

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

<b>IN THE MATTER OF:</b>  <b>Ven Green Land Development, LLC</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2021-WW- 07</b>
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**TO:** Nick Kremer  
Kremer Construction Company  
5465 Tremont Ave.  
Davenport, IA 52807

Thomas Pastrnak, Registered Agent  
for Ven Green Land Development,  
LLC  
313 3<sup>rd</sup> Street  
Davenport, IA 52801

Ven Green Land Development, LLC  
2900 McKinnon St., Unit 1005  
Dallas, TX 75201

**I. SUMMARY**

This administrative consent order (order) is entered into between Ven Green Land Development, LLC dba Spencer Hollow (Ven Green Land) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Ven Green Land's storm water National Pollutant Discharge Elimination System (NPDES) permit. Ven Green Land agrees to pay an administrative penalty of \$6,000.00. 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:**

Jeff Prier, Environmental Specialist Senior  
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

**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**

Ven Green Land neither admits nor denies the following statement of facts and enters into this agreement solely for the purposes of settlement:

1. On July 17, 2019, Ven Green Land was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the location of Spencer Hallow 3<sup>rd</sup> through 5<sup>th</sup> additions, a residential development construction site (site). This site is 22 acres and is located at Section 1, Township 78N Range 4E, in Bettendorf, IA. The storm water from this site flows to an unnamed tributary to Spencer Creek which flows to Mississippi.
2. On July 15, 2020, the Department received a complaint alleging that the water in the unnamed tributary to Spencer Creek was brown from silt that had run off from the above referenced site.
3. On July 17, 2020, Kyle Fentress of Storm Water and Management Services, conducted an inspection and documented that the silt fence on the site needed repair, that areas where excavating was complete, that new silt fences should be installed in areas with concentrated storm water flow.
4. On July 20, 2020, the Department conducted an inspection of the site. Once on site, the Department observed the following violations:

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- a. Silt fences had failed in several places around the perimeter of the site. In multiple locations a flow path of tan sediment was observed from the site to the creek;
  - b. Tan soil was observed on the bank of the creek and in the stream bed, stuck behind logs and boulders;
  - c. Portions of the site were not properly stabilized;
  - d. A large area under a bulk fuel tank trailer was stained with diesel fuel, this was not documented in the weekly inspections required by the Storm Water Pollution Prevention Plan (SWPPP) further a mandatory spill report was not received by the Department; and
  - e. Sediment was observed in the street.
5. On July 22, 2020, Mr. Fentress e-mailed pictures showing the cleanup of the spilled fuel.
6. On July 27, 2020, 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 detailed the necessary corrective action and a summary of the relevant law.

**IV. CONCLUSIONS OF LAW**

Ven Green Land 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.
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.

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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 Ven Green Land 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 \$6,000.00 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 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

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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 Ven Green Land'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 \$2,000.00 is assessed for this factor.

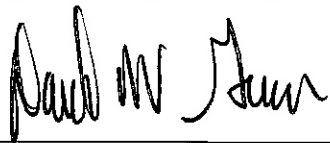
c. **Culpability.** Ven Green Land is engaged in the business of development and construction. This is a highly regulated activity and therefore Ven Green Land has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$2,000.00 is assessed 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 Ven Green Land. By signature to this order, all rights to appeal this order are waived by Ven Green Land.

**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.

 *Paul M. Jaur*      *Manager, VGLD*

On behalf of Ven Green Land Development, LLC

Dated this 8<sup>th</sup> day of  
March, 2021

  
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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9<sup>th</sup> day of  
March, 2021

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Ven Green Land Development, LLC (Copy of Order to Central Office Records File), FO 6, Carrie Schoenebaum-Legal Services Bureau, U.S. E.P.A., I.C.7.b.