IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **PAT HOEFLING**	ADMINISTRATIVE CONSENT ORDER NO. 2020-FP-02

To: Pat Hoefling
1645 325th Street
Odebolt, Iowa 51458

Re: Non-compliance with Iowa flood plain regulations

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Pat Hoefling to resolve violations of state law restricting certain construction activities in flood ways.

As detailed below, Mr. Hoefling agrees to pay an administrative penalty of $3,000.00, and to submit a complete as-built application to the Iowa DNR for the stream alteration work referenced herein. If the DNR determines that the application cannot be approved, Mr. Hoefling will return the stream to its original pre-construction conditions.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Scott Wilson, Supervisor
Iowa Department of Natural Resources
Field Office No. 3
1900 N. Grand Avenue, Suite E17
Spencer, Iowa 51301
Phone: 712-262-4177

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
[Please include the Order Number with your payment.]

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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 I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 455B.279, which authorizes the Director to issue any order necessary to secure compliance with or prevent violation of 455B, Division III, Part IV (Water Allocation and Use; Floodplain Control), and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following facts are relevant to this matter:

1. On August 3, 2019, Pat Hoefling submitted a joint application for a livestock trailer washout and bio-dry project for Triple H Truck Wash located on parcel #811227300005 within the city of Odebolt. The permit was issued on November 7, 2019 (see below). Authorization was not provided for excavation or alteration of a stream on the property.

2. On August 15, 2019, DNR Field Office (FO) 3 received an anonymous complaint alleging that Mr. Hoefling was excavating, widening, and straightening the creek on the parcel without flood plain development authorization.

3. On August 19, 2019, DNR FO3 staff investigated the complaint and confirmed the allegations were correct.

4. On August 20, 2019, DNR confirmed with DNR Flood Plain engineers that there was no application pending for excavation or channel changes, and that there was approximately 4.7 square miles of drainage on the unnamed creek that was being altered. As such, DNR approval was required prior to the work commencing.

5. On September 4, 2019, DNR FO3 issued a Notice of Violation (NOV) to Mr. Hoefling advising him that he was in violation of DNR rules and the Iowa Code because no approval was granted by the DNR for the excavation or channel changes being conducted. DNR required Mr. Hoefling to submit a complete flood plain development application by October 1, 2019 or restore the site to pre-project conditions.

6. On November 7, 2019, DNR issued Flood Plain Development Permit FP#201-216 for the construction of a livestock trailer washout and bio-dry facility. DNR Flood Plain staff had previously notified Mr. Hoefling that the application did

not authorize stream alteration or excavation and that a separate permit would be required for that work.

7. As of December, 2019, no flood plain application had been submitted for the work in the stream.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.275(3)(a)(1) requires a person to file a written application with the DNR if the person desires to erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on any floodway or floodplain, including certain channel change activities. The above-stated facts establish a violation of this statutory requirement.

2. 567 IAC 71.2(2) and 567 IAC 71.11(2) requires a person to obtain approval from the DNR for the excavation and channel changes of the category referenced above. The above-stated facts establish violations of these regulatory requirements.

V. ORDER

THEREFORE, the DNR orders and Mr. Hoefling agree to the following:

1. Mr. Hoefling agrees to file an application for a permit for the stream alteration work referenced above within 30 days of this Order being signed by the Director.

2. If the permit application is denied by DNR due to the project being non-compliant with Iowa rules or regulations, Mr. Hoefling agrees to restore the stream to pre-construction conditions within 60 days of issuance of the denial notification by DNR.

3. Mr. Hoefling agrees to pay an administrative penalty of $3,000.00 within 30 days of this Order being signed by the Director.

VI. PENALTY

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.279(2) provides for civil penalties of up to $500.00 per day for flood plain permit violations. Iowa Code § 455B.191 provides for civil penalties of up to $5,000.00 per day for water quality violations.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a $3,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

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 states, "reasonable estimates of economic benefit should be made where clear data are not available."

   The DNR has determined that no economic benefit penalty will be assessed at this time.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

   Development projects within the flood plain without authorization threaten the integrity of the DNR's regulatory program. Unauthorized flood plain development may exacerbate potential flooding conditions which may result in the creation of unnecessary and undue hardships for private property owners affected by the flooding.

   As such, $1,500.00 is assessed for this factor.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

   Mr. Hoefling was aware that construction in a flood plain requires approval from the DNR. He failed to obtain approval prior to construction, and has since failed to file for an as-built permit.

   As such, $1,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, there is no right of appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 14 day of May, 2020.

Pat Hoefling

Dated this 8th day of April, 2020.

CC: DNR Field Office 3; David Scott; III.A.1.