

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Three Rivers FS Company Clayton County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2021-WW- 23
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TO: Jacob Ioerger, Registered Agent
Three Rivers FS Company
1200 Field of Dream Way
Dyersville, IA 52040

Gary Kregel, President
Three Rivers FS Company
30392 Garber Rd
Guttenberg, IA 52052

I. SUMMARY

This administrative consent order (order) is entered into between Three Rivers FS Company (Three Rivers) 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. Three Rivers agrees to pay an administrative penalty of \$6,000.00. Three Rivers neither admits nor denies the contents of this order and 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:

Jessica Ragsdale, Environmental Specialist
IDNR Field Office No. 1
909 West Main Street
Manchester, IA 52037
319-927-2640

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:

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Iowa Department of Natural Resources
502 East 9th 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

Three Rivers FS neither admits nor denies the following statement of facts:

1. Three Rivers FS is an agricultural cooperative serving producers in Northeast Iowa. Three Rivers has 9 locations in Iowa and provides retail sale in: seed, precision agriculture products, custom application, crop protection, propane, fuels, and lubricants to over 10,000 customers. The location that is the subject of this order is located at 2452 HWY 13, Elkader, Iowa (Elkader Three Rivers).
2. On the evening of July 19, 2020, the Department Fisheries Bureau received a complaint of dying fish at the confluence of Roberts Creek and the Turkey River. The complainant stated that he observed the dying fish on July 18, 2020.
3. On July 20, 2020, Gary Siegwarth, a Natural Resources Biologist with the Department, went to the location of the 250th street bridge in Elkader (Site 1 downstream from Three Rivers) to investigate. From site 1 Mr. Siegwarth observed dead fish in the water. Next, Mr. Siegwarth proceeded to the location of the bridge on Grape Road that crosses Roberts Creek slightly upstream of the confluence of Roberts Creek and the Turkey River (Site 2 downstream from Three Rivers). At site 2 dead fish were observed. Next, Mr. Siegwarth proceeded to Elkader Three Rivers. Once on site, Mr. Siegwarth observed water being pumped from a building across the chemical loading/mixing yard and into a culvert that flows under Innovative Ag Services' (IAS) driveway and into a drainage ditch that flows to Roberts Creek and eventually the Turkey River. A Three Rivers employee stated that the liquid being pumped out was from a secondary containment area. Next, Mr. Siegwarth called the Department's Field No. 1 and reported what he observed.
4. On July 21, Jessica Ragsdale, an Environmental Specialist with the Department, went to the site to investigate. Ms. Ragsdale began her investigation at Elkader Three Rivers, where she walked around the property with Chad Keehner, Three Rivers Area Manager. Mr. Keehner stated that IAS has an anhydrous ammonia storage area south of Three Rivers site and that when Three Rivers pumps the rain and snow melt from the secondary containment structures it flows over a gravel area to a culvert, then into a drainage ditch located on IAS' property. Ms. Ragsdale took a field sample testing for ammonia (N) of the pooled water on IAS' property (Site 3). The field sample showed no ammonia was present. Ms. Ragsdale proceeded to the culvert that flows under IAS'

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driveway and into a drainage ditch that flows to Roberts Creek (Site 4 point of discharge). A field sample was taken, which was positive for the presence of ammonia. A laboratory sample was also taken and the results were sent to the State Hygienic Laboratory for analysis.¹ Ms. Ragsdale observed that some of IAS' anhydrous ammonia storage area drained into the drainage ditch. A field sample was taken, which was positive for ammonia (Site 5). Next, she took field samples of the pooled water on IAS' property (Site 6). All samples were negative for ammonia as nitrogen and no leaking ammonia tanks were observed in the area. 5. Next, Ms. Ragsdale, discussed her observations with Mr. Keehner. They then inspected Three Rivers two secondary containment structures. No liquid was on the floor of the structures because they had been pumped out on July 2, 2020, and again on July 20, 2020. One containment structure housed six tanks of gasoline and diesel. A leak in one tank was observed and dripping fuel formed a puddle. The second structure held four tanks of liquid fertilizer, no visible leaks were detected. The containment structure for the liquid fertilizer had a cutout with a floor gate, which had standing water. A field sample was taken on the standing water and showed a high amount of ammonia. The protocols for emptying the secondary containment was discussed. Mr. Keehner stated that the fuel containment is checked for a sheen and the liquid fertilizer containment is checked with a test strip for potential Hydrogen (pH) and ammonia. The pumping records were inspected for the last five years and it appeared that ammonia ranged from 3-6 parts per million (ppm).

6. Following this discussion, Ms. Ragsdale proceeded north to the location of the drainage ditch, discussed above, which flows into Roberts Creek. At this location there was pooled water and a laboratory sample was taken (Site 7). Next Ms. Ragsdale took a laboratory sample of the water flowing in Roberts Creek (Site 8). Then she proceeded south to the location of Site 1 and took a laboratory sample. Next, she proceeded North upstream of the discharge and took a laboratory sample of the portion of Roberts Creek that flows behind Three Rivers property (Site 9). Lastly, she proceeded approximately 1900 feet upstream from Site 9 and took another sample (Site 10).
7. Laboratory samples were taken at the following locations and the results are in the below table:

Location	Ammonia nitrogen as N milligrams per Liter (mg/L)
Site 1	.060
Site 4	40
Site 7	.11
Site 8	Less than .050
Site 9	Less than .050
Site 10	Less than .050

8. On October 7, 2020, a NOV was sent to Three Rivers for the above discussed violations. Included with this NOV was a copy of the relevant inspection report, a summary of the relevant law, the results of the laboratory samples, and the recommended corrective action.

¹ All laboratory sample results from samples taken during this inspection are presented in the table.

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IV. CONCLUSIONS OF LAW

Three Rivers FS neither admits nor denies the following conclusions of law:

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. 567 IAC 61.3(2) "e" states:
 - e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.
3. The above stated facts demonstrate noncompliance with these provisions.
4. Subrule 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 Three Rivers consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. In the future provide documentation to the Department establishing all storm water was legally disposed of from the Elkader Three Rivers; and
3. Pay an administrative penalty of \$6,000.00 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." An economic benefit was pumping contaminated water into a water of the state rather than paying to have the water hauled off site and properly disposed of.

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This avoided a significant amount of money thus, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$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 wastewater deposits excess pollutants in water channels. Pollution of Iowa's waterways is a serious problem. 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.** Three Rivers is an agricultural coop and stores chemicals on a regular basis. This is a highly regulated activity and therefore Three Rivers has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, Three Rivers was testing the wastewater on a regular basis and those test results showed the presence of ammonia. Nevertheless, the wastewater was pumped into a water of the state and a discharge of a pollutant occurred. Therefore, the amount of \$3,000.00 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 chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent Three Rivers. By signature to this order, all rights to appeal this order are waived by Three Rivers.

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.



On behalf of Three Rivers FS Company

Dated this 28 day of
September, 2021

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this _____ day of
_____, 2021

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Copy of Order to Central Office Records File), FO 1, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A,
I.C.7.b.