

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

IN THE MATTER OF: Jeffrey Boyer Des Moines County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2024-WW-12
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TO Jeffrey Boyer
4748 30th St
Oakville, IA 52646

I. SUMMARY

This administrative consent order (order) is entered into by Jeffrey Boyer and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to an illegal discharge to a water of the state. Mr. Boyer 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.

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

Relating to technical requirements:

Anthony Kerker, Environmental Specialist
IDNR Field Office No 6
1023 W. Madison St.
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
6200 Park Ave. Ste
Des Moines, Iowa 50321
Phone: 515-444-8165

Payment of penalty to:

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.

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III. STATEMENT OF FACTS

1. On April 22, 2024, at approximately 5:30 pm the City of Burlington Fire Department (Fire Department) reported a fertilizer spill to the Department. The Fire Department reported that the spill occurred near the location of West Avenue and Roosevelt Avenue in Burlington, Iowa. Following the Fire Department's response, the Department received a report which contained the following information:

The Fire Department was dispatched to Roosevelt Avenue and West Avenue for a drum that fell out of the back of a vehicle and is leaking. Upon arrival there appeared to be a large spill beginning 350 feet South of the Roosevelt Avenue and West Avenue intersection in the northbound lanes and continued to the east on West Avenue for an additional 700 feet. The total length of the spill was approximately 1050 feet in length. High traffic through the area had increased the size of the scene with vehicles dragging the fluid into other areas such as Lawrence Drive. No leaking vehicle was in sight and the Fire Department was unable to locate the source of the leak. The first priority was to attempt to identify the substance and to dike and dam the unknown product. Crews utilized Oil Dry to dam the sewer drains that the unknown product was flowing into. The product was slick on the road surface and created a sticky tacky substance.

The Fire Department requested a hazardous materials truck. Crews continued to attempt to identify the product utilizing what identification tools were available. DESCOM was contacted multiple times with regard to locating the vehicle in order to identify the product. Skifstad identified the product as non flammable, alkaline and not water soluble. The Fire Department spent hours trying to identify the product. The Fire Department planned to utilize a sand truck in order to gain traction on the roads and reopen the streets while containing the unknown product. With the assistance of the Burlington Police Department, the affected streets were closed. Large quantities of Oil Dry were utilized in an attempt to mitigate the pools of the product.

After hours of trying to identify the product, Merschman Fertilizer contacted DESCOM and stated that they loaded this product earlier in the day and can be of assistance. An employee of Merschman stated that the product is a fertilizer called Green Phosphate and they recommended that the product be washed off the street with water.

At approximately 5:30 pm the Burlington Fire Department reported the spill to the Department and informed the Department that Mr. Boyer was responsible.

2. Between approximately 12:00-1:00 pm on April 23, 2024, the Department went to the Fire Department to receive an update on the spill. Because the storm sewer located near the spill, at West Avenue & Roosevelt Avenue, drains to Hawkeye Creek (Creek), which is a tributary of the Mississippi River, the Department went to the Creek to investigate. Once at the Creek, the Department observed white discolored water. Field samples and Laboratory samples were taken at the locations identified in the Table 1. Field sample results indicated high levels of ammonia in the water. The laboratory results are in Table 1. At the time of the investigation the spill impacted approximately 1 mile of the Creek; however, the white discolored water had not yet reached the Mississippi River.

After the on-site investigation, the Fire Department called Mr. Boyer to discuss the spill. The Department recommended that Mr. Boyer mitigate the spill and return Hawkeye Creek to the condition prior to the spill. Mr. Boyer declined to assist with the clean-up.

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Following this call, the Department called the City of Burlington. During this call it was determined that due to the extent of the impact on the Creek, clean water should be flushed into the Creek.

