

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: K and N Holdings, LLC Dallas County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2020-WW- 15
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TO: Bradley Skinner, Registered Agent
K and N Holdings, LLC
160 Adventureland Dr NW STE B
PO Box 367
Altoona, IA 50009

Corey Kautz, K and N Holdings, LLC
1680 SW Ankeny Road, Suite 2A
Ankeny, IA 50023

I. SUMMARY

This administrative consent order (order) is entered into between K and N Holdings, LLC (K and N) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of K and N's storm water National Pollutant Discharge Elimination System (NPDES) permit. K and N 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:

Dennis Thielen
IDNR Field Office No. 5
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
712-262-4177

Relating to legal requirements:

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

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th 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

K and N neither admits nor denies the following statement of facts:

1. On September 5, 2017, K and N 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 Landing at Oxley Creek Plat 1 and 2 (site). This site is 17.2 acres and is located at Section 6, Township 80 Range 25W, in Granger, IA. The storm water from this site flows to Oxley Creek, which is a tributary to the Beaver Creek which, in turn, flows to the Des Moines River.
2. On May 6, 2019, the Department received a complaint alleging that sediment was migrating outside of the perimeter of the site onto neighboring properties and that the Storm Water Pollution Prevention Plan (SWPPP) had not been implemented. Following the receipt of this complaint, the Department requested a copy of the SWPPP. It was sent to the Department and reviewed. After the SWPPP was reviewed, the Department went to the site to investigate. Once on site, the Department observed the following violations:
 - a. Perimeter controls were lacking and/or deficient;
 - b. Stockpiles of top soil were present and had not been stabilized. The stockpiles had been present since April 10, 2019;
 - c. Sediment baskets located in the storm water intakes along Windcrest Dr., Sunset Dr., and Maplewood Dr. were not properly installed;
 - d. There was a significant amount of sediment in the street gutters along Windcrest Dr., Sunset Dr., and Maplewood Dr. and there were no sediment controls along the curbs;
 - e. The silt fences on the west end of the site along Sunset Dr. needed repair; and
 - f. The drainage ditch between Windcrest Dr. and Maplewood Dr. lacked sufficient controls and sediment had entered the storm drain.

A review of the weekly inspection records from the week of April 10, 17 and 24, 2019, by the Department revealed that the inspector documented that curb intakes needed to be cleaned out, but this had not been done, and that all controls and sediment barriers had been adequately installed and maintained.

3. On the afternoon of May 7, 2019, the Department returned to the site. Once on site the Department observed significant improvement in the implementation of the SWPPP. The stockpiled top soil had been leveled and Aaron Larson, of Greenland Homes, indicated that the

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remaining stock pile would be temporarily stabilized. Curbside controls were placed along Windcrest Dr., Sunset Dr., and Maplewood Dr. and sediment was removed from the streets.

4. On May 15, 2019, a Notice of Violation (NOV) was sent to K and N for the above-discussed violations. This NOV summarized the violations, relevant law, and recommended corrective actions. Included with this NOV was a copy of the inspection report.

5. On April 22, 2020, the Department received a complaint alleging that sediment from the site was leaving the site and that the SWPPP was not being implemented.

6. On April 23, 2020, the Department went to the site to investigate. Once on site the Department observed the following violations:

- a. A stockpile of top soil was present but not stabilized;
- b. Sediment baskets located in the storm water intakes along Windcrest Dr., Sunset Dr., and Maplewood Dr. were not properly installed;
- c. There was a significant amount of sediment in the street gutters along Windcrest Dr., Sunset Dr., and Maplewood Dr. and there were the sediment controls along the curb that needed repairs;
- d. A petroleum spill in the concrete washout area was observed on Windcrest Dr.;
- e. The silt fence located on the northwest end of a newly graded area needed repair in two locations;
- f. A drainage ditch had been dug on the north side of the site but no ditch controls had been installed.
- g. Inspection records were reviewed, for the weeks of April 9-22, 2020, and stated that all controls and sediment barriers adequately installed and maintained.

7. On May 4, 2020, a Notice of Violation (NOV) was sent to K and N for the above-discussed violations. This NOV summarized the violations, relevant law, and recommended corrective actions. Included with this NOV was a copy of the inspection report.

8. On May 26, 2020, the Department received a complaint stating that there was a lack of storm water controls at the site.

9. On May 27, 2020, the Department went to the site to investigate. Once on site the Department observed inadequate storm water control and a sediment path observed leaving the site flowing down Sunview Dr. ultimately discharging to an unprotected storm water intake which discharges directly to Oxley Creek.

IV. CONCLUSIONS OF LAW

K and N neither admits nor denies the following conclusions of law and enters into this agreement solely for the purposes of settlement:

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" 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." 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.
6. 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 K and N consents to do, the following:

1. Comply with all conditions of K and N's NPDES permit, which includes the SWPPP; and
2. Pay an administrative penalty of \$8,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

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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 \$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 K and N’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.** K and N is engaged in the business of development and construction. This is a highly regulated activity. K and N 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 knowingly by and with the consent K and N. By signature to this order, all rights to appeal this order are waived by K and N.

III. NONCOMPLIANCE

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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, K and N Holdings, LLC

Dated this 23rd day of
November, 2020



Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7th day of
December, 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.