

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

<b>IN THE MATTER OF:</b>  <b>ReNewTrient I, LLC d/b/a NuOrganics, LLC</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2021-WW- 13</b>
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**TO:** Ryan Brandt, ReNewTrient I, LLC  
d/b/a NuOrganics, LLC  
33272 Oasis Rd,  
Center City  
Minnesota 55012

Registered Agent for ReNewTrient I,  
LLC Development, LLC  
400 E Court  
Des Moines, IA 50309

**I. SUMMARY**

This administrative consent order (order) is entered into between ReNewTrient I, LLC (d/b/a NuOrganics LLC here after NuOrganics) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of NuOrganics storm water National Pollutant Discharge Elimination System (NPDES) permit and an illegal discharge of a pollutant to a water of the state. NuOrganics agrees to pay an administrative penalty of \$8,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

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

**Relating to technical requirements:**

Dan Watterson, Environmental Specialist  
IDNR Field Office No. 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> St. SW  
Mason City, IA 50401  
641-424-4073

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
Phone: 515-444-8165

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
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**

1. On April 8, 2019, NuOrganics was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the location of 2728 275<sup>th</sup> St, Clarion, Iowa for a construction site of a fertilizer facility (site). This site is 10 acres and is located at Section 36, Township 91N Range 24W, in Wright County, Iowa. Storm water from this site flows to a road ditch that drains via an underground tile to Drainage Ditch No. 3 (DD3), which then flows to the Iowa River. The majority of Construction of this facility was completed in the fall of 2020. This site manufactures liquid fertilizer to be used as a commercial organic fertilizer. It does this by drying solid chicken manure and collecting the liquid ammonia rich steam product, which is then condensed into a liquid. The ammonia rich water is further processed by a biological treatment technique to produce liquid nitrogen fertilizer.

2. On September 22, 2020, Dan Bratrud, an Environmental Specialist with the Department, conducted an NPDES permit compliance inspection. Once on site, Mr. Bratrud observed a storm water pond in the center of the site near the north end. The outfall to this pond was free flowing and discharging into the road ditch. Mr. Bratrud recommended that because manure will be stored on site that a shutoff control system be installed so that if the storm water became contaminated with the manure it could be contained. The rest of the site appeared to be in compliance with its permit.

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3. On October 2, 2020, a copy of this inspection report was mailed to NuOrganics. This inspection reported contained the above discussed recommendation.

4. On November 5, 2020, the Department received a complaint alleging an odor and dark smoke being emitted from the site. Upon receipt of the complaint Mr. Bratrud went to the site to investigate. Mr. Bratrud did not observe black smoke but he did observe discolored brown/orange water discharging from the site's storm water pond to the road ditch and into a tile intake. Mr. Bratrud took a field sample of this water which indicated a high amount of ammonia. The water also had a chicken manure odor. Because of this, Daniel Watterson, an Environmental Specialist with the Department, called Eric Rink who was listed as the manager of the site and asked if he was aware of the discharge. Mr. Rink said he was not but had not been to the site in a few days; he said he would check into it and see if he could plug the tile intake.

5. On November 6, 2020, Mr. Watterson called Mr. Rink to inform him that he was going to inspect the site and asked if the tile intake had been plugged. Mr. Rink stated he was not able to do much at the site and was not sure what was causing the discharge.

At approximately 10:00 am Mr. Watterson and Kayla Beck an Environmental Specialist with the Department went to the site to investigate. Once on site, they met with Tim Smith of Farm Nutrients and Mr. Rink. They explained that NuOrganics was in charge of the processing part of the site and was responsible for anything that spilled into the storm water pond. The Department also met with Paul Santos who represented himself as the Plant Manager and Eugenio Giraldo who represented himself as the Process Engineer for the site. They explained that the source of the discharge was likely from the ammonia water collection system air emission control equipment, which had recently overflowed due to cold temperatures. They explained that excess foam in the storage tank overflowed and spilled onto the ground, once the foam was outside of the collection system it turned to liquid and flowed into the storm water pond. Following receipt of this information, the Department provided detailed steps that needed to be taken to immediately cease the discharge. These steps included the following: (1) plug the tile intake to immediately stop the flow of the contaminated water out of the storm water pond; and (2) dam DD3 to prevent the water from flowing to the Iowa River. While on site, the Department observed the following violations:

- a. Water entering the tile intake in the road ditch had high ammonia, a field sample indicated that it was over the quantitative limit of the test which is 3.0 milligrams per liter (mg/l);
- b. The water in the storm water pond was a brown/orange color and was discharging to a culvert which flowed under the site's drive way into the road ditch and entered a tile intake which flowed to DD3; and
- c. The water in DD3 was brown/orange in color.

