

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

**IN THE MATTER OF:**

**UNITED FARMERS MERCANTILE  
COOPERATIVE**

**ADMINISTRATIVE  
CONSENT ORDER  
2016-WW- 26**

**To: United Farmers Mercantile Cooperative  
Attn: Don Davis  
401 North U Avenue  
Villisca, IA 50864**

**Re: Hazardous Spill Incident No. 101414-JLC-1831**

**I. SUMMARY**

The Iowa Department of Natural Resources (DNR) and United Farmers Mercantile Cooperative (UFMC) hereby agree to the following Administrative Consent Order (Order). UFMC agrees to continue to comply with requirements imposed by the DNR's contaminated sites section, and agrees to pay an administrative penalty of \$4,000.00 to the DNR due to the illegal discharge of a pollutant to a water of the state of Iowa resulting from the release of a hazardous substance and the failure to notify the DNR in a timely manner as required by law. DNR acknowledges that UFMC has been working closely with DNR since the release occurred and has complied with all requirements imposed by the DNR to-date.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Allison Manz, Env. Specialist  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Ph: 712- 243-1934  
alison.manz@dnr.iowa.gov

**Relating to legal requirements:**

David Scott, Attorney  
Iowa Department of Natural Resources  
502 East 9th Street  
Des Moines, Iowa 50319-0034  
Ph: 515-725-8239  
david.scott@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; and Iowa Code section 455B.109 and administrative rules in 567 Iowa Administrative Code chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.00.

**III. STATEMENT OF FACTS**

The DNR and UFMC hereby agree to the following statement of facts:

1. UFMC owns and operates a facility located at Villisca, Montgomery County, Iowa (the Facility) which provides various agricultural services and products, including anhydrous ammonia.
2. On October 14, 2014, the DNR received a report via its spill hotline regarding a release at the facility. The call did not come from UFMC, but instead was from an anonymous source. The caller stated that UFMC had excavated an area near two anhydrous ammonia bulk tanks in order to repair a broken waterline that had been discovered when contaminated water began seeping to the surface of the ground. The caller stated that contaminated water was being pumped out of the excavation pit and was flowing into a storm sewer.
3. On October 15, 2014, staff from FO4 visited the Facility to investigate. The investigation confirmed that anhydrous ammonia contaminated water was flowing from the Facility into a storm sewer and ultimately reaching an unnamed tributary of the West Nodaway River.
4. During the October 15, 2014 inspection, Don Davis, UFMC's CFO, stated that UFMC employees had noticed water seeping to the surface of the ground at the Facility. The City of Villisca was contacted and city employees located a waterline running through the property that was believed to be leaking and the source of the water. An excavation was started in an attempt to locate and repair the waterline leak.
  - Mr. Davis stated that city employees started pumping the contaminated water out of the excavation pit to the surface of the ground. It is unknown how long the pump was running or how much contaminated water was pumped out of the pit.
  - Mr. Davis was adamant that there was not a current spill from the Facility's bulk anhydrous ammonia tank system as the inventory did not show any losses.
  - Mr. Davis provided additional history of the site which allowed DNR to determine that the origin of the contamination was most likely past soil

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contamination from the Facility that had gone undetected until being mobilized by the waterline leak.

5. During this inspection, DNR staff observed a definite flow path from the excavation pit to a large storm water structure on the UFMC property. From the storm water structure, the product flowed south into a drainage ditch. Contaminated water flowed through the drainage ditch for approximately  $\frac{1}{4}$  of a mile before flowing west, under highway 71 via a culvert, into an unnamed tributary of the West Nodaway River. DNR staff instructed UFMC to construct a berm in the tributary about  $\frac{1}{2}$  mile downstream from the culvert on the west side of highway 71 to ensure that all contaminated water was contained during the cleanup process.

- Water in the tributary was sampled and field tested at several downstream locations. The results showed ammonia levels greater than 300 mg/L (the highest range possible on the field testing kit).

6. Following this inspection, water samples were sent to the State Hygienic Laboratory where they were analyzed for ammonia nitrogen. The lab results showed ammonia concentrations were 1,800 mg/L at the culvert on the west side of Highway 71. Approximately  $\frac{3}{4}$  of a mile downstream from the culvert, concentrations were 0.24 mg/L.

7. On October 16, 2014, DNR staff conducted a follow-up inspection at the Facility. At that time, a berm had been constructed and a vacuum truck was being used to pump out the collected wastewater. UFMC also began flushing the storm sewer structure at the Facility.

