

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Calcium Products, Inc. Ames, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2020-WW-02
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TO: Mike Hogan, Registered Agent and President
2520 N Loop Dr STE 7100
Ames, IA, 50010

I. SUMMARY

This administrative consent order (order) is entered into between Calcium Products, Inc. (Calcium Products) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of its National Pollutant Discharge Elimination System (NPDES) permit which includes an illegal discharge of a pollutant to a water of the state. Calcium Products agrees to pay an administrative penalty of \$6,700.00 and comply with its NPDES permit. 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:

Jeremy Klatt, Environmental Specialist Senior
Field Office 2
2300 15th St. SW
Mason City, IA 50401
Phone: 641-424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8244

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street

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Calcium Products, Inc.

Des Moines, Iowa 50319-0034

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

Calcium Products neither admits nor denies the following statement of facts and enters into this agreement solely for the purpose of settlement:

1. Calcium Products is an Iowa based business that manufactures calcium based fertilizers primarily for the agricultural industry and also for the professional fertilizer industry. It manufactures fertilizer at 3 different locations in Iowa. The location which is the subject of this order is located at 2055 Quail Avenue, Fort Dodge, Iowa (facility). At this facility calcium based fertilizers are produced by blending gypsum, limestone, and lignin. The facility has two primary outfalls and the runoff from the property generally flows to the east side of the property into a road ditch and then south into an unnamed tributary to Holiday Creek which flows into the Des Moines River. This facility operates pursuant to NPDES general permit No. 1.

2. On May 14, 2019, the Department received a complaint alleging that on Sunday May 12, 2019, and on Tuesday May 14, 2019, Holiday Creek suddenly became foamy and discolored. The complainant tracked the foam upstream to a tile outfall in Holiday Creek and stated that the discharge was dissipating. At this location (site 1) the complainant took a sample.

3. On May 15, 2019, Jeremy Klatt an Environmental Specialist with the Department went to the site to investigate. Mr. Klatt began his investigation by meeting with the complainant. Together they drove to the location of site 1. At this location, Mr. Klatt observed that the water discharging from the outfall was clear. The complainant stated that on the prior day the creek was so discolored that vegetation at the bottom of the creek (which was then visible) was not visible. The complainant also stated that on the prior day the water upstream of the tile outfall was clear but it was brownish red in color downstream the day before. The complainant then showed Mr. Klatt the water he had collected from site 1 the prior day. Mr. Klatt observed that the water was brownish red in color.

Next, Mr. Klatt went to the location of a tile which drains the area near United States Gypsum Co. (US Gypsum) and CertainTeed Gypsum, Inc. (CertainTeed). Mr. Klatt met with Jim Clabough of US Gypsum. Mr. Clabough showed Mr. Klatt the only permitted discharge from US Gypsum to Holiday Creek which is downstream of site 1. Then, Mr. Klatt went to

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CertainTeed Gypsum where he met with an employee of Reilly Construction who works at the quarry. The employee stated that he likely knew the source of the discharge and showed Mr. Klatt the road ditch in front of Calcium Products' property. In that road ditch Mr. Klatt observed a brownish red substance which he later found out was lignin sulfonate¹. Mr. Klatt noted that substance originated under the center driveway of Calcium Products' property. The substance was flowing approximately 1,000 feet to the south and then it entered a tile intake. Mr. Klatt took laboratory samples of the substance at the point where it flowed into the intake (site 2). The results are as follows: biological oxygen demand five day (BOD5) concentration of 7,200 parts per million and no ammonia was detected.

Next, Mr. Klatt called Mike Pederson, of Calcium Products and told him that the intake needed to be plugged and that the substance needed to be removed from the road ditch. Mr. Pederson indicated that the substance was lignin sulfonate which is a chemical used in Calcium Products' manufacturing process. Mr. Pederson called the Director of Operations at Calcium Products, Jay Jergens, who arrived on site shortly thereafter. Neither Mr. Pederson nor Mr. Jergens knew how the lignin sulfonate had discharged to the road ditch. Mr. Jergens speculated that the product may have left the facility through the septic tank and then via the leach field. Calcium Products agreed to plug the intake in the road ditch and remove the lignin sulfonate from the road ditch.

4. On May 20, 2019, an NPDES permit inspection was conducted at Calcium Products' facility. During this inspection the facility explained the cause of the above discussed violations. It was explained that lignin sulfonate had been released via a floor drain in the building and then flowed to the septic system leach field. Once in the leach field, the lignin sulfonate plugged the leach field and prevented it from functioning properly. Thus, lignin sulfonate flowed via an overflow pipe in the leach field to the above referenced road ditch.

The following deficiencies were documented during this inspection:

(1) A record review revealed that the mandatory Storm Water Pollution Prevention Plan (SWPPP) had not been completed. Specifically, it was not signed, a site map showing the locations of potential pollutants and flow paths had not been included, a list of releases resulting in hazardous conditions had not been developed, required employee training had not been completed, non-storm water discharge evaluation had not been completed, and annual visual site inspection had not been completed and/or documented;

(2) The above discussed road ditch still had several inches of lignin sulfonate impacted water standing in it. The facility had installed a sleeve around the tile intake to prevent further discharge to Holiday Creek however because of rain the water level in the road ditch was high and only a few inches below the top of the sleeve; and

(3) Housekeeping as required in the SWPPP was not occurring on a routine basis and several areas of concern were identified. On the east side of the facility there were multiple puddles that were very dark from storm water coming into contact with the lignin sulfonate. There was also lignin, gypsum, and limestone dust on the gravel surfaces. Piles of dust containing lignin were present on the ground. These piles were

¹ Lignin sulfonate may also be referred to as tree sap and may be used as a dust suppressant on gravel roads.

