

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

<b>IN THE MATTER OF:</b>  <b>Paul Koth</b>  <b>Buena Vista County, Iowa</b>  <b>NPDES Permit No. 26048-25797</b> <b>General Permit No. 2</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2016-WW- 14</b>
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**TO: Paul Koth**  
**5973 50<sup>th</sup> Ave**  
**Alta IA, 51102**

**I. SUMMARY**

This administrative consent order (order) is entered into between Paul Koth and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Mr. Koth's National Pollutant Discharge Elimination System (NPDES) General Permit No. 2. Mr. Koth agrees to pay an administrative penalty of \$6,000.00.

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

**Relating to technical requirements:**

Michelle Sabatini, Environmental Specialist  
IDNR Field Office No. 3  
1900 North Grand Ave, Suite E17  
Spencer, IA 51301  
Phone: 712-262-4177

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney at Law  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515-281-0824

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> 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 September 24, 2015, Mr. Koth received a Notice of General Permit Coverage under NPDES General Permit Number 2 for storm water discharge associated with construction activity. This permit was for the property referred to as Maple Creek Subdivision, which is located in the NE ¼ of Section 27 T91N R38W in Buena Vista County Iowa.

2. On August 17, 2015, the Department received two separate complaints alleging that Mr. Koth was doing work on the above mentioned property and adequate erosion control measures were not in place. One complainant explained that each time it rained the City of Alta had to wash the sediment, which was runoff from Mr. Koth's construction site, off of the streets. The other complainant stated that a large quantity of mud was discharging off site into the storm sewer causing the sewer to discharge mud into the creek.

3. On August 19, 2015, Sheila Kenny, an Environmental Specialist with the Department, went to the site to investigate. Once on site Ms. Kenny verified that the complaints were valid and that the erosion control measures were inadequate. Ms. Kenny documented her observations with photographs.

4. On August 26, 2015, Michelle Sabatini, an Environmental Specialist with the Department, went back to the site to investigate. While on site she documented the following violations: (1) the Storm Water Pollution Prevention Plan (SWPPP) was not available upon request; (2) many silt fences were collapsed; and (3) some areas lacked storm water erosion control measures. Following these observations, Ms. Sabatini informed Mr. Koth that the weather forecast predicted rain and for that reason storm water controls should be implemented immediately.

5. On August 28, 2015, after receipt of notification that it rained on August 26th and 27th, Ms. Sabatini returned to the site. While on site it was again raining. Ms. Sabatini observed the addition of earthen berms which were intended to slow the flow of storm water and direct it to a grassy area. However, in several of these berms, Ms. Sabatini observed channelization which allowed the water to bypass the erosion controls. Sediment laden storm water was flowing freely from the site, down West Links Dr., and into the storm drain which drains to Mill Creek. Ms. Sabatini also observed storm water bypassing the silt fences and flowing onto pavement and then into Mill Creek. Ms. Sabatini took lab samples and photographs which documented that the storm water was entering Mill Creek.

The lab samples were sent to the State Hygienic Laboratory for analysis and the results were as follows:

- (a) Mill Creek downstream of the development, Total Suspended Solids (TSS) were 38 milligrams per Liter (mg/L);
- (b) The location where the discharge from the development entered the storm drain, TSS was 650 mg/L; and
- (c) Mill Creek upstream of the development, TSS was 17 mg/L.

6. On October 7, 2015, the Department sent Mr. Koth a Notice of Violation and Notice of Referral that discussed the above referenced violations, the relevant law and informed him that the matter was being referred to the Department's Legal Services Bureau for enforcement.

7. Following receipt of the above letter Mr. Koth sent a photo to the Department showing that grass was establishing in portions of this site where construction had ceased.

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**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.
2. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.
3. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary.
4. General Permit No.2, Part IV, provides that the permittee must develop and implement a SWPPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the SWPPP. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days.  
  
Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. A copy of the plan is required to be furnished to the Department upon request. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept within a reasonable time.  
  
The above stated facts demonstrate non-compliance with this provision.
5. Department 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. This would include Mr. Koth operating under the authority of NPDES General Permit No 2.

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Failure to comply with General Permit No. 2 is a violation of subrule 64.3(1). The above stated facts demonstrate non-compliance with this provision.

**V. ORDER**

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

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of the site's NPDES General Permit No. 2; and
3. Pay an administrative penalty of \$6,000.00 in accordance with the following schedule:
  - (1) \$2,000.00 shall be due no later than August 23, 2016;
  - (2) \$2,000.00 shall be due no later than December 23, 2016; and
  - (3) \$2,000.00 shall be due no later than March 23, 2017.

If any of the above payments are not paid in accordance to the schedule then the remainder of the penalty shall be due immediately.

**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.** Mr. Koth failed to install and maintain adequate runoff control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses since the ground breaking. For these reasons, the amount of \$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 storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality

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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.** Mr. Koth is engaged in the business of construction and property development. As a person engaged in this business, Mr. Koth has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, as an NPDES permit holder Mr. Koth has an obligation to be aware and fulfill the requirements associated with that permit. 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 of Mr. Koth. By signature to this order, all rights to appeal this order are waived by Mr. Koth.

**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.

  
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Paul Koth

Dated this 18 day of  
July, 2016

  
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Chuck Gipp, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 8<sup>th</sup> day of  
August, 2016

Paul Koth NPDES Permit No. 26048-25797 (Copy of Order to Central Office Records File), Michelle Sabatini- FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.

