

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

IN THE MATTER OF:

WEST UNION BRANCH OF NUTRIEN AG
SOLUTIONS, INC.

Fayette County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2021-WW- 12

To: Nutrien Ag Solutions, Inc.
West Union Branch
c/o Kennon Gumm, branch manager
105 Armour Street
West Union, Iowa 52175

Cc: Nutrien Ag Solutions, Inc.
c/o Sandi Shannon Schultz
Counsel of Record
3005 Rocky Mountain Avenue
Loveland, Colorado, 80538

I. SUMMARY

This Administrative Consent Order (Order) requires the West Union Branch of Nutrien Ag Solutions, Inc., to pay an administrative penalty in the amount of \$4,000.00, pay restitution in the amount of \$2,299.37, and in the future comply with the laws of the State of Iowa.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom McCarthy
DNR Field Office 1
Iowa Department of Natural Resources
909 W Main St, Ste 4
Manchester, Iowa 52057
Ph. (563)927-2640

Relating to legal requirements:

Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Department of Natural Resources
502 9th St., Wallace State Office Building
Des Moines, Iowa 50319
(515)725-8248

Send payment of penalty to:

Director of the Iowa DNR
Iowa Department of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, Iowa 50319

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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 1 and the rules adopted or permits issued pursuant thereto; Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties; and Iowa Code section 481A.151 which authorizes the assessment of restitution for injuries caused to wild animals by unlawful water pollution.

III. STATEMENT OF FACTS

1. Nutrien Ag Solutions, Inc. (Nutrien) is an entity incorporated in the State of Delaware and registered to conduct business in Iowa as a foreign profit corporation. Nutrien, among other things, is a distributor of solid-state fertilizers and pesticides.

2. The West Union Branch of Nutrien (WUBN) conducts business in Fayette County, Iowa, and surrounding counties.

3. At 1:57 p.m. on November 2, 2020, a WUBN distributor hauling chemicals approximately four miles north of Arlington, Iowa, lost control of the transport vehicle. The vehicle overturned into an unnamed tributary (Tributary) of Brush Creek (Creek).

4. An estimated 20,100 pounds of potash, 7,235 pounds of ammonium sulfate, and 12,864 pounds of monoammonium phosphate were spilled. An unknown but substantial amount of chemicals entered the Tributary.

5. At 2:30 p.m. on November 2, the Fayette County Sheriff's Department informed DNR Field Office 1 of the spill. DNR Field Office 1 environmental specialist senior Tom McCarthy responded to the spill to investigate.

6. A 4:15 p.m. on November 2, Mr. McCarthy made contact with Kennon Gumm, branch manager of WUBN. Mr. Gumm explained to Mr. McCarthy the cause of the spill and detailed the cleanup efforts underway by WUBN and the local fire department.

7. Mr. McCarthy noted large amounts of dry chemicals in the Tributary and on the Tributary bank.

8. Mr. McCarthy documented the spill and cleanup efforts with photographs.

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9. Starting at approximately 4:30 p.m. on November 2, Mr. McCarthy collected multiple water samples for laboratory testing. The results of those samples are as follows (all distances are approximate):

Location	Ammonia as Nitrogen (mg/L)	Total Phosphorous (mg/L)	TKN (mg/L)
Ten feet below spill	960	810	990
Twenty feet upstream of spill	< 0.05	< 0.10	0.26

These results indicate chemicals from the spill site entered the Tributary.

10. Mr. McCarthy conducted ammonia as nitrogen field testing approximately 100 feet downstream of the spill site. The testing results showed ammonia as nitrogen concentration levels as greater than 3 ppm.

11. Mr. McCarthy conducted ammonia as nitrogen field testing approximately one-quarter mile downstream of the spill site. The testing results showed ammonia as nitrogen concentration levels as greater than 3 ppm. Mr. McCarthy noted eight dead fish at this location.

12. After collecting water samples, Mr. McCarthy returned to the spill site. Mr. McCarthy noted that WUBN completed construction of an earthen dam in the Tributary upstream of the spill site.

13. On November 3, 2020, Mr. McCarthy contacted Mr. Gumm by phone. Mr. Gumm stated that WUBN pumped uncontaminated water from behind the earthen dam until midnight, then breached the dam.

14. Mr. McCarthy returned to the spill site to conduct a follow-up investigation.

15. Mr. McCarthy noted that chemicals remained on the Tributary bank and as sediment on the Tributary bed. An ammonia as nitrogen field test at the spill site showed the concentration to be greater than 3 ppm.

16. Mr. McCarthy contacted Mr. Gumm and informed him that further cleanup was required. Mr. McCarthy provided Mr. Gumm an ammonia as nitrogen test kit to help determine when no further chemicals remained at the spill site.

17. Mr. McCarthy conducted ammonia as nitrogen field testing approximately one-quarter mile downstream of the spill site. The testing results showed ammonia as nitrogen concentration levels as greater than 3 ppm. Mr. McCarthy noted six dead fish at this location.