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not protected from the storm water runoff. Two tile intakes are located on the north and south side of the plant. These intakes did not have protection and a flow path of the limestone and gypsum products to the intakes was observed. On the west side of the facility there was also lignin dust. A storage pile of lignin dust was located within 25 feet of a small ditch on the west side of the property and a flow path of lignin dust to this small ditch was observed.

5. On June 3, 2019, a Notice of Violation (NOV) was sent for the illegal discharge of lignin sulfonate to a water of the State. This NOV summarized the relevant law and recommended leaving the tile intake plugged until the lignin sulfonate had been adequately removed from the road ditch.

6. On June 6, 2019, a NOV was sent for the violations documented during the May 20, 2019, NPDES permit inspection. Included with this NOV was a copy of the inspection report from the May 20, 2019, inspection. This inspection report detailed the violations and recommended corrective action.

7. On November 7, 2014, the Department received a complaint alleging that water which was dark, coffee and/or tea colored, foamy and had an odor, was flowing in the above referenced road ditch. After receipt of this complaint the Department called Mr. Jergens. Mr. Jergens stated that he was not sure where the discharge originated but that he would investigate. He eventually concluded that when lignin sulfonate is spilled inside the plant, it is then washed down floor drains which drain to the septic system. The septic system drains to the leach field and ultimately the road ditch.

8. On March 3, 2015, the Department received a complaint alleging that lignin sulfonate was in the above referenced road ditch. After receiving this complaint the Department went to Calcium Products to investigate. Once on site, the Department observed lignin sulfonate in the road ditch. Calcium Products stated that the discharge was due to residual lignin sulfonate from the November 2014 discharge. The Department recommended that the lignin sulfonate should be removed from the road ditch. On March 10, 2015, the Department returned to the facility and observed that the road ditch had been cleaned up.

The facts alleged in paragraph 9 and 10 are admitted by Calcium Products, have been put forth by Calcium Products and are neither admitted nor verified by the Department:

9. In response to the June 6, 2019, NOV, Calcium Products took action to address the items noted in the NOV and in the inspection report. These actions included the following: updated the SWPPP, conducted employee training regarding the SWPPP, excavated and replaced the leach bed and decoupled the roof drain system from the leach bed system.

10. In response to the 2015 lignin sulfonate discharge Calcium Products took the following actions: permanently capped the drain in the plant which discharged to the septic system and excavated the impacted soil in the road ditch.

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IV. CONCLUSIONS OF LAW

Calcium Products 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. Calcium Products did not have a permit that allowed the discharge of lignin sulfonate. 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.

3. 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the Department orders, and Calcium Products consents to do, the following:

1. Pay an administrative penalty of \$6,700.00 within 30 days of the date the Director signs this order.
2. Cease all illegal discharges to waters of the State;
3. Remediate the impacted area of the road ditch; this shall include the removal of all lignin sulfonate, excavation of any contaminated soil in the impacted area, and reshaping and seeding the road ditch in accordance to Webster County specifications; and
4. In the future, comply with all provisions of Calcium Products' NPDES permit.

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VI. PENALTY

Calcium Products neither admits nor denies the following penalty calculation and enters into this agreement solely for the purposes of settlement:

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." Calcium Products saved time and money by failing to devote adequate time and resources to compliance with its NPDES permit. This includes failure to conduct required inspections and the failure to properly train its employees and failure to implement the best management practices detailed in the permit. For these reasons, it is reasonable to estimate that at least \$1,200.00 was saved. Thus, \$1,200.00 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 comply with Calcium Product's NPDES permit resulted in an illegal discharge to a water of the State. This degrades water quality. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Further NPDES permits are the backbone of the water quality program, thus, noncompliance with such permits thwarts the integrity of the program. Therefore, the amount of \$2,500.00 is assessed for this factor.

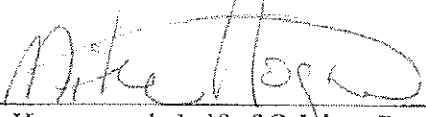
c. **Culpability**. Calcium Products is a manufacturer of fertilizer with many locations. This is a highly regulated activity. Calcium Products has a duty to be aware of the laws which apply to its facility and has a duty to properly train all employees in order to properly handle and store chemicals, and other materials on site. Further, Calcium Products had a prior similar discharge in 2014 and failed to take the necessary measures to prevent a future discharge. Therefore, the amount of \$3,000.00 is assessed for this factor.

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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 Calcium Products. By signature to this order, all rights to appeal this order are waived by Calcium Products.

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.



Mike Hogan, on behalf of Calcium Products, Inc.

Dated this 22 day of
JANUARY, 2020



Kayla Lyon, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31st day of
January, 2020

FO 2, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.