

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

<b>IN THE MATTER OF:</b>  <b>South East Polk Community School District Polk County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2022-WW-13</b>
--	--

**TO:** Kevin Baccam  
SE Polk CSD  
407 8<sup>th</sup> St. SE  
Altoona, IA 50009

Dr. Dirk Halupnik, Superintendent  
407 8<sup>th</sup> Street  
Altoona, IA 50009

Chad Crabb, President Board of  
Directors  
407 8<sup>th</sup> Street  
Altoona, IA 50009

**I. SUMMARY**

This administrative consent order (order) is entered into between the South East Polk Community School District ( SE Polk) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of SE Polk's storm water National Pollutant Discharge Elimination System (NPDES) permit. SE Polk 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.

Any questions or responses regarding this order should be directed to:

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**  
South East Polk Community School District

**Relating to technical requirements:**

Dennis Thielen  
IDNR Field Office No. 5

Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
712/262-4177

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources

502 East 9<sup>th</sup> Street  
Des Moines, Iowa 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**

1. On April 1, 2021, SE Polk 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 SE Polk stadium construction (site). This site is located at Section 1, Township 78 Range 23W. Storm water from this property flows to Spring Creek.
2. On November 1, 2021, the Department observed that downstream of the site Spring Creek was discolored from sediment in the water.
3. On November 2, 2021, the Department conducted a NPDES permit inspection. Once on site the Department observed and/or documented the following:
  - (1) The majority of the site had been stabilized;
  - (2) Perimeter controls had been installed on the majority of the site and were functioning well;
  - (3) The only disturbed area was the large excavated bowl where the stadium will be constructed;
  - (4) The north entrance from Martha Miller Drive was well rocked and showed no off-site tracking;
  - (5) Sediment was no longer in Spring Creek downstream of the site; and

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

South East Polk Community School District

(6) The Department spoke to Seamus Spain, of Graphite Construction Group, who stated that during construction activities on November 1, 2021, a drain tile was tied into a storm sewer which flows into the stormwater basin on the southwest corner of the site. The basin did not have a standpipe or any additional stormwater controls in place to prevent a discharge to Spring Creek. A large amount of water drained from the site via the drain tile and flowed through the basin into Spring Creek.

Following the onsite inspection, a copy of the Storm Water Pollution Prevention Plan (SWPPP) was e-mailed to the Department. Zachary Seaton with Green Tech of Iowa conducts the weekly SWPPP inspection. These inspections were included with the SWPPP.

4. On November 17, 2021, a Notice of Violation (NOV) was sent to SE Polk for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective action and a summary of the law.

**IV. CONCLUSIONS OF LAW**

The parties hereby agree to the following conclusions of law:

1. 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 rule 60.2, "Storm 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. Number 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.

2. Subrule 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.

3. 567 IAC 61.3(2)"c" and "e" state:

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectional color, odor or other aesthetically objectional conditions. [and]

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate noncompliance with these provisions of law.

## IOWA DEPARTMENT OF NATURAL RESOURCES

### ADMINISTRATIVE CONSENT ORDER

South East Polk Community School District

4. 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 SE Polk consents to do the following:

1. Comply with all conditions of SE Polk’s NPDES permit, which includes the SWPPP;
2. Hire qualified personnel to inspect disturbed areas of the construction site; and
3. 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 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.

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**ADMINISTRATIVE CONSENT ORDER**

South East Polk Community School District

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 SE Polk'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.** SE Polk 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**

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 SE Polk. By signature to this order, all rights to appeal this order are waived by SE Polk.

**VIII. 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.

 Kevin Buccam  
On behalf of, South East Polk Community School District

Dated this 20 day of  
April, 2022

\_\_\_\_\_  
Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

SE Polk Community School District (Copy of Order to Central Office Records File), FO 5, Carrie Schoenebaum-Legal Services Bureau, U.S. E.P.A., I.C.7.b.