

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

<p>IN THE MATTER OF:</p> <p>Dan Allen</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-FP-<u>01</u></p>
---	---

To: Dan Allen
1966 175th Lane
Winterset, Iowa 50273

Re: Non-compliance with Iowa flood plain regulations.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Dan Allen to resolve violations of state law requiring flood plain construction permits prior to commencing construction projects in flood ways and floodplains.

As detailed below, Mr. Allen agrees to comply with Iowa floodplain regulations in the future, to comply with the terms of his recently-issued floodplain construction permit, and to pay an administrative penalty of \$5,500.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 5
Wallace State Office Building
Des Moines, Iowa 50319
Phone: 515-725-0268

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

II. JURISDICTION

This Order 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN ALLEN

III. STATEMENT OF FACTS

1. On April 8, 2014, DNR Field Office (FO) 5 issued a Notice of Violation (NOV) to Mr. Allen for the unpermitted construction of an earthen levee in the Middle River floodplain south of Winterset, Iowa. Permits had been issued for installation of riprap only. On April 23, 2014, FO5 staff confirmed the levee had been removed.

2. On January 4, 2022, DNR FO5 received a complaint from the Madison County Zoning Department that an unpermitted levee was being constructed along the North River. DNR staff confirmed that no permit had been issued for this project.

3. On January 12, 2022, DNR FO5 staff visited the property and found that an earthen levee had been constructed for several hundred feet along the north bank of the North River. Limestone riprap had also been placed along the bank in this area and trees had been removed.

4. On January 19, 2022, FO5 staff contacted Mr. Allen by phone. DNR explained that such construction without a permit was a violation of Iowa law. DNR also provided contact information for submitting a post-construction permit application.

5. On January 20, 2022, an NOV is issued to Mr. Allen.

6. On April 13, 2022, DNR Flood Plain staff issued a proposed decision authorizing certain construction work at the property. Authorized work includes rip rap, but does not authorize the construction of an earthen levee.

IV. CONCLUSION OF LAW

1. 567 Iowa Administrative Code 71.4 requires a person to obtain DNR approval for the construction of levees or dikes in certain rural areas.

2. 567 Iowa Administrative Code 71.9 requires a person to obtain approval from the DNR prior to installing stream bank protective devices.

3. Mr. Allen was aware of DNR's floodplain permitting requirements based on his interactions with DNR in 2014. As such, his failure to obtain a permit prior to construction of the current project is a violation of the above-referenced regulatory requirements.

V. ORDER

THEREFORE, the DNR orders and Mr. Allen agrees to the following:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN ALLEN

1. Mr. Allen will comply with the requirements of Iowa floodplain regulations at all times in the future, including full compliance with the recently-issued floodplain construction authorization.

2. Mr. Allen will pay an administrative penalty of \$5,500.00 due to his failure to comply with Iowa floodplain permitting regulations.

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.

a) 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 "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."

The DNR has determined that no economic benefit will be issued at this time.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

Development projects within the flood plain without authorization threatens the integrity of the DNR's regulatory program. Unauthorized flood plain development may exacerbate potential flooding conditions which may result in the creation of unnecessary and undue hardships for private property owners affected by the flooding.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN ALLEN

As such, \$2,500.00 is assessed for this factor.

c) 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. Allen was fully-aware of his obligation to obtain floodplain permit approval prior to conducting work in the floodplain. He failed to do so.

As such, \$3,000.00 is assessed for this factor.


VII. APPEAL RIGHTS

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

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 Lyon, Director
Iowa Department of Natural Resources



Dan Allen

Dated this 28th day of
April, 2022.

CC: DNR Field Office 5; David Scott; III.A.1.