

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

<p>IN THE MATTER OF:</p> <p>PARKS MARINA, INC.</p> <p>Dickinson County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER 2022 - SL-01</p>
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TO: Leo R. Parks, Jr.
Registered Agent/President
Parks Marina, Inc.
P.O. Box 229
Okoboji, IA 51355

I. SUMMARY

This administrative consent order (the Order) is entered into between Parks Marina, Inc. (Parks Marina) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of the Order to resolve a violation of sovereign lands construction permitting requirements. The Order requires Parks Marina to pay an administrative penalty of \$5,000.00.

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

Relating to technical requirements:

Seth Moore, Environmental Specialist
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-330-6432

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-724-3805

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This order is issued pursuant to Iowa Code sections 456A.25 and 461A.4 and 571 Iowa Administrative Code (IAC) section 13.17, which authorize the Natural Resource Commission (Commission) via the Department's Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 461A and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 461A.5B and 571 IAC section 13.17, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Parks Marina is an Iowa corporation located in Okoboji, Iowa. Parks Marina owns and operates a large marina ("the Marina") on the north shore of East Okoboji Lake, east of the town of Okoboji, near the intersection of 175th Street and 178th Street. The Marina is used for boat sales, service, and storage, as well as providing docks and access to the lake via boat ramps and a boat lift system.
2. East Okoboji Lake is a "meandered sovereign lake." As defined in 571 IAC 13.3, "meandered sovereign lake" means "those lakes which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds..." of such lakes.
3. On March 26, 2021, the Department received multiple reports that heavy construction equipment was being used to excavate material from East Okoboji Lake at the Marina.
4. Later on March 26, the Department's Mike Hawkins investigated the reports and observed a long-reach excavator digging material from East Okoboji Lake at the Marina. The excavation was taking place in the lake bed in front of the Marina's boat forklift station. Mr. Hawkins located Leo "Butch" Parks, Jr., owner and president of Parks Marina, and asked if he had obtained the sovereign lands construction permit (permit) required for such a project under 571 IAC 13. Mr. Parks stated that he did not know that he needed a permit to remove material from the lake. Mr. Hawkins informed Mr. Parks that a permit was required for any construction-type activity taking place below the ordinary high water line (OHWL), as the OHWL forms the legal boundary between privately owned and state owned property at a meandered sovereign lake. Mr. Parks stated that he would instruct his staff to apply for a permit. Mr. Parks then described additional work that he wished to do below the OHWL, and Mr. Hawkins advised him that a permit would be required for that work as well.

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5. On April 14, 2021, Parks Marina submitted an application for the needed sovereign lands construction permit. In response, the Department issued an after-the-fact permit to address the lake bed excavation.

IV. CONCLUSIONS OF LAW

1. East Okoboji Lake is a “meandered sovereign lake” as defined in 571 IAC 13.3. Meandered sovereign lakes, including East Okoboji Lake, are property of the State of Iowa and fall under the jurisdiction of the Commission. The rules found in 571 IAC chapter 13 are applicable to East Okoboji Lake, as a meandered sovereign lake, per 571 IAC 13.2.
2. Iowa Code sections 461A.4 and 461A.35 and 571 IAC 13.4 collectively prohibit any construction project on, alteration or damage to, or removal of material from, state owned property without a permit issued by the Department.
3. 571 IAC 13 provides a process for the Department to issue such permits. These permits are generally referred to as “chapter 13 permits” or “sovereign lands construction permits.”
4. Parks Marina’s project at the Marina consisted of excavating material from state property at East Okoboji Lake. As such, Parks Marina was required to obtain a chapter 13 permit from the Department prior to beginning the project.
5. Parks Marina did not apply for or receive a chapter 13 permit prior to starting its project on state property. This failure to obtain the required permit is a violation of 571 IAC 13.15(1)“a”(1).

V. ORDER

THEREFORE, the Department orders, and Parks Marina consents to do, the following:

1. Pay an administrative penalty of \$5,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

1. Iowa Code section 461A.5B and 571 IAC 13.17 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for the violation involved in this matter.
2. The Department has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of an administrative order with an administrative penalty. Assessment of the administrative penalty takes into consideration the totality of

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the circumstances, including factors such as economic benefit (costs saved through noncompliance), the gravity of the violation, and the level of culpability of the violator.

- a. In this case, the economic benefit was not significant. Parks Marina would have been granted a permit authorizing the work in a timely manner had it applied prior to starting the project. The importance of the permitting requirement in such a situation is to allow for appropriate monitoring of the project and to ensure that any conditions required to safeguard the natural resources at the site are followed.
- b. The gravity of the violation based on the outcome of the project and impact to the resource was fortunately low. However, failure to obtain permission to conduct work on state property is a significant violation, as it has the potential to cause significant impacts to public property and resources, and as such, is highly regulated. Failure to comply with the law also undermines the permitting process and gives that impression to the general public that such activities are not being properly regulated by the Department.
- c. Culpability in this case is judged to be high. Parks Marina, its owner, and senior employees are well aware of permitting requirements for projects on state property, including East Okoboji Lake. Mr. Parks' statement to Mr. Hawkins that he was unaware that a permit was required for the project is not credible. Parks Marina has in the past properly obtained permits for similar and related projects. Additionally, Parks Marina has previously failed to apply for such permits and then was made aware of the permitting requirements. This history includes the following:
 - In 2012, Parks Marina sought and was granted a permit to dredge sediment around its boat ramp, a project extremely similar to the current incident.
 - In 2013, Parks Marina sought a permit to install three new boat ramps within the lake. This permit was denied. While onsite to review this permit application, Department staff noted that a forklift station had been constructed below the OHWL without a permit. Additionally, staff noted that fill had placed below the OHWL to create a motorcycle parking lot, also without a permit. Mr. Parks told Department staff that fill had not been placed there; however aerial photos proved otherwise and a Notice of Violation was issued. The Department granted Parks Marina a permit to excavate the fill and armor the shoreline to resolve the matter.
 - In 2017, Parks Marina sought a permit to install four additional boat docks.
 - In 2018, Parks Marina applied for and was granted a permit to install a new boat ramp.

Based on these considerations, the Department has determined that a \$5,000.00 penalty is appropriate.

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VII. WAIVER OF APPEAL RIGHTS

571 IAC section 13.17 and 571 IAC chapter 7, provide a right to contest violations through an appeal and administrative hearing. This order is entered into knowingly by and with the consent of Parks Marina. By signature to this order, all rights to appeal this order are waived by Parks Marina.

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 461A.5B. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Leo R. Parks, Jr., President
Parks Marina, Inc.

Dated this 2ND day of
JUNE, 2022

Kayla Lyon, Director
Iowa Department of Natural Resources

