IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER NO. 2016-WW- 17
Ajinomoto Heartland, Inc. Monroe County, Iowa NPDES No. 6800113	

TO: **Masami Kashiwakura, President**
Ajinomoto Heartland, Inc.
8430 W Bryn Mawr STE 650
Chicago, IL
60631

Randy Schreiner, Plant Manager
Ajinomoto Heartland, Inc.
1116 Hwy 137, Eddyville, IA
52553-5005

I. SUMMARY

This administrative consent order (order) is entered into between Ajinomoto Heartland, Inc. (Ajinomoto) and the Iowa Department of Natural Resources (Department). This order is entered into for the purpose of resolving environmental violations that occurred at Ajinomoto's, Eddyville, Iowa location. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Tom Atkinson, Senior Environmental Specialist
IDNR Field Office #5
7900 Hickman Rd. Suite 200
Windsor Heights, IA 50324
515/725-0371

Relating to legal requirements:
Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-8244

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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. Further, 571 IAC chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the Department for injury caused to a wild animal by the pollution. A fish kill resulted from discharge of untreated wastewater by Ajinomoto.

III. STATEMENT OF FACTS

1. Ajinomoto is a company that specializes in amino acid-based animal nutrition and has various locations throughout the world. The facility which is the subject of this order is located at Section 12 Township 73 Range 16W, Monroe County, Iowa. This property is locally known as 1116 Hwy 137, Eddyville, Iowa. At this location Ajinomoto manufactures lysine, threonine, AjiPro®-L Rumen Protected Lysine and AjiTein® a dried cell product used as a protein source for animals, for customers in North America and around the world. Ajinomoto's industrial process wastewater is split between its wastewater treatment plant and Cargill, Inc.'s wastewater treatment plant. On site, Ajinomoto treats its industrial wastewater in a four-stage Bardenpho activated sludge treatment process with membrane bio-reactor filtration. The wastewater is ultimately discharged to the Des Moines River pursuant to National Pollutant Discharge Elimination System Permit (NPDES permit) No. 6800113.

2. On April 21, 2016, at approximately 6:00 am Joel Millikin, an employee of Ajinomoto, notified the Department of an accidental discharge of untreated wastewater to an unnamed tributary of the Des Moines River. Mr. Millikin stated that, at approximately 3:10 am, a pipe to an air header located in the first aeration basin became disconnected. This caused a discharge of untreated wastewater composed of mixed liquor to the ground which flowed to a storm sewer intake and ultimately discharged to an unnamed tributary of the Des Moines River (tributary). The discharge was discovered at approximately 3:40 am. Upon discovery, Ajinomoto shut down its aeration system and this stopped the discharge. Mr. Millikin estimated that approximately 59,450 gallons of mixed liquor was discharged.

At approximately 8:50 am Tom Atkinson, a Senior Environmental Specialist with the Department, called Mr. Millikin to inquire as to the status of the discharge. Mr. Millikin stated that Ajinomoto staff returned from observing the conditions in the tributary and that they observed dead and struggling fish.

At approximately 11:30 am Mr. Atkinson and Anne Hildebrand, an Environmental Specialist with the Department, arrived on-site to investigate. They began their investigation at the point on Ajinomoto's property where the spill occurred and flowed into the storm sewer (site 1). From here Mr. Atkinson and Ms. Hildebrand walked downstream to the box culvert (site 2), which is the point where the wastewater from site 1 flows into the tributary. At site 2, the mixed liquor was observed in the tributary. Next they walked from site 2 downstream to the point where the stream flows through another culvert then under railroad tracks and onto Cargill's property (site 3). Between the location of sites 2 and 3, mixed liquor was observed in the tributary. However, no aquatic life was observed in the tributary.

