

**NOTICE OF INTENT TO PERFORM
A NATURAL RESOURCE DAMAGE ASSESSMENT**

October 25, 2024

In re: Nishnabotna Fertilizer Spill

POTENTIALLY RESPONSIBLE PARTY: NEW Cooperative, Inc.

A preliminary determination has been made that NEW Cooperative, Inc. is potentially liable for any natural resource damages as a result of the release of a hazardous substance from the NEW Facility in Red Oak, Iowa

- Pursuant to State and Federal laws, the Iowa Department of Natural Resources (IDNR), Nebraska Department of Environment and Energy, Missouri Department of Natural Resources and the U.S. Fish and Wildlife Service on behalf of the U.S. Department of the Interior (collectively, the Trustees) have authority to perform a natural resource damage assessment (NRDA) related to a hazardous substance release of liquid nitrogen fertilizer at and from the NEW Cooperative, Inc. (NEW) facility in Red Oak, Iowa. On March 9-11, 2024, the NEW facility in Red Oak, Iowa released 1,500 tons (265,000 gallons) of liquid nitrogen fertilizer (UAN-32) a urea ammonium nitrate solution, through an open valve, which flowed over a graveled parking area into a stormwater drainage ditch, and then into the East Nishnabotna River (anywhere contaminants have come to be located is collectively referred to herein as “the Site”). The release was discovered at 5:30 a.m. on March 11, 2024, by NEW employees who used soil to block the ditch and stop further inputs of UAN-32 into the river. NEW notified IDNR of a release occurring on-site. The UAN-32 release resulted in a mass fish kill in the Nishnabotna River, extending downstream to its confluence with the Missouri River, with a total impact of approximately 60 miles. Due to the release, the IDNR issued an advisory that recommended people avoid recreational activities on the river and not to collect or eat dead fish. In addition to the fish kill, the release impacted water quality, potentially other species, and wetland, marsh, and riparian habitat. (The UAN-32 release is collectively referred to herein as the “Nishnabotna Fertilizer Spill” or “Spill”).
- Federal and State Trustees have authority to conduct a NRDA pursuant to Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f); Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R §§ 300.600, 300.605; and the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations, 43 C.F.R. Part 11. This document serves to notify NEW Cooperative, Inc. of the Trustees’ intent to perform an assessment of damages for injuries to natural resources

and their services resulting from the release of a hazardous substance (ammonia) at and from the NEW Cooperative, Inc. Facility into the Nishnabotna River and the surrounding area.

The Trustees have taken the initial step of conducting a Preassessment Screen (PAS) for the Site in accordance with Subpart B – Preassessment Phase, Sections 11.20 – 11.25 of the CERCLA NRDAR regulations. The CERCLA NRDAR regulations provide a method for assessing damages for natural resource injuries resulting from the release of hazardous substances under CERCLA, 42 U.S.C. §§ 9601-9628. Adherence to the methods set forth in the CERCLA NRDAR regulations is not mandatory and does not preclude the Trustees from using alternative assessment methods or arriving at a negotiated settlement with the potentially responsible party.

A copy of the Nishnabotna Fertilizer Spill Preassessment Screen is enclosed for your convenience (Attachment A). The PAS contains, to the extent known, a description of the Site; the hazardous substance; the natural resources and associated services under the jurisdiction of the Trustees; and the natural resources and their services potentially injured. The PAS is a public document. The public will be encouraged to provide input into the assessment process, including reviewing and commenting on the development of any assessment plan(s), as well as any restoration actions developed pursuant to the CERCLA NRDAR regulations.

Based on the PAS, the Trustees have made a preliminary determination that the specified criteria in Section 11.23(e) of the CERCLA NRDAR regulations, have been met:

- A release of a hazardous substance (ammonia) has occurred;
- Natural resources for which the IDNR, Nebraska Department of Environment and Energy, Missouri Department of Natural Resources, and Department of the Interior may assert trustee authority under CERCLA have been, or likely have been, adversely affected by the release;
- The quantity and concentration of the released hazardous substance is sufficient to potentially cause injury to those natural resources;
- Data sufficient to pursue an assessment are readily available, or likely to be obtained at a reasonable cost;
- Response actions already carried out will not sufficiently remedy the injury to natural resources without further action.

Based upon an evaluation of these five (5) criteria, the Trustees have determined that a NRDA is warranted at the Site in accordance with 43 C.F.R. Part 11, Subparts C and E. The NRDA will assess damages for injuries to natural resources and their services caused by the release of UAN-32.

A preliminary determination has also been made that your company is potentially liable for any natural resource damages as a result of the release of a hazardous substance at and from the Site. Additional information on the background of the Site and the basis of the preliminary determination may be found in the PAS.