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IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

<p><b>IN THE MATTER OF:</b></p> <p><b>Bates Construction, Inc.</b></p> <p><b>Dickinson, Iowa</b></p>	<p><b>ADMINISTRATIVE CONSENT ORDER NO. 2016-WW- 15</b></p>
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**TO: Mervin Bates, President  
Bates Construction, Inc.  
3514 Hwy 71 South  
Spirit Lake IA, 51360**

**I. SUMMARY**

This administrative consent order (order) is entered into between Bates Construction, Inc. (Bates) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to the illegal discharge of pollutants to a water of the state. Bates agrees to pay an administrative penalty of \$3,000.00. 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:**

Tom Roos, Senior Environmental Specialist  
IDNR Field Office No. 3  
1900 Grand Ave  
Spencer, IA 51301  
Phone: 712-262-2901

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515-725-8244

**Payment of penalty to:**

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

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**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.

**III. STATEMENT OF FACTS**

1. On June 22, 2016, the Department received a complaint alleging that as a result of construction activities taking place on a property located at 2609 Lake Shore Drive, Okoboji, IA sediment was being discharged directly to West Lake Okoboji (lake).<sup>1</sup>
2. On June 23, 2016, Tom Roos, Senior Environmental Specialist with the Department, went to the site to investigate. Once on site, Mr. Roos observed that significant erosion had occurred on the property. Mr. Roos observed that inadequate control measures were in place in light of the steep slope of the site. He observed that silt fencing had been installed along the bank of the lake but it failed during a recent rain event which resulted in the discharge of sediment laden water to the lake.
3. On July 14, 2016, the Department received another complaint alleging that construction activities (specifically the dewatering of an excavation pit near the lakeshore), on the above referenced property, were resulting in the discharge of sediment directly to the lake. Photographs of the sediment laden water running from the construction site into the lake were submitted to the Department by the complainant. These photograph show Mervin Bates, the president of Bates, on site while the violations were occurring.
4. On July 15, 2016, Mr. Roos went back to the site to investigate. Once on site Mr. Roos met with Mervin Bates and discussed the recent complaints and explained that the discharge of sediment laden water is prohibited by Iowa law.
5. On July 18, 2016, the Department sent Bates a Notice of Violation (NOV) for the above discussed violations. This NOV provided a summary of the relevant Iowa 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

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<sup>1</sup> Bates was hired by Robert Sturgeon, the deed holder of the above referenced property, to work as the contractor on site.

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Department. The above stated facts demonstrate non-compliance with this provision of law.

2. 567 IAC 61.3(2) "b", "c" and "e" state that "[s]uch waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance." The above stated facts demonstrate non-compliance with this provision of law.

**V. ORDER**

THEREFORE, the Department orders and Bates consents to do the following:

1. Cease all illegal discharges to waters of the state;
2. Pay an administrative penalty of \$3,000.00 within 30 days of the date the Director of the Department 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 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 order with an administrative penalty. The administrative penalty is determined as follows:
  - a. **Economic Benefit.** Bates failed to install and maintain adequate storm water runoff control measures throughout the construction site. This resulted in a significant cost savings in materials and labor expenses. For that 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

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the attainment of state water quality goals, and causes a decline in the quality of life generally. Therefore, the amount of \$1,000.00 is assessed for this factor.

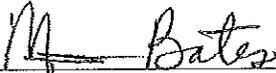
c. Culpability. Bates is engaged in the business of construction and property development. As a company engaged in this business, its managers and employees have an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

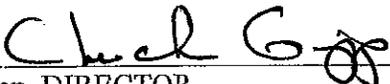
Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Bates. By signature to this order, all rights to appeal this order are waived by Bates.

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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Mervin Bates, President Bates Construction, Inc.

Dated this 15<sup>th</sup> day of  
August, 2016

  
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Chuck Gipp, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1<sup>st</sup> day of  
September, 2016

Mervin Bates (Copy of Order to Central Office Records File), Tom Roos- FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.