# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

### IN THE MATTER OF:

Farmers Co-Operative Society, Sioux Center, Iowa d/b/a Farmers Co-Operative Society and FCS Cooperative  
Boyden, Iowa

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<th>ADMINISTRATIVE CONSENT ORDER</th>
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<td>NO. 2019-WW-12.</td>
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### TO:

John McDaniel, Registered Agent  
317 3rd Street NW  
City, State, Zip  
Sioux Center, IA, 51250

Brian Fylstra  
808 Railroad St.,  
Boyden, IA 51234

## I. SUMMARY

This administrative consent order (order) is entered into between Farmers Co-Operative Society, Sioux Center, Iowa d/b/a Farmers Co-Operative Society and FCS (FCS) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to an illegal discharge of a pollutant to a water of the state resulting in a water quality violation. FCS agrees to pay an administrative penalty of $5,000.00 and submit a standard operating procedure to Department for safe storage of mineral oil at the FCS facility. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions or responses regarding this order should be directed to:

**Relating to technical requirements:**  
Tom Roos, Environmental Specialist Senior  
IDNR Field Office No 3

**Relating to legal requirements:**  
Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources
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 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.

III. STATEMENT OF FACTS

FCS neither admits nor denies the following statement of facts and enters into this agreement solely for the purposes of settlement.

1. FCS is a full service agricultural cooperative with many locations. The location which is the subject of this order is 808 Railroad Street Boyd, Iowa (Sioux County). At this location FCS provides grain handling, fuel, seed and other agronomy services.¹

2. On the morning of January 14, 2019, the Department was notified of a petroleum-like sheen in an unnamed tributary of the West Fork of the Floyd River (Tributary). Tom Roos, an Environmental Specialists Senior and Brandon Miner, an Environmental Specialist (Department staff) arrived at the scene to investigate. Department staff began its investigating at the point where the Tributary intersects Highway 18 and walked upstream until the sheen was no longer present. This was at approximately halfway between where the Tributary intersects Highway 18 and where the Tributary intersects Colfax Street in Boyd, Iowa. At this location Department Staff discovered an oily liquid entering the Tributary. The liquid was traced approximately 350 feet from the Tributary to a tanker truck on the above referenced FCS property. While observing the tanker truck, Department Staff was approached by Brian Fykstra, FCS Location Manager. Department Staff explained the reason for the visit and communicated that the sheen on the Tributary appeared to be caused by the release of an oily liquid from the tanker truck owned by FCS. Mr. Fykstra stated the tanker truck was used for dust suppression, and that when it was parked it originally contained approximately 1,300 gallons of mineral oil. However, upon further investigation, only 200 gallons were left in the tanker truck. The apparent cause of the

¹ The Deed holder to this parcel is listed as Fcs Cooperative on the Sioux County Iowa Assessors website.
discharge was a valve that was left in the open position, allowing the mineral oil to drain onto the ground, down the hill, and into the Tributary.

Next, Department Staff, Mr. Fykstra, and Jerry Broderick, FSC Safety, Quality & Regulatory Director, traveled downstream to determine the extent of the discharge's impact. The impact to the Tributary extended across approximately 6.8 stream miles.

FCS staff then deployed absorbent booms to trap the released oil near the intersection of 350th Street and Ironwood Avenue.

Department Staff took laboratory samples both upstream and downstream of the discharge point. The results were as follows:

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<tr>
<th>Location</th>
<th>Hexane Extractable Material (HEM) level</th>
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<tr>
<td>Colfax Street (upstream of discharge)</td>
<td>&lt;5.0 mg/L</td>
</tr>
<tr>
<td>Jefferson Avenue (downstream of discharge)</td>
<td>6.5 mg/L</td>
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3. On February 8, 2019, a Notice of Violation (NOV) was sent to FCS regarding the above discussed violations. This NOV included a copy of the relevant inspection report, and a copy of the relevant law.

IV. CONCLUSIONS OF LAW

FCS neither admits nor denies the following conclusions of law and enters into this agreement solely for the purposes of settlement.

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. FCS did not have a permit that allowed the discharge of mineral oil. Thus, the above stated facts demonstrate non-compliance with this provision of law.

2. 567 IAC 61.3(2) “b” states:

b. Such 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.
The above stated facts demonstrate non-compliance with this provision of law.

V. ORDER

THEREFORE, the Department orders, and FCS consents to do, the following:

1. Pay an administrative penalty of $5,000.00 within 30 days of the date the Director signs this order.

2. Develop a standard operating procedure to assure the safe storage of mineral oil at the FCS facility and submit this procedure to the Department within 30 days of the date the Director signs 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.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00 which 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 this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

   a. 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.” FCS saved time and money by failing to properly monitor the fuel valve. If the staff had monitored it more closely the spill could have been avoided or mitigated. Furthermore, secondary containment could be placed around truck parking areas to avoid such spills reaching waterways. For these reasons, it is reasonable to estimate that at least $1,000.00 was saved. Thus, $1,000.00 is assessed for this factor.

   b. Gravity of the Violation. 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. Failure to properly manage
onsite equipment and materials resulted in a discharge of mineral oil to a water of the state
spanning nearly 7 miles. This degrades water quality and creates a nuisance. Degraded water
quality harms aquatic life, prevents the attainment of state water quality goals, and causes a
decline in the quality of life generally. Therefore, the amount of $2,000.00 is assessed for this
factor.

c. **Culpability.** FCS is a full service agricultural cooperative with many locations. It has a
duty to be aware of the laws which apply to its facility and has a duty to properly train all
employees in order to properly handle and store chemicals, oils, and other materials on site.
Therefore, the amount of $2,000.00 is assessed for this factor.
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FARMERS CO-OPERATIVE SOCIETY, Sioux Center, Iowa

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) 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 FCS. By signature to this order, all rights to appeal this order are waived by FCS.

VIII. NONCOMPLIANCE

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. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

Jerry Bradnick
On behalf of FCS

Dated this 14 day of October, 2019

Kayla Lyon, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27 day of October, 2019