The Department took numerous field samples. The locations and results of these field samples are in the below table:

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**Table 1**

<b>Field test ammonia location</b>	<b>Result milligrams per liter (mg/L)</b>	<b>Visual Observations</b>
Tile Intake (in road ditch)	3.0+	brown/orange water
Upstream 1 of the tile outfall in DD3 (100ft upstream low flow tile drainage water pooled)	3.0+	Brown/orange
Upstream 2 of NuOrganics' outfall to DD3 (500 feet upstream)	0.4	clear
Road 59/Taylor Avenue (south of City of Galt approximately 3 miles downstream of NuOrganics)	0.4	clear
Sycamore Avenue (south of the City of Galt approximately 1.52 miles downstream of NuOrganics)	3.0+	green
Iowa River (approximately 6 miles downstream)	ND	clear

The Department also took laboratory samples that were sent to the State Hygienic Laboratory for analysis. The results of these laboratory samples and the locations of the sample are in the below in table:

**Table 2**

<b>Sample location</b>	<b>Ammonia nitrogen as N (mg/L)</b>	<b>Total Kjeldahl Nitrogen as N (TKN) (mg/L)</b>	<b>Nitrate + Nitrite nitrogen as N (mg/L)</b>	<b>Visual Observations</b>
DD3 Culvert 275 <sup>th</sup> Street (south of the City of Galt downstream of NuOrganics' tile outfall)	470	630	120	Brown/orange
Storm water pond (on NuOrganics property)	530	670	120	Brown/orange and contained foam
Tile intake	510	670	120	Brown/orange and contained foam
Outfall to DD3	490	600	110	Brown/orange
Upstream 1	13	28	3.4	Brown/orange
Upstream 2	0.44	1.5	<0.10	clear
Sycamore Avenue	26	43	6.0	green
R59/Taylor Avenue	0.090	0.48	0.23	clear

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Following this investigation, Mr. Watterson and Ms. Beck returned to the site and observed that the outfall to the storm water pond had not yet been plugged. They then explained to Mr. Giraldo and Mr. Rink what steps needed to be taken to contain the ammonia laden water and clean-up the road ditch. Following this discussion, Mr. Watterson and Ms. Beck were given a tour of the facility. During this tour, Mr. Watterson and Ms. Beck observed that the entire area on the south side of the facility was covered in a 2-4 inch layer of muddy sludge from the foam overflow. The sludge was being directed to the storm water intakes that drain to the storm water pond. A tanker trailer was now on site pumping off some of the water in pools near the site's offices but it was not capturing all the runoff from the site. The Department explained that the release was serious and that they should contact the county emergency management to inform them of the spill and see if the county could assist. Further, the Department explained that NuOrganics needed to place a dam in the road ditch at the Sycamore location and then pump out the contaminated water.

While traveling back to the office Department staff contacted Sandy McGrath, the Wright County Sanitarian and informed her of the situation and the plan for pumping out the ditch. She stated that she would contact the county roads department and help with the delivery of sand to build the necessary dam. Later in the day she called the Department back to get directions as to where to place the dam.

At approximately 2:30 pm Mr. Watterson and Ms. Beck returned to the site. They observed that a polyvinyl chloride (PVC) sleeve had been placed over the tile intake but the contaminated water was still flowing out of the tile line and into the road ditch.

6. On November 9, 2020, Mr. Watterson returned to the site for a follow-up investigation. This investigation began at the location of the dam at Sycamore, where Mr. Watterson met with Mr. Santos. Mr. Watterson observed that most of the water had been pumped out and there was not a lot of new water coming into the area. Mr. Santos explained that they were collecting samples to test at the site's lab for ammonia but they did not have any sample results yet. Mr. Santos stated that they were working with Clean Harbors to pump out and store the contaminated wastewater until they find a disposal option. Next, Mr. Watterson drove east through the crop field to determine how far downstream was impacted by the discharge. Approximately 1.75 miles downstream of NuOrganics, between Sycamore Avenue and Taylor Avenue, a field sample was taken which showed that the ammonia was 1.5 mg/L. Laboratory samples were collected and the results are as follows: 1.4 mg/L ammonia, 5.8 mg/L nitrate, 13 mg/L TKN. At this location water was a light green in color. It appeared that as the stream bed became rockier and generally shallow there was very little flow moving farther downstream from this point. Mr. Watterson went to Taylor Avenue and observed live minnows in the water. Flow was minimal at this point, even with the combination of other drainage ditch branches combining into a larger ditch.

7. On November 10, 2020, Mr. Brandt informed the Department that heavy rain overnight washed out the dam at Sycamore Avenue. Following receipt of this information Mr. Watterson went to the site to investigate. Once on site, the following violations were observed:

- a. At the location of Taylor Avenue a field test indicated that ammonia was 3.0 milligrams mg/l;
- b. Upstream of NuOrganics (in a northern branch of DD3 not impacted by the NuOrganics discharge), a field test indicated that the background level of ammonia was 1.4 mg/l; and
- c. Downstream ammonia levels were still elevated after the rainfall, indicating there may still be contaminated water entering DD3 from NuOrganics;

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- d. Orange/brown water was observed discharging from the storm water pond through the temporary soil plug, the water was tested and the ammonia level was greater 3.0 mg/l; and
- e. It was documented that the tile outfall which drains to DD3 from the road ditch intake had not been plugged, Mr. Brandt had mistakenly plugged another tile outlet that drained the storm water pond.

