

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: UNITED FARMERS COOP 206 South Main Street George, IA 51237 Spill No. 033011-TWR-2120	ADMINISTRATIVE CONSENT ORDER 2011-WW- 13
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TO: United Farmers Coop
Attn: Irvin Clubine
206 South Main Street
George, IA 51237

I. SUMMARY

The Iowa Department of Natural Resources (Department) and United Farmers Coop (UFC) hereby agree to the following Administrative Consent Order (Order). UFC agrees to pay fish restitution and investigation costs of \$1,707.92 and an administrative penalty of \$5,000.00 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Roos
Iowa Department of Natural Resources
1900 N. Grand Avenue
Spencer, Iowa 51301
Ph: 712/262-4177

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

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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; Iowa Code section 481A.151, which authorizes the collection of restitution costs for harm to wildlife; and Iowa Code section 455B.109 and administrative rules in 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and UFC hereby agree to the following statement of facts:

1. UFC is the owner of a former liquid fertilizer storage tank and filling facility located in George, Iowa. The facility contained approximately seven above ground storage tanks and associated piping used for transferring and filling purposes. UFC discontinued active use of these tanks in 2005 and believed that the tanks had been pumped empty at that time.
2. On March 30, 2011, a contractor, hired by UFC to dismantle the tank farm, severed bolts which held segments of the piping together. This break in the piping allowed the contents of a tank or tanks to drain into the secondary containment area. At some point between 2005 and this incident, a breach in the secondary containment wall occurred, allowing the newly released tank contents to flow out across the drive and downhill into nearby Rio Grande Creek.
3. On the evening of March 30, 2011, a neighbor discovered the release and reported it to the Mayor of George. The Mayor then notified Tom Handlos of UFC. At 8:10 PM, Greg Harson, a Conservation Officer for the Department, became aware of a fish kill on Rio Grande Creek and notified Department Environmental Specialist Tom Roos. At 8:56 PM, Mr. Harson reported to Mr. Roos that a release of 28% liquid nitrogen from UFC had entered Rio Grande Creek and that UFC staff were onsite constructing containment berms to stop the flow. At 9:20 PM, Dan Tomjack of Compass Inc., environmental contractor for UFC, called Mr. Roos to officially report a release of 28% liquid nitrogen by UFC.
4. Berms constructed by UFC were successful at stopping the flow of additional liquid nitrogen fertilizer to Rio Grande Creek. Tanker trucks were able to recover approximately 5,000 gallons of liquid fertilizer from the site, which was sent to storage until later land application. Two semi-trailers of contaminated soil were also removed from the site and transported to a landfill for proper disposal.

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5. At 7:50 AM on March 31, 2011, Mr. Roos and Environmental Specialist Amber Wolf arrived at the site to assess the spill and collect water samples from Rio Grande Creek and the Little Rock River into which Rio Grande Creek flows. Field testing of water samples produced the following results:

Location (Site #)	Ammonia-Nitrogen (mg/L)	Temperature (°C)	pH	Dead Fish Observed
Site #1 - 8:00AM Little Rock River, downstream of RGC	1.3	4.0	8.3	No
Site #2 - 8:16 AM Rio Grande Creek, downstream of release	20-25	3.5	8.0	Yes
Site #3 - 9:32 AM Rio Grande Creek, upstream of release	0.6	4.0	8.0	No
Site #4 - 10:00 AM Rio Grande Creek, downstream of release	2.0	4.0	8.1	Yes
Site #5 - 1:20 PM Little Rock River, upstream of RGC	0.3	5.0	8.3	No

6. Mr. Roos and Ms. Wolf collected additional water samples for testing by the University of Iowa Hygienic Laboratory in Ankeny which produced the following results:

Location (Site #)	Ammonia-Nitrogen (mg/L)
Site #1 - 1:37 PM Little Rock River, downstream of RGC	0.75
Site #2 - 8:25 AM Rio Grande Creek downstream of release	22.0
Site #3 - 9:30 AM Rio Grande Creek upstream of release	<0.05
Site #4 - 10:00 AM Rio Grande Creek downstream of release	1.5
Site #5 - 1:15 PM Little Rock River upstream of RGC	0.13

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7. The above results demonstrate elevated Ammonia-Nitrogen levels in Rio Grande Creek downstream from the release, but not upstream, and in the Little Rock River downstream from its confluence with Rio Grande Creek, but not upstream. These findings are consistent with a single source of contamination originating at UFC.

8. On April 1, 2011, Department Fisheries staff conducted a fish kill investigation, beginning at UFC and continuing downstream along Rio Grande Creek to its confluence with the Little Rock River. Numerous dead fish were found along this 1,405 yard stretch of Rio Grande Creek, with a total count of 1,370 dead fish recorded.

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 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 (EPC) 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." Liquid nitrogen fertilizer, such as that released into the environment in the present case, is a pollutant under this definition.
3. Rio Grande Creek and the Little Rock River are "waters 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 ... natural or artificial, public or private, which are contained within ... the state ..."
4. As UFC did not have a NPDES permit authorizing the discharge of liquid nitrogen fertilizer to these waters, it has discharged a pollutant into waters of the state in violation of the above provisions.
5. Iowa Code section 455B.173 states that the EPC shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The EPC 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 ... which are

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acutely toxic to human, animal, or plant life." UFC's liquid nitrogen fertilizer discharge which caused the deaths of fish 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 Resource Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these assessments through Iowa Code chapter 17A contested case procedures. The NRC has adopted such rules in 571 I.A.C. 113.

8. Based on the authority provided by and methods specified in 571 I.A.C. 113 and 567 I.A.C. 133.6, the Department is authorized to collect, and UFC is liable for the following:

Fish restitution	\$404.88
Fisheries investigation costs	\$603.18
Field Services investigation costs	\$699.86

V. ORDER

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

1. UFC shall pay to the order of the Iowa Department of Natural Resources a total of \$1,707.92 for fish restitution and investigation costs within 30 days of receipt of this Order.

2. UFC shall pay an administrative penalty of \$5,000.00 to the order of the Iowa Department of Natural Resources within 30 days of receipt of this Order.

VI. PENALTY

1. 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 EPC to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The EPC has adopted this schedule with procedures and criteria for assessment of penalties in 567 I.A.C. chapter 10.

ECONOMIC BENEFIT: UFC did not benefit economically from the incident. Therefore, no penalty is assessed for this factor.

GRAVITY: An illegal discharge resulting in a fish kill is a serious violation. In this case, well over 1,000 fish were killed. As a result, \$2,500 is assessed for this factor.

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CULPABILITY: This incident could have been prevented entirely by checking to make sure the tanks were empty before dismantling them. A penalty of \$2,500 is assessed for this factor.

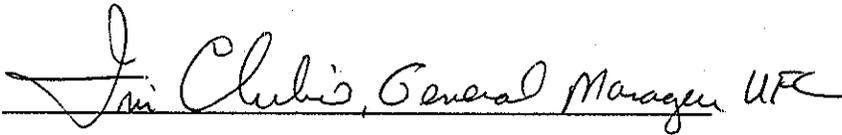
Based on the above factors, a total penalty amount of \$5,000 is assessed.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.175, 481A.151, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7 and 571 I.A.C. chapter 7, authorize a written notice of appeal to the EPC and NRC, respectively. This Order is entered into knowingly by and with the consent of UFC. 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 section 455B.175.


Jim Cluhio, General Manager UFC

Dated this 30th day of August, 2011


ROGER L. LANDE, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9th day of September, 2011

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