

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

<b>IN THE MATTER OF:</b>  <b>OSCEOLA FOODS, INC.</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2016-WW-19</b>
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**TO:** Larry Kjellsen  
1027 Warren Avenue  
Osceola, IA 50213

**I. SUMMARY**

This administrative consent order ("Order") is entered into between Osceola Foods, Inc. ("OF") and the Iowa Department of Natural Resources ("DNR") for the purpose of resolving violations resulting from a wastewater discharge from the OF facility in Osceola, Iowa. This discharge caused violations of water quality standards and a fish kill. 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:**

Jeff Theobald  
Field Office 5  
Iowa Department of Natural Resources  
7900 Hickman Road  
Windsor Heights, IA 50324  
Ph. 515-725-0373

**Relating to legal requirements:**

John Crotty  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
Ph. 515-725-8249

**Payment of penalty and restitution to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, IA 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code 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 1 and the rules adopted or permits issued pursuant thereto; Iowa Code 455B.109 and 567 Iowa Administrative Code (IAC) chapter

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10, which authorize the Director to assess administrative penalties; and Iowa Code 481A.151, which authorizes the recovery of investigative costs in cases involving injury to wild animals.

**III. STATEMENT OF FACTS**

1. OF sends its wastewater to the City of Osceola Sewage Treatment Plant. Around 2:00 AM on September 27, 2015, a lift station failed at the OF facility causing approximately 200 gallons of wastewater to flow across the facility's parking lot and into a drainage ditch. OF notified DNR Field Office 5 of the discharge that same morning.

2. DNR staff member Jeff Theobald arrived at the OF facility on September 28, 2015, to inspect the areas impacted by the discharge. He observed grease residual on the banks of the drainage ditch and high levels of biological oxygen demand in the water. In an unnamed stream to which the drainage ditch flowed, he observed more grease residual, low levels of dissolved oxygen, and dead or dying fish.

3. Mr. Theobald returned to the site on September 29, 2015, to observe OF's clean-up efforts. Mr. Theobald observed that OF had placed hay bales in the unnamed stream in order to create a temporary dam to hold back the polluted water. However, the hay bales were leaching out a black residue. A 200 foot pool below the bales had turned pitch black from this leachate. OF removed the bales, made a new dam from dirt, and pumped out the black water.

4. Mr. Theobald observed approximately 125-150 dead fish in the unnamed stream. However, a formal fish kill count was not conducted because of the small area of impact. DNR's costs for investigating this incident totaled \$529.41.

5. On November 18, 2015, OF submitted to DNR a list of actions taken to prevent a recurrence of this incident. These actions included: a) replacing a faulty level control device; b) installing a high level sensor as a backup to the level control device; c) installing an alarm system; and d) training staff.

**IV. CONCLUSIONS OF LAW**

DNR and OF agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission ("Commission").

2. 567 IAC 61.3(2) provides general water quality criteria. These criteria provide that all waters shall be free from materials attributable to wastewater discharges producing objectionable color, odor, or other aesthetically objectionable conditions. The

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criteria also provide that all waters shall be free from substances attributable to wastewater discharges which are acutely toxic to human, animal, or plant life.

3. The facts stated in Section III of this Order constitute violations of Iowa Code 455B.186 and 567 IAC 61.3(2).

4. Iowa Code 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law is also liable to pay restitution to DNR for injury caused to a wild animal by the pollution. The amount of the restitution shall also include DNR's administrative costs for investigating the incident.

5. DNR has determined there is no likelihood that the violations identified in Paragraph 3 of this section will recur because OF has instituted a permanent remedy, as noted in Paragraph 5 of Section III.

**V. ORDER**

Therefore, DNR orders and OF agrees to do the following:

1. OF shall not discharge a pollutant to any water of the state.
2. OF shall pay restitution for DNR investigative costs in the amount of \$529.41 within 30 days of the date the Director signs this Order.
3. OF shall pay an administrative penalty of \$1,500 within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter.
2. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$1,500 for the violations described above. The following factors were considered in the assessment of this penalty:
  - a. Economic benefit. OF avoided costs associated with adequately maintaining a level control device. OF delayed costs associated with timely replacing the device, installing backup sensors and alarms, and training staff. \$500 is assessed for this factor.
  - b. Gravity of the violation. The unpermitted discharge of process wastewater to a water of the state negatively affects beneficial uses of Iowa's rivers and streams. In this

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case, narrative water quality standards were violated and a fish kill occurred. \$1,000 is assessed for this factor.

c. Culpability. The discharge occurred due to an unexpected break down of a level control device. OF acted expeditiously to stop the discharge and limit the extent of the impact on waters of the state. DNR finds no basis for a culpability assessment.

**VII. WAIVER OF APPEAL RIGHTS**

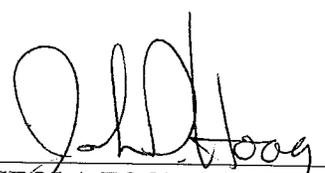
Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of OF. By signing this Order, all rights to appeal this Order are waived.

**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 455B.191.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 17<sup>th</sup> day of  
October 2016

  
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OSCEOLA FOODS, INC.

Dated this 12 day of  
OCTOBER 2016

Field Office #5; John Crotty; EPA; I.C.1