle of the Department, investigated the complaint. Once on site they detected a sewage smell, and observed fungus and algae growing in the ditch. Samples were taken and sent to the University of Iowa Hygienic Laboratory (UHL) to be analyzed. The results indicated elevated levels of ammonia concentration. A manhole on AGP's property just south of 8th Street was observed, the water flowing through this manhole discharges to the ditch discussed above. Water in this outfall structure had the same septic smell as the water in the ditch, fungus was also observed. Mr. Carper and Mr. Ostwinkle contacted Mr. Phil Huffman, AGP Plant Manager, who stated that the outfall receives surface water discharged from the soybean meal load-out area in addition to excess well water. The Department concluded that the soybean meal is likely the cause of the septic odor and the algae and fungi growth. Mr. Huffman stated that AGP will take efforts to keep the area around the soybean meal load-out location clean.

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4. On February 19, 1992, a letter detailing the UHL results was sent to AGP. This letter also informed AGP that Iowa's general water quality laws were violated. AGP was instructed to take the necessary steps to keep soybean meal out of the sewer.

5. On May 26, 1992, the Department received a complaint from the Wright County Sanitarian, alleging that AGP was discharging foul smelling water to a ditch near 8th Street in Eagle Grove. On July 14, 1992, Mr. Carper investigated the complaint. On site he observed a faint rusty brown color in the water which was being discharged to the ditch. Mr. Carper went to AGP where he observed several puddles of very deep brown (tea colored) liquid puddles near the soybean meal load-out area. This pooled water was capable of running to the ditch discussed above, especially during rainfall events.

6. On March 31, 1997, Department Field Office #2 received a complaint alleging that soybean meal was entering a storm water intake on AGP's property. On April 4, 1997, Clay Swanson and Trent Lambert of the Department investigated the complaint. On site they met with various employees of AGP. After meeting and discussing the complaint AGP escorted the Department to the storm water intake that was the subject of the complaint. This location is approximately 30 feet southeast of the east door of the south truck load-out area. At the intake, the Department observed that soybean meal product was on the ground in the general area and soybean meal was surrounding the storm water inlet grate and the lip of the inlet itself. There was standing water in the tile which was a cream color. AGP stated that the soybean meal had most likely come from the railroad load-out located on the west side of the facility. The Department reviewed AGP's Storm Water NPDES permit and pointed out that "good housekeeping" as detailed in its permit would keep the soybean meal out of the storm water. On April 7, 1997, the Department sent AGP an NOV outlining the above discussed violations.

7. On September 13, 2000, AGP conducted storm water testing as required by its permit. This test revealed that TSS was in excess of the permitted amount at the east intake. The TSS concentration was 118 mg/L; the permitted concentration is 50 mg/L.

8. On August 5, 2002, AGP conducted storm water testing as required by its permit. This test revealed that TSS was in excess of the permitted amount at the east intake, TSS was 108 mg/L.

9. On January 14, 2003, the Department received a complaint alleging a septic smell in a ditch north of 8th Street in Eagle Grove. The complainant stated that he began smelling this odor when AGP began its new refinery process. On January 29, 2003, Al Tompkins of the Department conducted a complaint investigation. On site he observed that the water near the storm sewer outfall north of 8th Street was milky in color, black sludge had accumulated in the bottom of the ditch slightly downstream from the outfall, and there was also sewage fungus growth on the stream substrate. Mr. Tompkins called Curt Nesvold the City's wastewater superintendent to see if there were any sanitary sewers that could be leaking into this storm sewer. Mr. Nesvold and three other City

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employees met Mr. Tompkins on site, with a map of the sanitary and storm sewer system, and concluded that there were no sanitary sewers nearby. Mr. Nesvold stated that the storm sewer primarily serves the north portion of AGP's property. UHL lab samples were collected and the results indicated a low level of organic contamination; BOD₅ concentration was 40 mg/L. The same day various AGP staff met Mr. Tompkins at the ditch. At that time Mr. Tompkins observed that the flow had increased significantly and that there was a black plume in the discharge. Mr. Tompkins observed a manhole in the storm water collection system on AGP's property just south of 8th Street and noted black solids were retained behind a weir in the manhole. Mr. Tompkins tracked the storm sewer back to the AGP processing area and found an intake at the north edge of AGP's warehouse, near the rail load-out area. Soybean meal had accumulated in the snow and ice which covered the storm water intake. Mr. Tompkins concluded that soybean meal had accumulated in the storm sewer for a long period of time and had decomposed causing the black sludge material and low level or organic contamination.

