

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

<b>IN THE MATTER OF:</b>  <b>William Kimberley Development Corporation Polk County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2022-WW- 14</b>
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**TO:** Matthew M Hurn, Registered Agent  
William Kimberley Development Corporation  
4201 Westown Pkwy Ste 200  
West Des Moines, IA 50266

**I. SUMMARY**

This administrative consent order (order) is entered into between William Kimberley Development Corporation (Kimberley) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Kimberley's storm water National Pollutant Discharge Elimination System (NPDES) permits at its Deer Run construction site and Boulder Creek Estates construction site (collectively referred to as sites). Kimberley agrees to pay an administrative penalty of \$8,000.00. 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:

**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

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**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**

Deer Run

1. On July 1, 2021, Kimberley 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 Deer Run construction site. Deer Run is located at Section 1, Township 79 Range 22W. Storm water from this property flows to an unnamed tributary which flows to the South Skunk River.

2. On August 18, 2021, the Department conducted a NPDES permit inspection. Once on site the Department observed and/or documented the following:

- (1) No perimeter sediment or erosion controls had been installed; however, dirt contractors were in the process of grading the site;
- (2) Jason Radke of Seamus Excavating indicated that dirt work began on August 10, 2021;
- (3) The site had several areas where the topography slopes towards the perimeter of the site;
- (4) Contractors were also on site clearing and grubbing trees out on the southwest side of the site;
- (5) The east entrance from Jasper Avenue was well rocked and showed no off-site tracking;
- (6) The ditch along Jasper Avenue did not have any storm water or erosion controls; and
- (7) The entire site had been graded and topsoil was placed in four stockpiles on the north side of the site but the stockpiles had not been temporarily stabilized.

Following the onsite inspection, a copy of the Storm Water Pollution Prevention Plan (SWPPP) was e-mailed to the Department. The SWPPP did not contain the owner's signature or contractor certifications.

3. On August 24, 2021, a Notice of Violation (NOV) was sent to Kimberley 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.

4. On October 20, 2021, the Department returned to the Deer Run for a follow-up inspection. Once on site the Department observed and/or documented the following:

- (1) Perimeter storm water and erosion controls had been installed;
- (2) There were multiple areas along the south side of the site where the silt fence was damaged from grading or was full of sediment;

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(3) The dirt contractors were in the process of grading the site and several areas with extremely steep grades needed additional storm water and erosion controls;

(4) A storm water basin had been constructed on the southeast side of the site to capture runoff from the majority of the site however a standpipe had not been installed in the basin;

(5) The temporary drainage ditches throughout the site did not have ditch checks as required by the SWPPP;

(6) Some off-site tracking of sediment was observed;

(7) There was a culvert in the ditch along NE 120<sup>th</sup> street that was not identified as a discharge point in the SWPPP. There was a significant amount of sediment in the ditch around the culvert and sediment was also observed on the east side of NE 120<sup>th</sup> street where the culvert daylighted;

(6) Topsoil stockpiles had not been stabilized; and

(7) A large portion of the site appeared to be at final grade and no grading activity had taken place for a significant amount of time because velvet leaf weeds were over a foot tall. However, this area had not been stabilized.

5. On October 29, 2021, a NOV was sent to Kimberley 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.

Boulder Creek Estates

6. On July 27, 2021, Kimberley 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 Boulder Creek Estates construction site (Boulder Creek). Boulder Creek is located at Section 17, Township 79 Range 22W. Storm water from this property flows to a tributary to Mud Creek which flows to the Des Moines River.

7. On October 4, 2021, the Department received a complaint alleging lack of perimeter controls on the Boulder Creek Estates construction site.

8. On October 5, 2021, the Department went to Boulder Creek to investigate. Once on site the Department documented and/or observed the following:

(1) The majority of the site was lacking perimeter sediment or erosion controls. A silt fence had been installed along the north edge of the site but much of it was failing or in need of maintenance;

(2) There were no controls along the southern edge of the site and it had several areas of extremely steep grades that slope toward the perimeter of the site;

(3) The ditch along NE 46<sup>th</sup> Avenue did not have any sediment or erosion controls;

(4) The western entrance from NE 80<sup>th</sup> Street was well rocked and showed no off-site tracking; and

(5) The entire site had been graded and topsoil placed in three stockpiles, these stockpiles needed to be temporarily stabilized.

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Following the onsite inspection, a copy of the Storm Water Pollution Prevention Plan (SWPPP) was e-mailed to the Department.

9. On October 11, 2021, a NOV was sent to Kimberley 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.

10. On November 1, 2021, the Department received a complaint alleging that sediment had flowed from the site onto the property located to the north. Following receipt of this complaint the Department returned to Boulder Creek for a follow-up inspection. Once on site the Department observed and/or documented the following:

- (1) The majority of the perimeter controls on the site were failing and in need of repair;
- (2) Silt fence along the north edge of the property had failed and a significant amount of sediment was observed on the property to the north;
- (3) All sediment and erosion controls in the ditch along the southern edge of the site had failed.
- (4) The west entrance from NE 80<sup>th</sup> Street was well rocked and showed no off-site tracking; and
- (5) The entire site had been graded and topsoil placed in three stockpiles, these stockpiles needed to be temporarily stabilized;

Following the onsite inspection, a copy of the Storm Water Pollution Prevention Plan (SWPPP) was e-mailed to the Department. The Department reviewed the weekly inspection reports. The October 25, 2021, and November 1, 2021, inspection reports stated the following:

Due to the recent rain a section of the silt fence has been damaged. Controls are in place in the SE corner of the site at the discharge point, [d]ue to the recent rain the current controls are failing. I would recommend installing more permanent solution at the discharge point in the SE corner within the creek. Controls are in place in multiple areas on the North perimeter of the site to protect the neighbors on the north side of the site. Additional controls are in place along the North and South perimeters of the site. Due to the recent rain a section of controls located in a low point of the perimeter have been damaged resulting sediment flowing off site and on the [n]eighbor's property.

11. On November 8, 2021, a NOV was sent to Kimberley 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:

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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. 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 Kimberley consents to do, the following:

1. Comply with all conditions of Kimberley's NPDES permits, which includes the SWPPP; and
2. Pay an administrative penalty of \$8,000.00 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

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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 \$4,000.00 was saved. Therefore, \$4,000.00 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 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 Kimberley’s NPDES permits 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.** Kimberley is engaged in the business of development and construction. This is a highly regulated activity and therefore Kimberley 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**

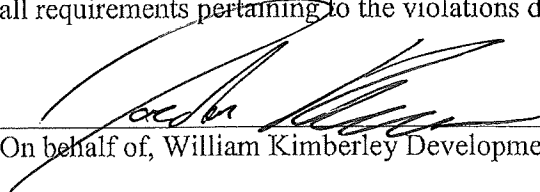
Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent Kimberley. By signature to this order, all rights to appeal this order are waived by Kimberley.

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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.

  
On behalf of, William Kimberley Development Corporation

Dated this 26 day of

April, 2022

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

William Kimberley Development Corporation (Copy of Order to Central Office Records File),  
FO 5, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.