

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**THOMAS MAY and TIMBER
INDUSTRIES, LLC**

ADMINISTRATIVE ORDER
NO. 2021-WW-10

TO: Timber Industries, LLC
Thomas May
900 Depot Avenue
Dixon, Illinois 61021

I. SUMMARY

This administrative order (Order) requires to comply with the provision in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Terry Jones, DNR Field Office 6
Iowa Department of Natural Resources
1023 W Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-9572

Appeal or Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of 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 1 and the rules adopted 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.

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III. STATEMENT OF FACTS

1. Timber Industries¹ is a tree service and mulch producer based in Dixon, Illinois but operates a grinding and mulch production facility at the River Cities Business Park at 200 East 90th Street in Davenport, Iowa. Timber Industries grinds pallets, tree and tree trimmings, and other suitable wood waste into mulch. The mulch is then colored black, brown, or red. The mulch is colored by mixing mulch, color, and water in a tumbler unit. Water is supplied by a hose attached to a spray bar mounted on the tumbler. The hose is also used to clean the tumbler between color applications. The waste water is not captured during the coloring or cleaning operations.

2. On December 24, 2019, DNR Field Office 6 received a complaint stating that Crow Creek was red in an area near the Timber Industries facility. Jacob Forgie, DNR Field Office 6 environmental specialist, investigated the complaint. During his investigation, Mr. Forgie noted that Crow Creek was normal in color, but he did observe what appeared to be red colored water around the storm drains at the Timber Industries property.

3. On January 7, 2020, DNR Field Office 6 received a complaint stating that Crow Creek was orange in an area near the Timber Industries facility. Terry Jones, DNR Field Office 6 environmental specialist senior, contacted Amy Kay, City of Davenport Clean Water Manager, and requested that she investigate the complaint. Ms. Kay investigated the complaint and confirmed that Crow Creek was orange. She also spoke with a representative of Timber Industries who confirmed that mulch was being colored that day. Ms. Kay informed the Timber Industries representative that the mulch piles over the storm drain were not effective as material was entering the creek. Mr. Jones contacted Tom May, owner of Timber Industries, and left a message for Mr. May of Ms. Kay's findings.

4. Mr. Jones visited the impacted area of Crow Creek on January 8, 2020, and noted that the creek had returned to a normal color. He did note some residual orange color where the storm drains from Timber Industries outlet to Crow Creek.

5. Also, on January 8, 2020, Mr. May returned Mr. Jones' telephone call and stated that the protocol was to cover the storm drains with plastic and pile mulch on top to block the storm drains. Mr. May stated he would travel to the site and provide a written report of his findings.

¹ Timber Industries is incorporated in the state of Illinois and does not have a certificate of authority from the Iowa Secretary of State of transact business in the state of Iowa.

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6. On January 9, 2020, DNR issued a Notice of Violation letter for the violations from the December 2019 and January 2020 investigations. The letter informed Timber Industries the matter was being referred for further enforcement.

7. On January 24, 2020, DNR Field Office 6 received the written report from Mr. May. Mr. May stated the drain seals were removed on December 13, 2019 since mulch coloring was done for the year. Prior to the January coloring, the employees failed to seal off the storm drains. Mr. May indicated that the facility was not aware of any discharges from the property in December.

8. Timber Industries entered into Administrative Consent Order #2019-WW-02 in January 2019 for the same violations as those stated in this administrative consent order. The 2019 administrative consent order required that the facility 1) pay an administrative penalty, 2) submit a complete storm water discharge permit application, 3) submit a plan to eliminate the discharge of rinse water and 4) eliminate the discharge of rinse water to any water of state. The penalty and plan were submitted to the DNR, but to date the facility has not submitted a complete storm water discharge permit application and has failed to eliminate the discharge of rinse water to any water of the state.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. The above-mentioned facts indicate a violation of these provisions.

3. 567 IAC 61.3(2) provides general narrative water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The above-mentioned facts indicate violations of the general water quality criteria.

4. 567 IAC 61.2(3) provides that all waste discharged to waters of the state must be of such quality that the discharge will not cause the narrative water quality criteria established at 567 IAC 61.3(2) to be exceeded. The above-mentioned facts indicate a violation of this provision.

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5. Administrative Consent Order 2019-WW-02 required that Timber Industries to pay an administrative penalty, 2) submit a complete storm water discharge permit application, 3) submit a plan to eliminate the discharge of rinse water and 4) eliminate the discharge of rinse water to any water of state. The penalty and plan were submitted to the DNR, but to date the facility has not submitted a complete storm water discharge permit application and has failed to eliminate the discharge of rinse water to any water of the state. The above-mentioned facts indicate noncompliance with Administrative Consent Order 2019-WW-02.

V. ORDER

THEREFORE, the DNR orders Timber Industries to do the following:

1. Timber Industries shall develop a Plan of Action to prevent future prohibited discharges. The Plan of Action must include a process for sealing the storm drains at the facility as well as how the facility will capture, retain, and treat any process water generated at the facility. The Plan of Action must be submitted to DNR Field Office 6 for approval within 60 days of the date the Director signs this Order and Timber Industries shall implement the Plan of Action immediately upon receiving approval from DNR Field Office 6;
2. Timber Industries shall submit a complete application for a storm water discharge permit to DNR within 30 days of the date the Director signs this Order; and
3. Timber Industries shall pay an administrative penalty in the amount of \$10,000.00 within 60 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 each of the water quality 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 DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty of \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that

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“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. Timber Industries gained an economic benefit by not properly containing and disposing of the rinse water. It is estimated that the facility has saved at least \$1,000.00 in hauling and disposal. Additional costs that have been avoided include the purchase of equipment to store the process water between hauling events and the equipment to properly seal the drains. The facility has also avoided the costs associated with applying for and maintaining a storm water permit. These costs are estimated to be at least \$2,000.00. Based on this information, \$3,000.00 is assessed for this factor.

Gravity – 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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Timber Industries discharged a pollutant into the creek turning the creek orange and creating water quality violations. The violations threaten the integrity of the waste water regulations. Additionally, the facility failed to comply with a previous administrative consent order by failing to eliminate the discharge of rinse water to a water of the state and by failing to submit a storm water permit application. Therefore, \$3,000.00 is assessed for the violations listed in Section IV, Paragraph 2, 3, and 4 and \$1,000.00 is assessed for the violations of the previous administrative consent order. Based on this information, \$4,000.00 is assessed for this factor.

Culpability – Timber Industries has a duty to know the regulations and to be aware that its actions are subject to the regulations. Timber Industries is aware of the regulations and the duty to contain all the rinse water. Based on the information above, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

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VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this 8th day of
April, 2021.

Kelli Book, DNR Field Office 6, EPA, I.C.1