

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

IN THE MATTER OF: Gary Adrian	ADMINISTRATIVE CONSENT ORDER NO. 2020-FP- <u>03</u>
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To: Gary Adrian
23501 115th Avenue
Walcott, Iowa 52773

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. Gary Adrian to resolve violations of state law restricting certain construction activities in floodways and floodplains.

As detailed below, Mr. Adrian agrees to cooperate with state officials to remove certain fencing referenced herein, and to comply with Iowa flood plain regulations in the future.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Terry Jones, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

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

II. JURISDICTION

This Order is issued pursuant to 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.



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III. STATEMENT OF FACTS

There has been significant communication between Mr. Adrian and DNR staff regarding this matter over the past year. Not all of those conversations are repeated below. The following facts are considered most relevant to this matter:

1. On July 25, 2019, DNR Field Office (FO) 6 received a complaint from Mr. Adrian concerning berm construction on a neighbor's property.
2. On October 16, 2019, during the review of the neighbor's compliance issue, DNR staff discovered that a chain link fence demarcating the property line was located in the floodway of Hickory Creek. This structure was not authorized by DNR permitting staff.
3. On February 17, 2020, after ongoing communication between Mr. Adrian and DNR staff, DNR notified Mr. Adrian and his attorney that a Notice of Violation (NOV) would be issued due to construction of the fence in the floodway.
4. On February 21, 2020, DNR floodplain staff issued an NOV to Mr. Adrian noting that the fence had been constructed in the floodway and must be removed.
5. On April 28, 2020, DNR staff met with Mr. Adrian on site to discuss the fence and the actions of his neighbor. At the time, Mr. Adrian was agreeable to removing the fence and was notified that this Order would be issued to him requiring the removal.
6. On May 4, 2020, Mr. Adrian notified DNR that the fence at issue had been removed.

IV. CONCLUSION OF LAW

1. 567 Iowa Administrative Code 71.12 requires DNR approval for construction of certain obstructions in a flood plain of a stream draining more than 10 square miles. In pertinent part, section 71.12(1) requires in rural areas, DNR approval of any miscellaneous structures, obstructions, or deposits on the floodway or flood plain of any river or stream draining more than 10 square miles where such works obstruct more than 15 percent of the total cross-sectional area of the flood plain at any stage. In determining a 15 percent obstruction of the flood plain, the concept of equal and opposite conveyance as defined in 567 IAC Chapter 70 applies. The DNR has determined that the fence in question violates this requirement.

V. ORDER

THEREFORE, the DNR orders and Mr. Adrian agrees to the following:

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1. Mr. Adrian has notified DNR that the fence in question has been removed.
2. Given Mr. Adrian's cooperation in this matter, DNR has determined that an administrative penalty is not warranted at this time.
3. Mr. Adrian agrees to comply with all Iowa floodway and floodplain regulations in the future. Any future non-compliance with these Iowa regulations may result in a subsequent removal order and administrative penalties.

VI. CIVIL 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.
4. DNR has determined that an administrative penalty will not be pursued for this matter.

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 may result in the imposition of 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

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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 15th day of
May, 2020.



Gary Adrian

Dated this 15 day of
May, 2020.

CC: DNR Field Office 6; David Scott; III.A.1.