

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
SLG, LLC

Bremer County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2020-WW- 07**

TO Wes Gielau, Registered Agent for
:
: SLG, LLC
: 2472 Joplin Ave, Denver, IA 50623
: Denver, IA 50622

I. SUMMARY

This administrative consent order (order) is entered into between SLG, LLC (SLG) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of SLG's National Pollutant Discharge Elimination System General permit No. 2 (NPDES permit). SLG agrees to pay an administrative penalty of \$5,000.00. 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:

Brenda Streicher
IDNR Field Office No. 1
909 W. Main St
Manchester, IA 52057
712/262-4177

Relating to legal requirements:

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
SLG, LLC

Payment of penalty to:

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

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 November 22, 2019, the Department received a complaint alleging that there was substantial erosion at the location of the development known as Arrowhead Ridge second addition.

2. On November 26, 2019, Brenda Streicher, an Environmental Specialist, with the Department went to the site to investigate. This site is located at SE S 22 T 91 R 13W and is locally known as Arrowhead Ridge second addition (site). Once on site, Ms. Streicher met with Tyler Lanus. Mr. Lanus stated that he is an owner of the site as well as Wes Gielau, and Brent Steege. Mr. Lanus contacted Mr. Gielau by phone and he was told that the Department had requested a copy of the Storm Water Pollution Prevention Plan (SWPPP).

3. On November 27, 2019, Ms. Streicher received a call from Mr. Steege. Mr. Steege is a partner of SLG and the President of Denver Underground and Grading, Inc. (Denver Underground) which is an excavating company. Mr. Steege acknowledged that he is a co-owner of the site and that he is SWPPP certified. Ms. Streicher advised Mr. Steege to immediately check to see if SLG, LLC had filed a Notice of Intent (NOI) for coverage under NPDES General Permit No. 2 for discharge associated with construction activity at the site. Mr. Steege, called Ms. Streicher back later the same day and stated that an NOI had not been submitted but that he would submit the required paperwork that day. Ms. Streicher e-mailed Mr. Steege a NPDES General Permit No. 2 guidance document.

4. On December 3, 2019, a Notice of Violation (NOV) was sent to SLG, Mr. Lanus and Mr. Steege, for operation of a wastewater disposal system without an NPDES permit. This NOV contained a summary of the relevant law, a copy of the relevant inspection report and recommended corrective actions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

SLG, LLC

5. On December 6, 2019, SLG filed a NOI for coverage under NPDES General Permit No. 2 for discharge associated with construction activity at the above reference site. This NOI was filed on DNR form 542-1415 and in this NOI, SLG (Mr. Steege on behalf of SLG) certified that the Storm Water Pollution Prevention Plan (SWPPP) had been developed prior to submittal of the NOI, and that the plan meets the legal requirements. This NOI contains the following language "I certify under penalty of the law that this document was prepared under my direction and supervision ... to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine..."

6. On December 13, 2019, authorization for coverage by NPDES General Permit No. 2, of the above discussed construction site was issued by the Department.

7. On December 19, 2019, Mr. Gielau called Ms. Streicher with various questions. During this call he stated that the SWPPP would be provided to the Department soon.

8. On January 6, 2020, Ms. Streicher had still not received a copy of the SWPPP, for that reason she called Mr. Steege and requested a status update on its submittal to the Department. Mr. Steege told Ms. Streicher to call Steve Leibold of VJ Engineering and request the SWPPP. Next Ms. Streicher called Mr. Leibold however, he was not able to provide a copy of the SWPPP.

9. On January 6, 2020, a NOV was sent to SLG, LLC, Mr. Lanus and Mr. Steege for failure to develop a SWPPP as required by the NPDES permit.

10. On January 7, 2020, Mr. Leibold, e-mailed the Department and stated that "another firm had prepared the plans for this project and we were later contacted by the contractor/developer to do a SWPPP."

11. On January 13, 2020, Ms. Streicher received a voice mail from Mr. Leibold who stated that he was brought in after the fact and is working on the SWPPP.

12. On February 4, 2020, Mr. Buchholz called Ms. Streicher and stated that the SWPPP was 75% completed.

13. On February 6, 2020, Mr. Buchholz e-mailed Ms. Streicher the completed SWPPP.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
SLG, LLC

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 Department. The above stated facts demonstrate non-compliance with this provision.
2. Iowa Code sections 455B.103(A) and 455B.197 authorize the issuance of permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.
3. Department subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts demonstrate noncompliance with this provision of law.
4. Part II. A of NPDES General permit No. 2 states that construction activities shall not commence until an authorization has been issued for the project by the Department. The above stated facts demonstrate noncompliance with this provision of law.
6. Part IV. A.1. of NPDES General permit No. 2 states that "[t]he pollution prevention plan shall be completed prior to the submittal of an NOI to the Department to be covered under this permit[.]" The above stated facts demonstrate noncompliance with this provision of law.
7. Part IV. C. of NPDES General permit No. 2 requires that SWPPPs be kept current and shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharge associated with industrial activity. The above stated facts demonstrate noncompliance with this provision of law.
8. Part V. B. of NPDES General permit No. 2 requires that SWPPPs be provided to the Department for inspection upon request. If the plan is kept off site, it shall be provided to the Department no later than three hours after it is requested. The above stated facts show noncompliance with this provision of law.

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

SLG, LLC

9. Part VI of NPDES General permit No. 2 requires that any person signing a NOI certify that the information submitted, is to the best of my knowledge and belief, true, accurate, and complete.” The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

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

1. Comply with all conditions of any applicable NPDES permit which includes the development of a SWPPP prior to filing a NOI;
2. In the future do not submit false statements to the Department;
3. Obtain coverage by an NPDES permit for all industrial activity which includes construction prior to beginning construction activities;
4. Pay an administrative penalty of \$5,000.00 within 30 days of the date the Director 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 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**. 567 IAC chapter 10 requires that the Department 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.” An economic benefit was obtained through delaying the cost of developing and implementing a SWPPP prior to filing an NOI and beginning construction. This delayed and avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$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

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

SLG, LLC

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 the attainment of state water quality goals, and causes a decline in the quality of life generally. SWPPS are required to be developed prior to filing the NOI and beginning construction because they identify the erosion and sediment controls necessary on a site to avoid the discharge of sediment to a water of the state. Such noncompliance thwarts the integrity of the NPDES permit and water quality programs. Therefore, the amount of \$2,000.00 is assessed for this factor.

c. **Culpability.** SLG is engaged in the business of development and construction. This is a highly regulated activity and therefore SLG has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, SLG certified that a SWPPP had been developed on the NOI submitted to the Department; however, it was not completed until approximately two months later. Therefore, the amount of \$2,000.00 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 SLG. By signature to this order, all rights to appeal this order are waived by SLG.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
SLG, LLC

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.

Wes Dilan Member/Manager
On behalf of SLG, LLC

Dated this 21st day of
July, 2020

Kayla Lyon
Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 28th day of
July, 2020

SLG, LLC (Copy of Order to Central Office Records File), FO 1, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.