IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

RICK FRESEE
and
RICK FRESEE WELL DRILLING,
INC.

ADMINISTRATIVE CONSENT ORDER
NO. 2019-WW-0

TO:  Rick Freese Well Drilling, Inc.
      Rick Freese, Registered Agent
      420 East Post Road SE
      Cedar Rapids, IA 52403

I. SUMMARY

This administrative consent order ("Order") is entered into between Rick Freese Well Drilling, Inc. (Freese), Rick Freese, and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations resulting from the improper discharge of drilling mud into the Twin Valley Lakes Improvement Association (TVLIA) pond. The Order requires remediation of the pond bed and impacted property and payment of an administrative penalty of $5,000.00. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Jeff Prier
Field Office 6
Iowa Department of Natural Resources
1023 W Madison Street
Washington, IA 52353
Ph. 319-653-2135

Relating to legal requirements:
Noah Poppelreiter
Legal Services Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319-0034
Ph. 515-725-8248

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034
II. JURISDICTION

This Order is issued pursuant to Iowa Code 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 adopted or permits issued pursuant thereto; and pursuant to Iowa Code 455B.109 and 567 Iowa Administrative Code ("IAC") Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On January 10, 2018, DNR Field Office 6 received a complaint that drilling mud was being discharged into the TVLIA pond from a well drilling site. DNR Field Office 6 environmental specialist senior Jeff Prier visited the site the next day to investigate.

2. Mr. Prier observed a flow path of grey colored drilling mud and other discharge (jointly, Wastewater) which originated at the well boring area. Only a single line of silt fencing had been put in place around the boring area. This fencing was insufficient to control the planned amount of Wastewater created by the well boring activities. The Wastewater flowed over the silt fencing, down a hillside, through a ravine, and into the upper end of the TVLIA pond. The Wastewater settled to form sludge deposits on the bed of the pond.

3. Mr. Prier documented the flow path and discharge with pictures.

4. During the investigation, Mr. Prier learned that Freese drilled the well from which the discharge originated. The company's president, Rick Freese, was the certified well driller on-site during construction.

5. On January 31, 2018, the DNR issued Freese and Mr. Freese a Notice of Violation regarding the discharge.

IV. CONCLUSIONS OF LAW

DNR, Freese, and Rick Freese agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 and 657 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During the drilling of the well, Neese discharged the Wastewater to the pond. These facts indicate a violation of these sections.

2. 567 IAC 61.3(2) establishes narrative water quality standards. These standards provide that all waters shall be free from substances attributable to point source
discharges that will settle to form sludge deposits. During Field Office 6’s investigation, discharge from Freese’s well drilling was noted on the bed of the pond. These facts indicate a violation of this provision.

3. 567 IAC 82.13(1) establishes grounds for taking disciplinary action against a certified well driller. Paragraph “c” provides that failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified well driller constitute such grounds.

4. The facts stated in Section III of this Order constitute violations of Iowa Code 455B.186 and 557 IAC 61.3(2), and constitute grounds for disciplinary action against Mr. Freese’s well driller certification.

V. ORDER

Therefore, DNR orders and Freese and Rick Freese agree to the following:

1. Freese and Mr. Freese shall comply with the remediation plan memorialized in the April 12, 2019 letter from TVLIA’s lawyer. Remediation, if any, is still required past the date the Director signs this Order, shall be completed no later than August 30, 2019. This deadline may be extended with written permission from Field Office 6.

2. Freese and Mr. Freese shall comply with Iowa law, rules and permits during all future well drilling projects.

3. Within 30 days of the date the Director signs this Order, Freese shall pay an administrative penalty of $5,000.00.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to $5,000 per day of violation for the violations involved in this matter.

2. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. DNR is assessing a penalty of $5,000.00 for the violations described above. DNR considered the following factors in the assessment of this penalty:

   a. Economic benefit. 567 IAC chapter 10 requires that the DNR 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
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states, "reasonable estimates of economic benefit should be made where clear data are not
available." Freese delayed costs by allowing the wastewater to run overland to the
TVLIA pond rather than properly containing and disposing of the Wastewater at the time
of the drilling. An estimated economic benefit of $500.00 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 that type
of violation. As indicated above, substantial civil penalties are authorized by statute.
Despite the high penalties authorized, the DNR has decided to handle the violations
administratively at this time, as the most equitable and efficient means of resolving the
matter. Freese caused a violation of Iowa's water quality standards that directly
impacted a water source within a community. $2,000.00 is assessed for this factor.

c. Culpability. Freese has a duty to conduct its business in accordance with
applicable laws and rules. Mr. Freese is a certified professional well driller. One of the
most basic obligations of his profession is to prevent the discharge of drilling mud to
water bodies. Mr. Freese took no action to fulfill this obligation besides erecting the
patently inadequate single line of silt fencing. $2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC
7.1, authorize a written notice of appeal to the Commission. This Order is entered into
knowingly by and with the consent of Freese and Mr. Freese. By signing this Order,
Freese and Mr. Freese waive all rights to appeal this Order.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all
requirements pertaining to the violations described in this Order, and constitutes a
permanent remedy of the conditions which caused the violations. Failure to comply with
this 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 455B.191.
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KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14th day of August 2019

RICK FREESE WELL DRILLING, INC.

Dated this 30th day of July 2019

RICK FREESE

Dated this 20th day of July 2019

Field Office #6; Noah Poppelsreiter; EPA; I.C.6.4