

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**William Kimberley Development
Corporation
Polk County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2020-WW- 10**

TO: Matthew M Hurn, Registered Agent
William Kimberley Development
Corporation
4201 Westown Pkwy Ste 200
West Des Moines, IA 50266

William Kimberley, Kimberley
Development
2785 N Ankeny Blvd Suite 22
Ankeny, IA 50023

I. SUMMARY

This administrative consent order (order) is entered into between William Kimberley Development Corporation (Kimberley) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Kimberley's storm water National Pollutant Discharge Elimination System (NPDES) permit. Solely for the purposes of settlement, Kimberley 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.

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Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Dennis Thielen
IDNR Field Office No. 5

Iowa Department of Natural Resources
502 E 9th Street
Des Moines, IA 50319-0034
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: 515-444-8165

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

Kimberley neither admits nor denies the following statement of facts:

1. On July 1, 2015, Kimberley 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 Reserve at Jester Park construction site (site). This site is located at Section 4, Township 80 Range 25W. Storm water from this property flows to an unnamed tributary which flows approximately 1000 ft to Saylorville Lake.
2. On February 25, 2020, the Department received a complaint alleging that sediment was migrating from the above referenced site onto Polk County Conservation land.
3. On February 26, 2020, Department staff went to the site to investigate. Once on site, Department staff walked the perimeter and observed that perimeter controls were lacking or deficient in multiple location. For instance, the east side of the site had a significant erosion ditch

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running parallel to the north-south silt fence which resulted in sediment leaving the site. The outlet to the north east sediment basin was discharging inches away from the silt fence and under cutting the silt fence. A significant amount of sediment had been deposited on the adjacent property because of the basin outlet location and because the basin did not have a standpipe. Further, the outlet pipe to the sediment basin was level with the bottom of the sediment basin and needed a standpipe to be installed for adequate storm water retention until construction activities are completed at the site.

A second sediment basin is located on the north side of the site and was discharging to the north. The basin did not have a standpipe installed. At the outlet of the basin, large rocks had been placed to prevent erosion from the outflow. On the rocks a significant amount of sediment was observed. From the outlet of the basin to the west, there were no perimeter controls in the drainage ditch leading to the north sediment basin. As a result, a significant erosion ditch had formed and sediment entered the basin. This resulted in sediment leaving the site. Currently the outlet pipe to the sediment basin is on the same grade as the bottom of the sediment basin. Thus, a standpipe should be installed for adequate storm water retention until construction activities are completed at the site.

A third basin is located on the southeast side of the site. This basin also did not have a standpipe. Sediment was observed leaving the site. Two drainage ditches leading to the basin also did not have the controls installed which are necessary to slow the flow of water and prevent sediment from leaving the site. The discharge from this basin was located about 10 feet from a pipe culvert which was discharging off site and sediment was observed by Department staff to have discharged to an unnamed tributary which flows to Saylorville Lake. A silt fence had been installed between the basin outlet and culvert, but had failed due to a significant amount of sediment leaving the basin. Currently, the outlet pipe to the sediment basin is on the same grade as the bottom of the sediment basin. A standpipe should be installed for adequate storm water retention until construction activities are completed at the site.

While on site Department staff requested copies of Storm Water Pollution Prevention Plan (SWPPP) and inspection records. The weekly inspection reports did not reflect the actual site conditions which were observed by the Department and discussed above. The inspection reports for the 8 weeks prior to the Department's visit indicated that the SWPPP had been fully implemented and that site was in good condition. Further, the inspection reports did not recommend any corrective action.

4. On March 3, 2020, a Notice of Violation (NOV) was sent to Kimberley for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective action and a summary of the law.

IV. CONCLUSIONS OF LAW

Kimberley neither admits nor denies the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water

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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. 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.

4. 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.

5. NPDES Part IV. D of NPDES General Permit No. 2 requires that "[q]ualified personnel ... shall inspect disturbed areas of the construction site that have not been stabilized[.]" Qualified personnel is defined in Part V of the NPDES permit as "those individuals capable enough and knowledgeable enough to perform the required functions adequately well to ensure compliance with the relevant permit conditions and requirements of the Iowa Administrative Code." The failure to properly implement the SWPPP and the failure to document this in the inspection records demonstrates that the personnel conducting the inspections were not qualified and therefore shows non-compliance with this provision.

V. ORDER

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

1. Comply with all conditions of Kimberley's NPDES permit, which includes the SWPPP;
2. Hire qualified personnel to inspect disturbed areas of the construction site; and
3. Pay an administrative penalty of \$8,000.00 within 30 days of the date the Director signs this order.

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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 erosion and sediment 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 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 Kimberley’s 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 \$3,000.00 is assessed for this factor.
 - c. **Culpability.** Kimberley is engaged in the business of development and construction. This is a highly regulated activity and therefore Kimberley has an obligation to be aware of the applicable regulations and comply with those regulations. 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

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knowingly by and with the consent Kimberley. By signature to this order, all rights to appeal this order are waived by Kimberley.

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.


On behalf of, William Kimberley Development Corporation

Dated this 20th day of
October, 2020


Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20th day of
October, 2020

William Kimberley Development Corporation (Copy of Order to Central Office Records File),
FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.