- During this investigation, Kevin Rugaard, agronomist with UFMC, was on-site and spoke with DNR staff. Mr. Rugaard stated that UFMC had contacted a plumber (Mr. Clark) when water was observed seeping to the surface of the ground.
- The plumber stated that UFMC contacted him on October 9, 2014 because water was bubbling to the surface of the ground. The area then received two inches of rain, so he was not able to get to the site until October 14, 2014.
- The plumber stated that he began excavating the soil but the wastewater began burning his eyes. According to the plumber, Randy Walter, a UFMC employee, advised him to pump the wastewater out of the excavation pit because "water neutralizes the product."
- City of Villisca employees were also present and assisted the plumber in locating the water leak.
- A large trench was dug on the west side of the bulk tanks, running north and south the entire length of the building site. During the excavation, another abandoned line was located that ran east and west on the north side of the plant.
- According to UFMC, liquid fertilizer was previously stored on site. The east-west line was used when UFMC mixed fertilizer with water in the building before transporting it to the field for application.

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8. On October 17, 2014, DNR staff conducted a follow-up inspection at the Facility. DNR staff noted that excavation was ongoing. DNR received several complaints from area residents and City of Villisca personnel of an obnoxious odor coming from the excavation area.

- Mr. Rugaard stated that approximately 44,000 gallons of water had been pumped out from behind the dam that was built in the unnamed tributary. Additionally, UFMC was flushing the storm sewer, drainage ditch, and the unnamed tributary.
- Field tests indicated ammonia concentrations were still greater than 300 mg/L at the dam, approximately 250 mg/L at the Highway 71 west culvert, 120 mg/L at the Highway 71 east culvert, and 60 mg/L in the drainage ditch south of UFMC.
- Samples of water seeping through cracks in the floor of the storm sewer structure were obtained, and field test results showed ammonia concentrations of 250 mg/L. UFMC was advised to flush the structure.
- Additionally, strong ammonia odors were noted coming from another tile outlet into this same storm sewer. Because the City of Villisca's water supply wells were located near the flow path of the contamination, water samples were obtained and sent to the State Hygienic Laboratory to be tested for ammonia nitrogen and nitrate. The results did not show any impact to the wells.

9. Due to logistical issues at the Facility, UFMC requested that it be allowed to delay cleanup of the spill until the Spring of 2015. This request was denied due to concerns about the proximity of the discharge to city wells.

10. On October 20, 2014, DNR staff conducted another follow-up visit and was notified that the water leak was located. It is speculated that the line was leaking for at least two weeks. Even though the leak was repaired, contaminated water was still filling up the pit.

- Field tests indicated ammonia concentrations of 200 mg/L at the storm sewer structure, 60 mg/L in the drainage ditch south of UFMC, 50 mg/L at the culvert on the west side of Hwy 71, 150 mg/L half way between the culvert and the dam built by UFMC, and 20 mg/L at the dam. It was speculated that product was pooling up behind the vegetation.
- DNR left an ammonia test kit with Mr. Rugaard.

11. On October 22, 2014, DNR staff conducted another follow-up inspection. Water in the storm sewer structure showed ammonia concentrations of 90 mg/L. On the south side of UFMC where the storm sewer overflows into the drainage ditch, the ammonia concentrations were still at 200 mg/L. DNR staff advised Mr. Rugaard that the sand piled up at this outlet was likely collecting the contaminated water and should be excavated. Ammonia concentrations on the east side of Highway 71 were less than 100 mg/L. Ammonia concentrations on the west side of Highway 71 and in the unnamed tributary were less than 20 mg/L.

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12. On October 23, 2014, DNR staff conducted another follow-up inspection. During this visit, DNR staff documented that the unnamed tributary had been adequately remediated. However, ammonia concentrations from the culvert that drains into the storm sewer structure were greater than 150 mg/L. UFMC was advised to assure all water flowing through the storm sewer was collected. Mr. Rugaard stated that a berm was placed in the drainage ditch approximately 50 feet down-gradient from the storm sewer outlet.

- Later that day, DNR was notified that the unknown line draining into the storm sewer structure was the same line that flows under the Facility and is located near the large bulk tanks. All runoff from the excavation activities and from the stockpiled contaminated runoff was flowing through this culvert into the storm sewer. Mr. Rugaard stated that a plug would be placed on the line to prevent any runoff from entering it.
- The area where trenching occurred was backfilled. However, per Mr. Rugaard, a large tube with holes was placed in the original excavation pit so that product could still be pumped from the pit during normal operations.

13. On October 27, 2014, DNR conducted another follow-up inspection. UFMC had excavated three holes on their property attempting to locate the line that drains from the east side of the building into the storm sewer. After locating the line, it was flushed and all product was collected in the drainage ditch.

