IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
RONALD STRATTON, DENNIS STRATTON and NATHAN STRATTON	NO. 2020-FP-01

To: Ronald Stratton
70984 335th Street
Collins, Iowa 50055

Dennis Stratton
Nathan Stratton
9580 112th Street North
Collins, Iowa 50055

Re: Non-compliance with water quality and flood plain regulations

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Ronald, Dennis and Nathan Stratton (collectively, the Strattons) to resolve violations of state law governing water quality and restricting certain construction activities in flood ways, including channel changes.

As detailed below, the Strattons agree to cooperate with state and federal officials to restore the channel of Wolf Creek, and agree to collectively pay an administrative penalty of $5,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Tom Atkinson, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 5
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-725-0268

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
[The administrative penalty is not due until after the Director has signed the Order; Please include the Order Number with your payment.]

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 September 3, 2019, Dennis Stratton called Tom Atkinson, DNR Field Office (FO) 5, to discuss the situation. Mr. Stratton indicated that his father, Ronald Stratton, had asked him and his son, Nathan Stratton, to redirect the channel of Wolf Creek to prevent erosion. He indicated that on Saturday, August 31, 2019, he and his son cleared an area and the trees and soil were used to fill the channel of Wolf Creek. Mr. Stratton indicated that in order to excavate the new channel he would need to extend the project from what he believed was Ronald Stratton's property onto the neighboring property belonging to Brian Loveland and Tiffany Meredith. Before the new channel was excavated it was determined that much of the clearing had occurred on the property of Loveland and Meredith, not that of Ronald Stratton.

2. Later that same day, Tom Atkinson returned a call to Tiffany Meredith. Ms. Meredith explained her side of the situation, indicating that when her family returned home on the evening of Saturday August 31, 2019, they discovered the project intending to alter the channel of Wolf Creek. Following a conversation with the Stratton's that night—who indicated that they intended to complete the excavation of a new creek channel the following day—a No Trespass Order for Ronald Stratton was issued by Story County, Iowa at 11:00 pm on August 31, 2019.

3. Later that same day, Tom Atkinson arrived at 71253 340th Street, Collins, Iowa. Tiffany Meredith escorted Mr. Atkinson to the site. The excavation, tree clearing, and channel filling were observed. Furthermore, the destruction of the habitat and the degraded quality of the water resulted in a small fish kill in the pools upstream and downstream of the filled channel.

4. That afternoon, Tom Atkinson called Dennis Stratton to discuss the finding of the on-site investigation. Due to the No Trespass Order and the property line confusion, it was recommended by Mr. Atkinson that no further work be conducted until the work could be coordinated with all parties and property owners involved. Mr. Stratton indicated that they would likely remove their equipment from near the site.

5. On September 5, 2019, Dennis Stratton called Tom Atkinson to discuss the status of the project. Concerned that the stream was filled and currently was not flowing, additional rains could cause more damage. Mr. Atkinson indicated that Mr. Stratton would need to coordinate with Ms. Meredith before entering the property to conduct any work.

6. On September 6, 2019, Tom Atkinson sent a Notice of Violation (NOV) to Ronald Stratton citing violations of 567 IAC 71.2 for alterations to the channel of Wolf Creek. Dennis and Nathan Stratton live in adjacent homes and share an address; therefore, a single copy of the letter was sent to both individuals.

7. On September 9, 2019, Tom Atkinson met Mr. Loveland and Ms. Meredith, as well as Albert Frohlich of the U.S. Army Corps of Engineers, on site to observe the area and discuss the process for restoring Wolf Creek and the disturbed area near the creek. It was suggested that the trees and soil should be removed from the creek channel to restore the banks and the restoration of the vegetation and riparian areas could be coordinated once the creek channel is restored.

8. On September 11, 2019, Dennis Stratton called Tom Atkinson to inquire if Ronald Stratton was sent the NOV letter as well. Mr. Stratton noted that he was attempting to contact Mr. Frohlich and would then coordinate with Tiffany Meredith to get the trees and soil removed from the channel of Wolf Creek.

9. On September 26, 2019, the U.S. Army Corps of Engineers issued a letter to the Strattons that required them to submit a restoration plan.

10. On October 22, 2019, Prudenterra submitted, on behalf of the Strattons and Meredith/Loveland, a work plan for emergency restoration of Wolf Creek.

11. On November 18, 2019, Kelly Stone, from Iowa DNR's Flood Plains Section, issued a letter authorizing the implementation of the emergency measures in the work plan.

12. On January 2, 2020, Prudenterra provided an email stating that the emergency stream repairs, considered to be Phase 1 of the work plan, were completed.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.186 prohibits the depositing or discharging of any pollutant into any water of the state of Iowa. The facts outlined above establish a violation of this section of the Iowa Code.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The facts above establish violations of this regulatory requirement.

3. 567 IAC 71.2 establishes that the construction, operation, and maintenance of channel changes in rural areas must be approval by the department when the changes are not associated with road projects and the work occurs in or on the floodway of any stream draining more than 10 square miles at the location of the channel change. At the location of the violations, Wolf Creek drains approximately 12.3 square miles. The facts above establish a violation of this regulatory requirement.

V. ORDER

THEREFORE, the DNR orders and the Strattons agree to the following:

1. The Strattons agree to work with the DNR and the U.S. Army Corps of Engineers to restore the channel to its original location. Restoration must be completed within 90 days of this Order being signed by the Director.

2. The Strattons will, collectively, pay an administrative penalty of $5,000.00 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 $5,000.00 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 Strattons failed to obtain the required approvals prior to beginning construction. The cost of preparing plans, including engineering design, and obtaining the required approvals would likely be at least $1,000.00. As such, $1,000.00 is being assessed for this factor.

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.

Damage to the environment, including the vegetation removal, elimination of the channel of Wolf Creek, and the fish kill resulting from the deposition of material in Wolf Creek, was significant. Failure to obtain approval prior to conducting such activities threatens the integrity of the regulatory program.

As such, $3,000.00 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.

The Strattons intentionally altered the channel of Wolf Creek and neglected to inquire about any regulations that may be applicable. Therefore, no requests were made for approval of the project. If the required requests had

been made prior to construction, it's unlikely that the project would have been allowed as planned. It is the Stratton's obligation as citizens of the state of Iowa to understand the law.

As such, $2,000.00 is assessed for this factor.

d) Mitigating Factor: The Strattons have worked with the DNR and the U.S. Army Corps of Engineers to restore the channel. As such, DNR is decreasing the administrative penalty by $1,000.00 to recognize this cooperation.

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

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 8th day of April, 2020.

Ronald L Stratton

PRINT NAME Ronald L. Stratton
For: The Strattons

Dated this 25th day of Mar, 2020.

CC: DNR Field Office 5; David Scott; III.A.1.