10. On February 12, 2003, Mr. Tompkins conducted a follow up investigation. AGP informed him that it had removed 16 cubic yards of sludge and wastewater from the storm sewer. This is approximately 3,230 gallons. Mr. Tompkins observed the discharge and noted that it was better but it was still slightly turbid.

11. On February 13, 2003, the Department sent AGP an NOV discussing the violations discovered during these investigations. This letter stated that soybean meal entered the storm sewer over a long period of time. The soybean meal which accumulates behind the V-notch weir in the manhole was decomposing and flushing low levels of organic pollutants to the ditch north of 8th Street. This letter again reminded AGP that allowing soybean meal to enter the storm sewer is a violation of its Storm Water NPDES permit and specifically its PPP contained in that permit. This letter asked AGP to provide a written response detailing what measures it will take to comply with its Storm Water NPDES permit and PPP.

12. On February 25, 2003, AGP sent the Department a letter detailing better housekeeping measure that it would take in an effort to eliminate soybean meal from entering the storm sewer.

13. On April 17, 2003, a Storm Water NPDES permit compliance inspection was conducted by the Department. During this inspection the Department noted numerous violations of AGP's PPP contained within its Storm Water NPDES permit. Following this inspection an inspection report was mailed to AGP.

14. On September 9, 2003, a Storm Water NPDES permit compliance inspection was conducted by the Department. During this inspection the violations documented during the April 17 inspection were found to be resolved. On September 12, 2003, this inspection report was mailed to the facility.

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15. On November 3, 2003, AGP took samples of the coal pile runoff as required by its Storm Water NPDES permit. These samples indicated that the effluent limit for TSS was violated, the results were as follows:

North intake: TSS 107 mg/L

East intake: TSS 97 mg/L

South intake: TSS 113 mg/L

16. On December 16, 2003, the Department sent AGP a NOV for the TSS violations. This NOV required that by January 15, 2004, AGP submit a written statement as to how it will reduce the TSS from the coal pile runoff. On January 7, 2004, a written statement was submitted to the Department.

17. On August 31, 2004, AGP took samples of the coal pile runoff as required by its Storm Water NPDES permit. These samples indicated that the effluent limit for TSS was violated, the results were as follows:

North intake: TSS 86 mg/L

East intake: TSS 80 mg/L

South intake: TSS 78 mg/L

18. On May 24, 2007, AGP took samples of the coal pile runoff as required by its Storm Water NPDES permit. These samples indicated that the effluent limit for TSS was violated, the results were as follows:

North intake: TSS 255 mg/L

East intake: TSS 164 mg/L

South intake: TSS 209 mg/L

19. On September 5, 2008, AGP took samples of the coal pile runoff as required by its Storm Water NPDES permit. These samples indicated that the effluent limit for TSS was violated, the results were as follows:

North intake: TSS 118 mg/L

East intake: TSS 127 mg/L

South intake: TSS 116 mg/L

20. On July 17, 2009, AGP took samples of the coal pile runoff as required by its Storm Water NPDES permit. These samples indicated that the effluent limit for TSS was violated, the results were as follows:

North intake: TSS 247 mg/L

East intake: TSS 258 mg/L

South intake: TSS 274 mg/L

21. On October 27, 2009, Jeremy Klatt, an Environmental Specialist with the Department, conducted a Storm Water NPDES permit compliance inspection. During

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this inspection, Mr. Klatt took a sample at the location where the storm water retention system discharges to the ditch north of 8th Street. This sample was sent to the UHL where it was analyzed for BOD₅. The concentration of BOD₅ was 150 mg/L. Additionally, at this location Mr. Klatt observed and detected the following: a pungent odor that smelled of rotting vegetation, black sludge in the bottom of the ditch, cloudy water, and Sphaerotilus bacteria growth.¹ Mr. Klatt took pictures documenting the sludge, the cloudy water and Sphaerotilus species. Mr. Klatt also noted that black sludge was present behind the weir in the manhole on AGP's property just south of 8th Street.

While on site Mr. Klatt also inspected the coal pile. Mr. Klatt noted three surface intakes around the coal pile, located in front of each was a small settling basin; these settling basins had significant accumulations of coal particles. AGP informed Mr. Klatt that the settling basins are cleaned every few months. Moreover, the area near the entrance to the coal pile was covered with coal dust. From observations it was apparent that more frequent cleaning of this area is needed. Mr. Klatt took UHL samples for TSS at each surface intake the results were as follows:

North intake: TSS 180 mg/L

East intake: TSS 8400 mg/L

South intake: TSS 610 mg/L

22. On November 16, 2009, an inspection report was mailed to AGP. This report discussed the water quality violations detailed above. It also made recommendations as to how to avoid future violations.