Mr. Watterson discussed the need to continuously monitor the DD3 to ensure that ammonia level did not increase and then he went to the locations identified in table 3 and took laboratory samples:

**Table 3**

<b>Sample location</b>	<b>Ammonia (mg/L)</b>	<b>TKN (mg/L)</b>	<b>Nitrate (mg/L)</b>	<b>Visual Observation</b>
Iowa River (approximately 5 miles downstream of NuOrganics)	0.31	1.2	1.7	Clear
Iowa River (approximately 1 mile upstream)	0.13	0.77	0.87	Clear
DD3 on 240 <sup>th</sup> Street (near the town of Rowan)	3.1	6.7	15	Turbid but otherwise clear

8. On November 12, 2020, Mr. Watterson spoke on the phone with Mr. Brandt who stated that flow level had decreased and no dead fish were observed in the area. Following this call, Mr. Watterson went to the site for a follow-up investigation. Once on site, Mr. Watterson went to the locations identified in table 4 and took field samples the results are below:

**Table 4**

<b>Field test ammonia location</b>	<b>Result milligrams per liter (mg/L)</b>	<b>Visual Observation</b>
Bridge on 240 <sup>th</sup> Street	1.2	Clear
Washed out dam on Sycamore Avenue	3.0	Light Green

Following this investigation Mr. Watterson explained what was necessary to complete the clean-up of the site.

- 9. On December 14, 2020, a Storm Water NPDES permit No. 1 was issued to NuOrganics.
- 10. On December 23, 2020, a Notice of Violation (NOV) was sent for the above discussed violations. This NOV summarized the violations and the relevant law and required that an emergency response plan be submitted to the Department by January 31, 2021. Included with this NOV was a copy of the inspection report which detailed the necessary corrective action and a summary of the relevant law.
- 11. On January 4, 2021, an emergency response plan was submitted to the Department.

## IV. CONCLUSIONS OF LAW

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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. The above stated facts demonstrate non-compliance with this provision.
2. Iowa Code sections 455B.103(A) and 455B.197 authorize the issuance of permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to subrule 60.2, "[s]torm water discharge associated with industrial activity" means the "discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant." Subparagraph 10 under this definition includes "construction activity, including clearing, grading, and excavation activities." Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.
3. 567 IAC 61.3(2)"c" states that "[s]uch waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions." The above stated facts demonstrate noncompliance with these provisions.
4. 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.
5. Part IV. C. of NPDES General Permit No. 2 requires that Storm Water Pollution Prevention Plans be kept current and shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharge associated with industrial activity. The above stated facts demonstrate noncompliance with this provision of law.
6. Iowa Code section 455B.386 requires that "[a] person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department and the local police department or the office of the sheriff of the affected county 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 above stated facts demonstrate noncompliance with this provision of law.

### **V. ORDER**

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

1. Comply with all conditions of its storm water NPDES permit No.1 and No. 2;
2. Cease all illegal discharges; and
3. Pay an administrative penalty of \$8,000.00 within 30 days of the date the Director signs this order.

### **VI. PENALTY**

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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.” An economic benefit was obtained through delaying the cost of installing a control valve to the storm water pond. And significant costs were saved by failure to properly dispose of the contaminated wastewater. and sediment control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$2,000.00 was saved. Therefore, \$2,000.00 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 wastewater degrades surface water quality and deposits excess pollutants in water channels. 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, noncompliance with an NPDES permit thwarts the integrity of the NPDES permit and water quality programs. Therefore, the amount of \$3,000.00 is assessed for this factor.

c. **Culpability.** NuOrganics operates a fertilizer factory. This is a highly regulated activity and therefore the NuOrganics has an obligation to be aware of the applicable regulations and comply with those regulations. NuOrganics was issued an NPDES permit and the Department communicated the need to install a control valve in the storm water pond. Nevertheless, a valve was not installed and an illegal discharge occurred. Further, the discharge occurred over the course of multiple days and until the Department became aware of the discharge NuOrganics took no steps to stop it or report it to the Department. Therefore, the amount of \$3,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

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

**III. 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.



On behalf of ReNewTrient I, LLC d/b/a NuOrganics, LLC

Dated this 7 day of  
May, 2021

Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 2021

ReNewTrient I, LLC d/b/a NuOrganics, LLC (Copy of Order to Central Office Records File), FO 6, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A., I.C.7.b.