

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

<p>IN THE MATTER OF:</p> <p>Steven & Jane Hemmingstad</p>	<p>CONSENT AMENDMENT TO ADMINISTRATIVE ORDER</p> <p>NO. 2020-FP-05 AMENDMENT 1</p>
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To: Steven Hemmingstad
1210 Benton Avenue
Sioux City, Iowa 51108

I. SUMMARY

This administrative order consent amendment (Amendment) amends Administrative Order No. 2020-FP-05 which addressed certain violations of state law relative to floodplains and permit requirements for dam construction.

The parties enter this Amendment to address the issues raised in the original Order. By entering into this Amendment, the Hemmingstads are also agreeing to voluntarily withdraw their appeal of Order No. 2020-FP-05.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Casey Welty, Env. Engineer Senior
Iowa Department of Natural Resources
Flood Plain Management and Dam
Safety Section
Wallace State Office Building
Des Moines, Iowa 50319
Phone: 515-725-8330

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-321-8504 (cell)

II. JURISDICTION

This Amendment is issued pursuant to Iowa Code § 455B.279, which authorizes the Director to issue any order necessary to secure compliance with or prevent violation of 455B, Division III, Part IV (Water Allocation and Use; Floodplain Control), and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

All facts referenced in Order No. 2020-FP-05 are incorporated herein. In addition:

17. The Iowa DNR and representatives of the Hemmingstads have worked collectively to reach a workable solution for the dam in question. By meeting the requirements in Section V, below, the dam will be below DNR regulatory thresholds which allows the dam to remain in place without additional permitting. As such, the parties recognize that acceptance of the plan to modify the dam below DNR regulatory thresholds does not constitute DNR's approval of the design of the dam. The parties also recognize that once the size of the dam is altered to comply with the requirements of Section V below, any changes to the dam size or pool capacity are not authorized under Iowa law and would require pre-approval from the DNR.

IV. CONCLUSION OF LAW

The conclusions of law referenced in Order No. 2020-FP-05 are incorporated herein.

V. ORDER

THEREFORE, the DNR orders and the Hemmingstads agree to the following:

1. Section V of Order No. 2020-FP-05 is rescinded and replaced with Section V of this Amendment.
2. The Hemmingstads will reconstruct the dam on their property that is the subject of Order No. 2020-FP-05 to meet the following requirements.
 - i. The final top-of-dam elevation will be 1175 feet National Geodetic Vertical Datum (NGVD).
 - ii. An emergency spillway must be constructed with a minimum width of 10 feet and depth of 2 feet.
 - iii. The manhole riser of the principal spillway must be modified to lower the permanent pool elevation to 1168.64 feet NGVD. The top 4-foot tall manhole section must be removed and a notch must be cut in the side of the riser at least 3-feet wide down to an elevation of 1168.64 feet NGVD. This will result in a normal pool elevation of 1168.64 feet NGVD.
 - iv. All removed material must be disposed of out of the floodplain and remaining floodplain materials must comply with all Woodbury County Floodplain Development Permit requirements. All fill must be removed above elevation 1175 feet NGVD.

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3. This construction project will be completed on or before June 1, 2021.
4. The Hemmingstads will pay an administrative penalty of \$3,000.00 within 30 days of this Amendment being signed by the Director.

VI. CIVIL PENALTY

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.279(2) provides for civil penalties of up to \$500.00 per day for flood plain permit violations. Iowa Code § 455B.191 provides for civil penalties of up to \$5,000.00 per day for water quality violations.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. The administrative penalty assessed by this Order is determined as follows:

- i. Economic Benefit: In the interest of reaching a settlement, the DNR has agreed that no penalty will be assessed for this factor.
- ii. Gravity of the Violations: In the interest of reaching a settlement, the DNR has agreed that no penalty will be assessed for this factor.
- iii. Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

Mr. Hemmingstad was informed after numerous site visits, letters, and phone calls that he would need approval for any repairs on his unauthorized dam. He continued with construction despite all of these discussions. As such, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Amendment is entered by the consent of the parties, there is no right of appeal.

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VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Kayla Lynn
Kayla Lynn, Director
Iowa Department of Natural Resources

Dated this 26th day of
February, 2021

Steven J. Hemmingstad
Steven Hemmingstad

Dated this 25th day of
Feb, 2021

CC: DNR Flood Plain/ Dam Safety Section; David Scott; III.A.1.