

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

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| <p>IN THE MATTER OF:</p> <p>Riverstone Group, Inc.</p> <p>Scott County, Iowa</p> <p>NPDES Discharge Authorization No. IAG140244</p> | <p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2023-WW- 08</p> |
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TO: Charles Ellis, President
4640 E. 56th Street
Davenport, IA 52807

Michael J. Ellis, Registered Agent
4640 E. 56th Street
Davenport, IA 52807

John Brimeyer, Environmental Manager
4640 E. 56th Street
Davenport, IA 52807

I. SUMMARY

This administrative consent order (Order) is entered into between Riverstone Group, Inc. (Riverstone) and the Iowa Department of Natural Resources (Department) for the purpose of addressing multiple illegal discharges of a pollutants to waters of the state.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Terry Jones, Environmental Specialist Senior
DNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-444-8165

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

RECEIVED

APR 06 2023

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Riverstone Group, Inc.

II. JURISDICTION

This Order is issued pursuant to the provisions of 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 (wastewater) and the rules adopted or permits issued pursuant to that part; 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

The parties agree to the following statement of facts:

1. Riverstone operates quarries throughout eastern Iowa and western Illinois. The quarry that is subject to this order is located at Section 33, T80, R1E in Scott County, Iowa. This location is locally known as 2700 New Liberty Road, New Liberty Iowa. LeClaire Investments Inc. is the deed holder of this property; however, this entity is not registered with the Iowa Secretary of State. This facility is authorized to discharge pursuant to National Pollutant Discharge Elimination System (NPDES) General Permit No. 5 and 3. Wastewater from this property is pumped to the east side of the facility to an unnamed drainage ditch which flows south, along the southeast side of the facility, through a culvert and into an unnamed tributary of Mud Creek (unnamed tributary). The unnamed tributary flows southeast to Mud Creek and ultimately to the Wapsipinicon River.

2. On October 27, 2022, the Department received a complaint alleging that Riverstone was washing rock and the discharge was turning the water white in the creek south of the quarry.

3. On October 28, 2022, the Department went to Riverstone to investigate. Once on site, the Department observed white discolored water flowing from the site to a drainage ditch (site 1), which flows underneath the road into an unnamed tributary (site 2). Upstream from the point at which the water flows from Riverstone into an unnamed tributary (site 3), the water was not discolored.

Next, the Department met Jim Webber, of Riverstone, to discuss the complaint. Mr. Webber took the Department to the bottom of the quarry and pointed out a black pipe that was dewatering the quarry. The Department and Mr. Webber followed the black pipe to its outlet, which is the drainage ditch identified above. The Department observed that the water flowing from the pipe into the drainage ditch was white and appeared to be the same color as the water observed in the unnamed tributary.

4. On November 4, 2022, a Notice of Violation (NOV) was sent for the above discussed violations. Included with this NOV was a copy of the inspection report, a summary of the law, and the recommended corrective actions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Riverstone Group, Inc.

5. On December 9, 2022, the Department received two complaints alleging that Mud Creek was discolored and running yellow south of Riverstone. Following receipt of these complaints the Department went to the site to investigate. Throughout the investigation laboratory samples were taken. All of the results are provided in Table 1 below.

At approximately 11:00 am the Department arrived on site. Once on site the Department observed yellow discolored water flowing from the above discussed drainage ditch into the unnamed tributary (site 2). The Department proceeded via car downstream of Riverstone and continued to see yellow discolored water in the unnamed tributary.

Table 1

| Test | Site 5 (south of the culvert, in the drainage ditch) | Site 4 (unnamed tributary at 35 th Avenue bridge downstream of site 2) | Site 3 (upstream of Riverstone) |
|-------------------------------------|--|---|---------------------------------|
| Total Suspended Solids (TSS) (mg/L) | 4170 | 330 | 120 |
| Turbidity (NTU) | 4800 | 280 | 160 |
| potential Hydrogen (pH) | 8.0 | 7.9 | 7.5 |

Following the onsite investigation, the Department contacted Brian Dockery, of Riverstone. Mr. Dockery was asked to take all steps necessary to cease the discharge. Mr. Dockery called the Department later that day to report that the pump dewatering the quarry had been shut off and the discharge had stopped.

6. On December 15, 2022, a NOV was sent to Riverstone for the above discussed violations. Included with this NOV was a copy of the investigation report, lab samples, a summary of the relevant law, and the recommended corrective actions.

IV. CONCLUSIONS OF LAW

The parties agree to the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate noncompliance with this provision of law.

2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. 567 IAC 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts demonstrate noncompliance with these provisions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Riverstone Group, Inc.

3. 567 IAC 61.3(2)“c” states:

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectional color, odor or other aesthetically objectional conditions.

The above stated facts demonstrate noncompliance with this provision of law.

4. 567 IAC 62.1 (1) states “[t]he discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit.”

The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

By the execution of this Order, the Department orders and Riverstone agrees to do the following:

1. Comply with all conditions of Riverstone’s NPDES permits;
2. By June 1, 2023, submit documentation to the Department that shows that employees of Riverstone have been trained in NPDES permit compliance; and
3. Pay a penalty in the amount 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 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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states, “reasonable estimates of economic benefit should be made where clear data are not available.” An economic benefit was obtained by Riverstone by avoiding the cost of properly disposing of wastewater and its failure to train its staff on how to properly dispose of the wastewater. 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. An illegal discharge to a water of the State degrades water quality. Degradation 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. Further, such noncompliance threatens the integrity of the water quality program. Therefore, the amount of \$2,000.00 is assessed for this factor.

c. Culpability. Riverstone operates a quarry business subject to two NPDES permits. Riverstone has an obligation to be aware of the conditions of its NPDES permits and the applicable regulations and comply with those laws. Furthermore, the Department documented an illegal discharge on two separate occasions. Therefore, the amount of \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Riverstone. For that reason, it waives its right to appeal this Order or any part thereof.

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

Charles Ellis
Charles Ellis, President, Riverstone Group, Inc.

Dated this 3rd day of
APRIL, 2023

Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

NPDES Discharge Authorization No. IAG140244; Field Office #6; Carrie Schoenebaum; EPA; Water Quality Bureau; I.B.2.c.C.1