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18. Mr. McCarthy traveled further downstream and collected multiple water samples for laboratory testing. The results of those samples are as follows (all distances are approximate):

Location	Ammonia as Nitrogen (mg/L)	Total Phosphorous (mg/L)	TKN (mg/L)
In Brush Creek, ten feet upstream of Tributary entering the Creek	1.9	0.88	2.3
At confluence of Tributary entering the Creek	31	18	33
Fifty feet downstream of Tributary entering the Creek	< 0.05	< 0.10	0.38

These results also indicate chemicals from the spill site entered the Tributary and reached the Creek.

19. Also on November 3, 2020, DNR fish hatcheries technicians Theresa Shay and Caleb Schnitzler responded to the site to conduct a fish kill investigation.

20. The technicians noted the water was accessible and had excellent clarity. The technicians began counting fish around 10:45 a.m. at the confluence of the Tributary and the Creek. The technicians identified fish carcasses of the following species: Longnose, Western Blacknose, and Southern Redbelly Dace; White Sucker; Stoneroller; Johnny, Rainbow, and Fantail Darter; Creek Chub; and Brown Trout.

21. The fish kill assessment determined that 1,573 fish were killed, valued at a total of \$976.13. Investigative costs associated with the fish kill totaled \$1,323.24. The total fish value and investigative costs totaled \$2,299.37.

22. On November 4, 2020, Mr. Gumm contacted Mr. McCarthy by phone. Mr. Gumm stated that WUBN removed four loads of dirt from the stream bank and that he noted live fish swimming downstream of the spill site.

23. On November 5, 2020, Mr. Gumm contacted Mr. McCarthy by phone and noted no further detectable amounts of ammonia as nitrogen in the Tributary.

24. On December 10, 2020, Mr. McCarthy conducted a follow-up inspection of the spill site. He noted the bank of the Tributary was seeded and covered in straw, that the Tributary bed was recovered with limestone, and that no chemicals remained present.

25. On December 15, 2020, the DNR issued the Nutrien a Notice of Violation for the discharge, attention to WUBN and Mr. Gumm.

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IV. CONCLUSIONS OF LAW

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

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants from a point source into any water of the State without an applicable permit. WUBN discharged chemicals to the Tributary. The facts of this case show WUBN is in violation of these sections.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits any discharge produce sludge deposits or are toxic to aquatic life. WUBN discharged chemicals to the Tributary, resulting in a fish kill. The facts of this case show WUBN is in violation of this section.

3. Iowa Code section 481.151 authorizes the assessment and recovery of restitution for damages to natural resources, as well as for the administrative costs for investigating the incident. The Natural Resource Commission has adopted 571 IAC 113. 571 IAC 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 DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge from to the Tributary.

V. ORDER

THEREFORE, the DNR orders and WUBN agrees to the following:

1. WUBN and/or its employees shall comply with all laws and regulations applicable to discharging pollutants into a water of the State.

2. WUBN shall pay restitution and investigative costs in the amount of \$2,299.37 within 30 days of the date the Director signs this Order. This amount shall be payable within 30 days to the Director.

3. WUBN shall pay an administrative penalty of \$4,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

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. The DNR has determined that the most effective and efficient means of addressing

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the above-cited violations is the issuance of an Order. Because the DNR determines this matter is best handled administratively, the DNR must follow the limits of Iowa Code section 455B.109 and 567 IAC chapter 10. Pursuant to those limits, a penalty of \$4,000.00 is assessed. The administrative penalty is determined as follows:

Economic Benefit: 567 IAC chapter 10 requires that the DNR 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.” WUBN avoided costs of properly disposing of the discharged chemicals. However, WUBN conducted a prompt and costly effort to remedy the discharge and to assist with the DNR’s investigation. In order to resolve this matter via consent order, \$50.00 is assessed for this factor.

Gravity of the Violation: WUBN violated multiple Iowa laws and rules related to the discharge of pollutants to the Creek. The discharge in this matter was extensive. Over 20 tons of chemical were spilled to the bank of the Tributary, with an unknown but substantial amount of discharging to the Tributary. The spill impacted the water quality of the Tributary over multiple days. The discharge resulted in a fish kill of over 1,500 fish. An administrative penalty of \$3,900.00 is assessed for this factor.

Culpability: WUBN has a duty to operate its vehicles in a manner that does not harm the public health and the environment. However, WUBN immediately began remediation of the spill and assisted the DNR in its investigation. This remediation and assistance continued over a period of several days. An administrative penalty of \$50.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 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 WUBN. 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

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Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this _____ day of
_____, 2021



WEST UNION BRANCH OF
NUTRIEN AG SOLUTIONS, INC.

Dated this 19 day of
February, 2021

Field Office #1; Noah Poppelreiter; EPA; I.C.1