14. On November 6, 2014, DNR conducted another follow-up inspection. Ammonia concentrations at the storm sewer outlet to the drainage ditch were still between 60-90 mg/L. Mr. Rugaard was advised to either continue flushing and pumping or to excavate more of the sand and rock from the drainage ditch.

- UFMC installed a manhole on the west side of the building and added a plug to the line. It appeared as if the plug was preventing water from entering the storm sewer.

15. A letter and 30-day spill report were submitted and received by the DNR on December 2, 2014.

16. While it did not result in a separate enforcement action, DNR notes for the record that on October 16, 2015, UFMC received a Notice of Violation relating to a Urea Ammonium Nitrate Spill at its facility in Villisca, Iowa. A Site Assessment Plan was required to be submitted to DNR for that spill no later than January 7, 2016.

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**IV. CONCLUSIONS OF LAW**

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code § 455B.186 prohibits the discharging of a pollutant into any water of the state. The facts outlined above establish a violation of this provision of the Iowa Code.
2. Iowa Code § 455B.381 defines a “hazardous substance” as any substance that presents a danger to the public health or safety and includes any substance that is toxic, corrosive, flammable, or that is an irritant. Anhydrous ammonia is a hazardous substance.
3. Iowa Code § 455B.381 defines a “hazardous condition” as any situation involving the actual, imminent, or probable spillage, leakage or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates and immediate or potential danger to the public health or safety or to the environment.
4. Iowa Code § 455B.386 requires any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance to notify the DNR of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. The facts above establish a violation of this requirement.
5. Iowa Administrative Code 567 - 131.2 reiterates the requirements of Iowa Code § 455B.386 and delineates reporting and follow-up obligations of the responsible party. The facts above establish a violation of these requirements.
6. Iowa Administrative Code 567 – 133 sets out the rules for cleanup actions required to abate or remediate a hazardous condition or the discharge of a pollutant. The rules require the responsible party to, among other things, develop a Site Assessment Plan and to implement a Remedial Action Plan to address the discharge.

**V. ORDER**

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

1. UFMC must pay an administrative penalty of \$4,000.00 within 30 days of this Order being signed by the Director.
2. UFMC must continue to comply with all requirements imposed by the DNR to address this discharge and to prevent future discharges. UFMC must also meet its reporting obligation under the law for any future release that results in a hazardous condition.

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**VI. PENALTY**

1. Iowa Code § 455B.109 authorizes the Environmental Protection 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 authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Additionally, Iowa Code § 455B.191(2) provides for civil penalties of up to \$5,000.00 per day for discharging pollutants into waters of the State of Iowa. The DNR reserves its right to pursue additional penalties pursuant to these sections if UFMC fails to comply with the terms of this Order.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories of consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. These categories are addressed below and the administrative penalty is determined as follows:

- a. Economic Benefit: The DNR assesses no penalty for this factor.
- b. Gravity: Violations of water quality criteria were confirmed and documented. A prohibited discharge was confirmed and documented. There was an actual and threatened harm to the environment, public health, and safety. Failure to timely report the spill threatens the integrity of the regulatory program. Therefore, a total of \$2,500.00 is assessed for this factor.
- c. Culpability: One of UFMC's specialties is in the handling and distribution of anhydrous ammonia and other agricultural products. At a minimum, if employees of UFMC are handling agricultural chemicals, they should also know how to properly clean the spills up. Knowingly pumping contaminated water to the surface of the ground and allowing the product to enter a storm sewer and ultimately a water of the state was negligent. Therefore, a total of \$2,500.00 is assessed for this factor.
- d. Mitigating Factor: UFMC has complied with all requirements imposed by DNR to-date. As such, DNR is authorized to decrease the penalty by \$1,000.00.

4. While DNR recognizes UFMC's efforts toward compliance and site remediation, failure to assess an administrative penalty for the violations listed above would threaten the integrity of the regulatory program by not providing a financial incentive for parties to comply.

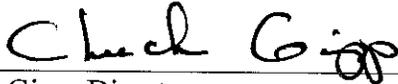
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**VII. WAIVER OF APPEAL RIGHTS**

This Order is entered into knowingly by and with the consent of UFMC. By signing this Order, all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of more significant administrative penalties or referral to the Iowa Attorney General for civil judicial enforcement.

  
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Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 19<sup>th</sup> day of  
December, 2016.

  
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Don Davis, General Manager  
United Farmers Mercantile Cooperative

Dated this 19<sup>th</sup> day of  
December, 2016.

CC: DNR Field Office 4; David Scott; IV.A, I.C.1