3. On April 24, 2024, the Department spoke to an individual who witnessed the spill. The witness stated that before 1:00 pm on April 22, 2024, they were one vehicle behind a black truck with a gooseneck trailer, which was carrying two large plastic tanks with straps holding the tanks to the trailer. As the black truck came to the intersection of Highway 61 (Roosevelt Street) and West Street (next to Casey's), one of the plastic tanks on the trailer erupted/broke open. The liquid contents of that plastic tank flowed off the trailer and onto the surrounding street. The driver exited the vehicle and assessed the situation. The driver then left the mostly emptied tank near Casey's and then left the area. The witness stated that they could smell the contents of the tank and thought it was some sort of fertilizer material. Later that day, the witness went back to the location of the spill and observed that vehicles were driving through the mess on the street until the Fire Department cleaned it up.

4. On April 24, 2024, the Department received a complaint alleging that the Creek was white. During this call the Department explained the situation and that the Department was still investigating the spill.

5. On April 24, 2024, at approximately 7:00 am through 4:45 pm the City opened the fire hydrant near the location of the spill to flush the Creek. Approximately 204,000 gallons of water was discharged. This water ran over the street and into the storm drain and into the Creek. Following this, a City of Burlington Public Works employee returned to the Creek and observed pools of white discolored water.

6. On April 25, 2024, the City flushed the creek for an additional 10 hours. Approximately 204,000 gallons of water was discharged. Following the flushing, a City of Burlington Public Works employee returned to the Creek and documented that there was no longer any visible impact to the Creek.

Table 1: Laboratory samples collected by the Department April 23, 2024

Pollutant	Burlington Notre Dame High School (near spill) (A)	Division & Plane St (B)	E Agency St (C)
Ammonia	11	27	8.8
BOD	<2	<2	2
TSS (mg/L)	10	56	5

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7. On April 30, 2024, the Department sent to Mr. Boyer a Notice of Violation (NOV) for the above referenced violations. Included with this NOV was a summary of the violations and the relevant law.

IV. CONCLUSIONS OF LAW

The parties 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 of law.
2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards. The Commission has done so at 567 IAC Chapters 60 through 65.
3. Iowa Code section 455B.383 requires that the Department establish such rules to protect the public from unnecessary exposure to hazardous substances.
4. 567 IAC 61.3(2)“c” and “e” state:
 - c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectional color, odor or other aesthetically objectional conditions. [and]
 - 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.

The above stated facts demonstrate noncompliance with these provisions of law.

5. Iowa Code section 455B.386 requires:

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.

6. 567 IAC 131.2 and (2) require
[a]ny person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department at (515)281-8694 and the local

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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 written report of such a hazardous condition shall be submitted to the department within 30 days[.]

The above stated facts demonstrate noncompliance with these provisions of law.

V. ORDER

THEREFORE, the Department orders, and Mr. Boyer consents to do, the following:

1. Cease all illegal discharges to waters of the state;
2. Submit a written report of the spill to the Department as required in 567 IAC 131.2;
3. In the future report all spills to the Department as required by 567 IAC 131.2; and
4. Pay an administrative penalty of \$8,000.00 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 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Boyer saved a significant amount of time and money by failing to report the spill and clean-up the spill. It is estimated Mr. Boyer saved at least \$3,000.00-\$7,000.00. Thus, it is reasonable to estimate that at least \$3,000.00 was saved. Therefore, \$3,000.00 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. The discharge of fertilizer to a water of the state resulted in a significant amount of a pollutant entering a water of the state. Pollution of Iowa’s waterways is a serious problem. Degraded water quality harms aquatic life,

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prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Moreover, if Mr. Boyer would have timely reported the spill clean-up efforts would have occurred sooner and the impact to the stream would have been mitigated. Self-reporting of a hazardous condition is the backbone of the program. Therefore, the amount of \$3,000.00 is assessed for this factor.

c. **Culpability.** Mr. Boyer is engaged in the business of farming, which includes the transportation of fertilizer. The transportation of fertilizer is very serious and there is an obligation to be aware of the applicable regulations and comply with those regulations. Mr. Boyer was aware of the spill yet he took no steps to properly report it. Therefore, the amount of \$2,000.00 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 of Mr. Boyer. By signing this order, all rights to appeal this order are waived by Mr. Boyer.

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.


Jeffrey Boyer

Dated this 5th day of August
_____, 2024

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

FO 6, Carrie Schoenebaum- Legal Services Bureau