CONCLUSIONS OF LAW

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

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.

2. 567 IAC 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. AGP allowed soybean meal to accumulate in its storm water retention system. Thus, AGP's storm water collection system became a retention vessel where biological activity and the breakdown of organic material was occurring.

¹ This is an organism that is indicative of wastewater pollution.

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This is the purpose of a wastewater treatment lagoon. Therefore, AGP was operating a waste disposal system without a permit. Thus, the above stated facts demonstrate noncompliance with this provision.

3. 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 noncompliance with this provision.

4. Storm Water NPDES permit Part IV, provides that the permittee must develop and implement a PPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the PPP. It is apparent from the above discussed violations that AGP did not adequately implement its PPP.

5. AGP's PPP specifically states that "[m]aterial will be manually swept up, warehouse roof will be manually swept off when needed." It is apparent from the above discussed violations that AGP is in noncompliance with this provision.

6. Part IV of AGP's Storm Water NPDES permit requires that "any storm water composed in part or in whole of coal pile runoff shall not exceed a maximum concentration at any time of 50.0 mg/L TSS." The above stated facts show noncompliance with this provision.

7. 567 IAC 61.3(2) "b", "c" and "e" set out criteria to be met in all surface waters in Iowa:

b. [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.

c. [s]uch waters shall be free from materials attributable to wastewater discharges producing objectionable color, odor or other aesthetically objectionable conditions.

e. [s]uch waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate that AGP violated these general water quality criteria.

V. ORDER

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

1. AGP shall keep all soybean meal out of the storm water collection system;
2. AGP shall comply with the TSS limit contained in its Storm Water NPDES permit for any storm water composed in part or in whole of coal pile runoff; and
3. AGP shall pay a penalty of \$10,000.00 within 30 days of the Director of the Department signing 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:** AGP saved considerable time and expense by engaging in an unpermitted discharge to water of the state and by not complying with its Storm Water NPDES permit. Specifically, the company did not allocate the necessary time to avoid the accumulation of soybean meal in its storm water retention system, nor did it allocate the necessary time to abate the violations. AGP continued to operate despite knowingly violating the law. Compliance with environmental laws can always be achieved through a reduction in manufacturing operations. Consequently, profits earned by AGP while operating in noncompliance are potentially subject to an economic benefit penalty calculation. In 2009, AGP reported to its stock holders that its earnings before income tax were \$66,800,000.00. A portion of this income is directly attributable to AGP's soybean refineries. AGP states in its report to stock holders that despite a bad economy "AGP was able to produce profitable results in the refined oil business." Pg 15, AGP Annual Report to Stock Holders (2009). From this it is clear that the economic benefit of operating while in noncompliance 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:** AGP has continuously failed to comply with its Storm Water NPDES permit and has violated other environmental laws. The laws have been established to ensure that environmental degradation will not occur. The failure by AGP

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to comply with the law 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.

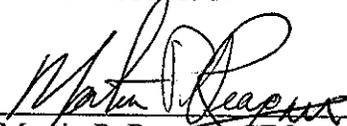
4. **Culpability:** Multiple inspections conducted by the Department revealed problems with soybean meal entering the storm water collection system and waters of the state. The Department directed AGP to take the necessary steps to keep soybean meal out of waters of the state. Nevertheless, these violations have persisted since 1992. Thus, it is apparent that AGP 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 7.4(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 AGP. By signature to this order, all rights to appeal this order are waived.

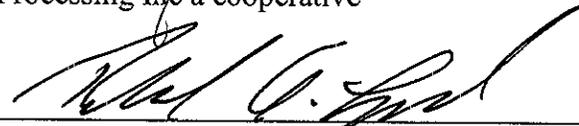
VIII. NONCOMPLIANCE

Compliance with this order constitutes full and complete satisfaction of any and all claims of the State of Iowa for the violations described herein. 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.



Martin P. Reagan, CEO and General Manager
Ag Processing Inc a cooperative

Dated this 4 day of
AUGUST, 2010



Richard A. Leopold, DIRECTOR

Dated this 10 day of

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IOWA DEPARTMENT OF NATURAL RESOURCES August, 2010.

Ag Processing, Incorporated, Field Office 2, Carrie Schoenebaum; Jeremy Klatt,
I.B.1 C.1