At approximately 12:15 pm Mr. Atkinson and Ms. Hildebrand met Mark Flammang and Bruce Ellison, of the Department's Fisheries Bureau, at the location where the tributary flows under County Road T59 (site 4). From here, Department staff walked downstream to the tributary's confluence with the Des Moines River (site 5). The mixed liquor was observed in the tributary at site 4 and continuously downstream to site 5. No mixed liquor was observed in the Des Moines River. Mr. Flammang and Mr. Ellison concluded that 3,162 feet of stream was impacted by the spill and a total of 284 fish were killed which have a monetary value of $1,286.00. Fisheries staff investigation costs were $369.72, the Department's field staff investigation costs were $596.88, indirect costs were $76.40 and mileage was $20.40.

Ajinomoto hired Boitnott Enterprises to assist in the spill cleanup. Throughout the day Boitnoot Enterprises used a vacuum truck to recover the spilled mixed liquor from the location of site 2. Approximately 12,000 gallons of mixed liquor and water were collected and deposited in one of Ajinomoto's wastewater lagoons.

3. On April 22, 2016, Boitnott Enterprises continued the cleanup. It used fresh water to flush the storm sewer from the location of sites 1 and 2. An additional 6,000 gallons of spilled mixed liquor and water was recovered and deposited in Ajinomoto's lagoons.

4. On April 25, 2016, Mr. Atkinson returned to the site to investigate. He began at the location of site 4 and walked downstream to the location of site 5. Along the way, Mr. Atkinson observed that the tributary's conditions had significantly improved and little to no accumulation of mixed liquor was visible. Next, Mr. Atkinson returned to the

location of sites 1-3 and noted that the tributary had significantly improved and that very little accumulated mixed liquor was visible. Mr. Atkinson concluded that the recovery effort had been sufficient and the tributary appeared to be recovering.

5. On May 6, 2016, the Department sent Ajinomoto a Notice of Violation (NOV) for a prohibited discharge of a pollutant to a water of the state that resulted in a fish kill. This NOV cited the relevant Iowa law that was violated and included a copy of Mr. Atkinson's investigation report and the fish kill investigation report.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. The discharge of untreated wastewater is not a discharge authorized by Ajinomoto's NPDES permit. For that reason the above stated facts establish that this provision has been violated.

2. 567 IAC 61.3(2) "c" "d" and "e" state

> *c.* Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.
>
> *d.* Such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life.
>
> *e.* Such 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 Ajinomoto violated these legal requirements.

3. 567 IAC 64.7(7) "f" and Standard Condition 9 of Ajinomoto's NPDES permit require that the facility be operated as efficiently as possible and maintained in good working order. The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

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

1. Cease all illegal discharges to waters of the State and waters of the United States;

2. Ajinomoto shall pay fish restitution in the amount of $2,349.40 which includes investigative costs of the Department's Fisheries Bureau and Field Office within 30 days of the date the Director signs this order; and

3. Pay a penalty of $3,000.00 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 Environmental Protection Commission (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 the assessment of penalties.

Economic Benefit – 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Ajinomoto could have installed secondary containment or storm water intake controls which would have minimized the amount of mixed liquor discharged to the tributary. In addition, there was a small economic benefit obtained through avoiding the cost of treating the 59,450 gallons of mixed liquor that was discharged. It is reasonable to estimate that the additional controls and wastewater treatment would have cost in excess of $500.00. For that reason $500.00 is assessed for this factor.

Gravity – 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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The Department documented a discharge that led to water quality violations and a fish kill. These violations threaten the integrity of the regulatory program because compliance with water quality requirements is required of all persons in this state. Therefore, $2,500.00 is assessed for this factor.

Culpability – At this time the Department has determined that no amount should be 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 Ajinomoto. By signature to 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.191.

Masami Kashiwakura, President
Ajinomoto Heartland, Inc.

Dated this 26th day of September, 2016

Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 28th day of September, 2016

Ajinomoto, Field Office 5, Carrie Schoenebaum; Tom Atkinson, I.C.1., & I.C.6.a.