

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

IN THE MATTER OF: NS Retail Holdings, LLC Linn County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2024-WW-05
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TO: Jim Brady Boyd Group (US) Inc/The Gerber Group Inc.
400 W. Grand Ave.
Elmhurst, IL
60126

United Agent Group Inc.
3106 Ingersoll Avenue
Des Moines, IA 50312

NS Retail Holdings, LLC
2021 McKinney Ave
Dallas, TX, 75201

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and the NS Retail Holdings, LLC for the purpose of resolving violations resulting from a discharge of chlorinated drinking water that resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Brenda Streicher, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Ct. Ste 10
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:
Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th St Wallace State Office Bldg
Des Moines, Iowa 50319
Phone: 515/444-8165

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

The parties hereby agree that 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 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. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. On January 23, 2024, at approximately 12:58 pm the Department was notified of a fish kill in McLoud Run. At 1:20 pm Brenda Streicher an Environmental Specialist with the Department spoke to Justin Schroeder, City of Cedar Rapids Environmental Manager, who stated that at approximately 3:30 am the City noticed that drinking water flows increased from a storage tower. The City determined that the location of the leak was an unoccupied building located at 4425 Center Point Road NE, Cedar Rapid.¹ Mr. Schroeder stated that at 9:00 am the water was shut off and that City crews placed dichlorination tables in the stream. Mr. Schroeder estimated that 450,000 gallons of drinking water was discharged.

At approximately 1:43 pm Paul Sleeper, a Fisheries Biologist with the Department, was notified and at approximately 3:25 pm Mr. Sleeper met Mr. Schroeder, Ms. Streicher and Ms. Errthum, an Environmental Specialist with the Department, at the McLoud Place bridge parking lot to begin an investigation. At this location, Department staff did not observe any live fish and noted that the water was turbid. Water samples were also taken and the results are as follows: no ammonia detected, pH of 7.9, temperature of 46.2 F and 0.00 milligrams per liter (mg/L) of total chlorine. Next, Mr. Streicher and Mr. Schroeder proceeded to the location in McLoud Run where the drinking water entered the stream. At this location, Department staff observed turbid water and approximately three dead fish. Water samples were also taken at this location and the results are as follows: No ammonia was detected, pH was taken twice it was 7.8 and 7.5, water temperature was also taken twice and it was 35.4 and 35.1 and total chlorine as .12 mg/L. At 4:28 pm Department staff returned to the location of McLoud Place Bridge and took additional total chlorine sample. This test showed total chlorine was .10 mg/L.

2. On January 25, 2024, Mr. Sleeper and Chris Mack, a Fisheries Technician with the Department, went back to site at McLoud run to continue the investigation. Mr. Sleeper and Mr. Mack began above 42nd street behind Czech Square in Cedar Rapids and walked the length of the fish kill approximately 1.9 miles and counted all the dead fish. Turbid water

¹ It was later determined that the cause of the leak was a broken pipe in a building owned by NS Retail Holdings, LLC.

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hampered the investigation by not allowing dead fish to be visible in the deeper pools of water.

3. On January 30, 2024, a Notice of Violation (NOV) was sent to the NS Retail Holdings, LLC for the above-discussed violations. Included in this NOV was a summary of the relevant law, a copy of the investigation report, and a fish kill memo drafted by Mr. Sleeper. The fish kill memo contained information regarding the number of fish killed and the monetary value. That information is as follows: it is estimated that 336 Rainbow and Brown Trout were killed, which have a monetary value of \$5,040.00; 61 Whiter Suckers of various sizes were killed, which have a combined monetary value of \$182.00; and 7 Green Fish were killed which have a monetary value of \$3.92. The Fisheries investigative costs were \$569.64 and the total fish kill restitution is \$5,795.64

4. The Field Office's investigation costs were \$282.22.

5. On approximately March 8, 2024, the Department received payment in the amount of \$5,795.64 to go towards the fish kill restitution from the Boyd Group (US Inc.).

IV. CONCLUSIONS OF LAW

The Department and NS Retail Holdings, LLC, hereby agree to 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) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The Department observed dead fish. Thus, the above stated facts indicate violations of the general water quality criteria.

3. Iowa Code section 481A.151 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 Department for injury caused to a wild animal by the pollution. The Department has adopted 571 IAC chapter 113. 571 IAC chapter 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 Department for injury caused to a wild animal by the pollution. A fish kill resulted from discharge of chlorinated drinking water due to a broken pipe in a building owned by NS Retail Holdings, LLC.

V. ORDER

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1. NS Retail Holdings, LLC shall pay the remainder of the fish restitution, which includes the Field Office's investigative costs, in the amount of \$282.22 within 30 days of the date the Director signs this administrative consent order; and

2. Pay an administrative penalty of \$1,500.00 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 water quality violation involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (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 consent order with an administrative penalty. The administrative penalty is determined as follows:

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.” The Department has determined that the NS Retail Holdings, LLC did not obtain an economic benefit from this violation. For that reason, no amount is assessed for this factor.

Gravity – 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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The Department documented a discharge that led to documented water quality violations and an extensive fish kill. These violations threaten the integrity of the regulatory programs because compliance with water quality requirements is required of all persons in this state. Therefore, \$1,500.00 is assessed for this factor.

Culpability – At this time the Department has determined that no amount should be assessed for this factor.

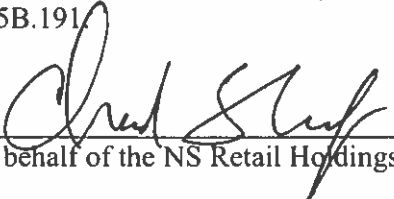
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the NS Retail Holdings, LLC. For that reason, the NS Retail Holdings, LLC waives its right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent 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.



on behalf of the NS Retail Holdings, LLC

Dated this 30 day of
May, 2024

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Carrie Schoenebaum, DNR Field Office 1, EPA, I. C. 6.