

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

IN THE MATTER OF: JR, Land LLC and Bridges Bay Resort, L.L.C. d/b/a BBR of SD, L.L.C., Dickinson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2020-WW- 08
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TO: Earl Maahs, Registered Agent for
JR, Land LLC and Bridges Bay
Resort, L.L.C.
708 Lake St
Spirit Lake, IA 51360

I. SUMMARY

This administrative consent order (order) is entered into between JR, Land LLC, Bridges Bay Resort, L.L.C. d/b/a BBR of SD, L.L.C., (collectively referred to as Bridges Bay) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Bridges Bay storm water National Pollutant Discharge Elimination System (NPDES) permit and an illegal discharge to a water of the state. Bridges Bay agrees to pay an administrative penalty of \$8,000.00. 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:

Tom Roos and Michele
IDNR Field Office No. 3

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources

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JR, Land LLC and Bridges Bay Resort, L.L.C. d/b/a BBR of SD, L.L.C.,
1900 Grand Ave. Suite E17
Spencer, IA 51301
712/262-4177

502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8244

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 August 11, 2008, Bridges Bay was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the location of the Bridges Bay construction site (site). This site is located at Section 21, Township 99 Range 36W (site). Bridges Bay timely renewed this permit and in total renewed coverage 3 times. The most recent renewal permit issued was NPDES permit No. 9551-9346. This permit was not timely renewed; it expired on July 28, 2019¹. Storm water from this site flows directly into East Lake Okoboji.

Current Violations

1. On September 23, 2019, the Department received a complaint stating that there were no storm water controls at the above construction site. Following receipt of this complaint, Department staff went to the site to investigate. Once on site, the Department observed that the only storm water control was a berm of wood chips at the base of the resort property which is the base of a hill that slopes west and drains to the East Lake Okoboji. While on site Department staff met with Randy Ronsiek, of Equity Homes. Department staff asked Mr. Rensiek for a copy of the sites Storm Water Pollution Prevention Plan (SWPPP) and inspection records. This information was not available and Mr. Rensiek stated that inspection records had not been maintained. To date this information has not been provided to the Department.

2. On October 1, 2019, Department staff returned to the site for a follow-up inspection. Once on site Department staff observed that silt fences had been installed around the site. However, the

¹ The permit fee was paid however, the permit application was not submitted. Thus, the permit expired.

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JR, Land LLC and Bridges Bay Resort, L.L.C. d/b/a BBR of SD, L.L.C., silt fencing was inadequate to prevent sediment laden storm water from discharging from the site to East Lake Okoboji. Sediment was discharging from disturbed ground located on the south east corner of the condos. This area drains to a detention pond that is located west of 240th Avenue. This detention pond flows directly to East lake Okoboji. At the location where the outfall from the detention pond flows into East Lake Okoboji (location 1), Department staff observed sediment laden storm water flowing into East Lake Okoboji. A laboratory sample was taken and sent to the Iowa State Hygienic Laboratory for analysis. The result is as follows: Total Suspended Solids (TSS) was 170 milligrams per liter (mg/L). Photographs were taken to document the observations.

Next, Department staff went to the location of the disturbed soil between Linden Avenue and the lake on the West side of the site. At this location, Department staff observed an overland flow path of sediment laden storm water discharging into East Lake Okoboji. At the point where the sediment laden storm water flowed into the lake a plume of sediment in the water was observed and a laboratory sample was taken (location 2) the result is as follows: TSS 550 mg/L. Photograph were taken to document the observations.

3. On October 22, 2019, a Notice of Violation (NOV) was sent to Bridges Bay for the above discussed violations. This NOV summarized the violations, cited the relevant law and summarized the necessary corrective actions.

Past Violations

4. On June 14, 2016, the Department received a complaint alleging that after a rain event sediment was in the street and the location of the above construction site.

5. On June 16, 2016, the Department went to the site to investigate. Once on site a large amount of sediment was observed in the street that had migrated from the construction site. A filter was in place that runoff flows through prior to entering East Lake Okoboji, however a significant amount of sediment was flowing through the filter and was observed in the lake. While on site, Department staff met with Mr. Rensiek to discuss the observations. Department staff also requested a copy of the SWPPP and a copy of the storm water control inspections as of July 5, 2016, neither the SWPPP nor the inspection reports had been provided to the Department.

6. On July 5, 2016, a NOV was sent for the above discussed violations. This NOV summarized the violations and the relevant law.

7. On July 15, 2016, Bridges Bay provide a copy of the SWPPP to the Department.

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8. On July September 1, 2016, a NOV was sent to Bridges Bay because the SWPPP had not been updated to reflect the current state of the site. Further, the inspection reports did not describe any maintenance of sediment and erosion controls in seven years.

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. 567 IAC 61.3(2) "c" states

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

...

The above stated facts demonstrate noncompliance with these provisions.

4. 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.

5. 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.

6. 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

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Department no later than three hours after it is requested. The above stated facts show
noncompliance with this provision of law.

V. ORDER

THEREFORE, the Department orders, and Bridges Bay consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of any applicable NPDES permit;
3. Timely renew all NPDES permit;
4. Obtain coverage by an NPDES permit for all qualifying construction sites;
5. Stabilize disturbed ground in accordance to NPDES General Permit No. 2; and
4. Pay an administrative penalty of \$8,000.00 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 avoiding the cost installing and maintaining adequate storm water runoff control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$3,000.00 was saved. Therefore, \$3,000.00 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

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JR, Land LLC and Bridges Bay Resort, L.L.C. d/b/a BBR of SD, L.L.C., 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. The erosion and sediment controls contained in Bridges Bay NPDES permit protect Iowa's waterways from sedimentation. 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.** Bridges Bay is engaged in the business of development and construction. This is a highly regulated activity and therefore Bridges Bay has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, on multiple occasions the Department communicated to Bridges Bay the need to implement proper storm water controls. Nevertheless, adequate controls were not installed and discharge occurred. Therefore, the amount of \$3,000.00 is assessed for this factor.

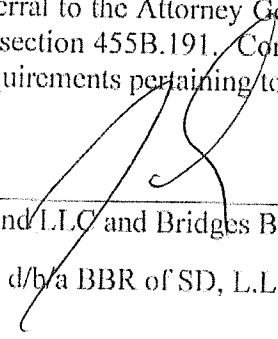
VII. WAIVER OF APPEAL RIGHTS

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 JNB. By signature to this order, all rights to appeal this order are waived by JNB.

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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.



JR, Land LLC and Bridges Bay Resort,
L.L.C. d/b/a BBR of SD, L.L.C.

Dated this 4th day of
August, 2020



Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5th day of
August, 2020

JR, Land LLC and Bridges Bay Resort, L.L.C. (Copy of Order to Central Office Records File),
FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.