

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

<b>IN THE MATTER OF:</b>  <b>CJ's Construction, Inc.</b> <b>Johnson County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2020-WW-14</b>
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**TO:** Cory Hodapp, Registered Agent and  
President  
CJ's Construction, Inc.  
350 Beaver Kreek Center Ste D North  
Liberty, IA 52317

**I. SUMMARY**

This administrative consent order (order) is entered into between CJ's Construction, Inc. (CJ's Construction) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of CJ's Construction's storm water National Pollutant Discharge Elimination System (NPDES) permit. CJ's Construction agrees to pay an administrative penalty of \$5,000.00 and agrees to the terms of this order solely for the purposes of settlement. 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:**

Brian Lee  
IDNR Field Office No. 6  
Iowa Department of Natural Resources  
1023 West Madison  
Washington, IA 52353  
319-653-2135

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
Phone: 515-444-8165

**Payment of penalty to:**

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

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**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**

CJ's construction neither admits nor denies the following statement of facts:

1. On February 11, 2019, CJ's Construction 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 Reserves, residential development construction site (site). This site is 5 acres and is located at Section 18, Township 80N Range 5W, in Iowa City, IA. The storm water from this site flows to an unnamed tributary to Turkey Creek.
2. On November 6, 2019, the Department conducted an inspection of the site. Once on site, the Department observed the following violations:
  - a. Sediment and erosion control were lacking in front of intake areas for a dam that had been created on the southwest drainage way of the site and the sediment basin;
  - b. Sediment and erosion controls were not in place on the downslope of the dam;
  - c. Sediment and erosion controls were lacking at the location of the sediment basin outlet;
  - d. Silt fencing in front of the northwest outlet to the sediment basin needed repair; specifically, a portion of the fence was undercut and another portion was detached from its posts;
  - e. Both exit areas of the site were bare and not properly stabilized; and
  - f. The Storm Water Pollution Prevention Plan (SWPPP) was not fully implemented.
3. On November 15, 2019, a Notice of Violation (NOV) was sent for the above discussed violations. This NOV summarized the violations and the relevant law. Included with this NOV was a copy of the inspection report which included recommended corrective actions.
4. On May 15, 2020, the Department received a complaint alleging that sediment was being discharged off of the site into a pond on a neighboring property.
5. On May 20, 2020, the Brian Lee, Environmental Specialist with the Department, went to the site to investigate. Once on site Mr. Lee made the following observations:
  - a. Rills and gullies were observed leading into the sediment basin, most of these were located on the south side of the basin;
  - b. The dam had bare soil; however, it appeared to have been seeded but the seeds had not established yet;

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- c. The water in the basin was light brown in color as well as the rock in the basin and around the outlet structure;
- d. Light brown turbid water was observed discharging from the basin and flowing west;
- e. The Storm Water Pollution Prevention Plan (SWPPP) was not fully implemented.

During this inspection laboratory samples were taken and tested for Nephelometric Turbidity units (NTU) and Total Suspended Solids (TSS) the results and observations are in the below table:

Location	Observation	Lab Results
Location 1: (Upstream of site)	Clear water observed	NTU 4.9 and TSS 16 mg/L
Location 2: (at the point where the site's sediment basin discharges off site to the unnamed tributary to Turkey Creek)	brown turbid water was observed	NTU 340, TSS 150 mg/L
Location 3: (where flow from location 2 flows into the unnamed tributary to Turkey Creek)	The turbidity appeared to be less than that of location 2, but more than location 1:	NTU 65, TSS 180 mg/L

After the site investigation the Mr. Lee spoke to Cory Hodapp, President of CJ's Construction, on the phone. Mr. Hodapp stated that the sediment basin had been recently excavated and that the disturbance in the basin likely led to the high turbidity of the water in the basin. However, no additional sediment and erosion controls were added following the excavation. Mr. Lee recommended additional sediment and erosion controls be added around the basin to minimize the discharge of sediment.

6. On June 4, 2020, a NOV was sent to CJ's Construction for the above discussed violations. Included with this NOV was a summary of the violations, recommended corrective actions, the relevant law and the inspection report.

**IV. CONCLUSIONS OF LAW**

CJ's Construction neither admits nor denies 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.

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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 subrule 60.2, "[s]torm 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." Subparagraph 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" and f states that "[s]uch waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions." ... [T]urbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge." The above stated facts demonstrate noncompliance with these provisions.

4. 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.

**V. ORDER**

THEREFORE, the Department orders, and CJ's Construction consents to do, the following:

1. Comply with all conditions of its NPDES permit, which includes the SWPPP; and
2. Pay an administrative penalty of \$5,000.00 in accordance with the following payment plan:
  1. \$1,000.00 shall be due to the Department no later than November 22, 2020;
  2. \$1,000.00 shall be due to the Department no later than January 22, 2021;
  3. \$1,000.00 shall be due to the Department no later than March 22, 2021;
  4. \$1,000.00 shall be due to the Department no later than May 22, 2021; and
  5. \$1,000.00 shall be due to the Department no later than July 22, 2021.

If any of the above payments are not made in accordance to this plan the remainder of the penalty shall be due in full immediately.

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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 of 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 \$2,000.00 was saved. Therefore, \$2,000.00 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 CJ's Construction 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.** CJ's Construction is engaged in the business of development and construction. This is a highly regulated activity and therefore CJ's Construction has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$1,000.00 is assessed for this factor.

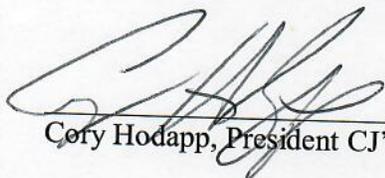
**VII. WAIVER OF APPEAL RIGHTS**

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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 CJ's Construction. By signature to this order, all rights to appeal this order are waived by CJ's Construction.

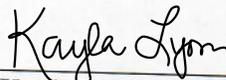
**III. NONCOMPLIANCE**

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.



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Cory Hodapp, President CJ's Construction, Inc.

Dated this 10 day of  
November, 2020



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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 16th day of  
November, 2020

K and N Holdings, LLC (Copy of Order to Central Office Records File), FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.