

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

IN THE MATTER OF:

**Mason Community School District
Cerro Gordo County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER**

NO. 2022-WW- 19

TO: Dr. Dave Versteeg, Superintendent
1515 S. Pennsylvania Ave,
Mason City IA
50401

Kent Brcka, NPDES permit contact
Henkel Construction Company
208 E. State St
Mason City, IA 50401

I. SUMMARY

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

Dan Bratrud
IDNR Field Office No. 2
Iowa Department of Natural Resources
2300 15th St SW
Mason City, Iowa 50401
641-424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-444-8165

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 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. November 30, 2020, Mason City 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 Natatorium and Fieldhouse addition construction (site). Mason City was listed as the owner in this permit and Kent Brcka of Henkel Construction Company is listed as the contact for this permit. This site is located at Section 11, Township 96 Range 20W. Storm water from this property flows into a storm drain system that flows east into the Winnebago River.
2. On November 19, 2021, the Department received a complaint alleging that a dark brown substance was flowing from a storm drain outfall into the Winnebago River east of the Mason City High School. Following receipt of this complaint, the Mason City also called the Department and stated that it had received several calls regarding the same complaint. The City employee informed the Department that they could observe the discharge from Asbury Park, which is located on the opposite side of the river as the high school on the east bank of the river.
3. Following the receipt of this complaint, the Department went to the site to investigate. Throughout the day the Department took laboratory samples and field samples. The laboratory samples were sent to the State Hygienic Laboratory for analysis. All sample results are presented in the table below. At approximately 2:30 pm the Department arrived at Asbury Park. At this location, the Department observed brown/tan sediment laden water discharging from the storm water outfall on the west bank of the river (Site 1). Next, the Department proceeded south along South Birch Drive approximately one-half a mile. The Department observed sediment laden storm water for approximately one-half mile downstream of Site 1. Approximately one-half mile downstream of the outfall the sediment laden storm water mixed with normal river water (Site 2). However, the sediment was still visible. The Department then drove north to the construction site and to the location of the outfall. At this location brown/tan sediment laden storm water was observed discharging from the outfall. The Department proceeded upstream from the location of the outfall approximately 30 feet and at this location the Department observed clear water free of sediment (Site 3). Next the Department proceeded approximately 20 feet downstream from the location of the outfall and at this location the Department observed water that appeared cloudy from the brown/tan sediment mixing into the river water (Site 4).

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Sample Location	pH (field sample)	Temperature (field sample)	Dissolved Oxygen (field sample)	Total Suspended Solids (laboratory sample)
Outfall (Site 1)	8.2	7.6 C ¹	12.0 ppm ²	19,400 mg/L ³
Downstream (Site 2)	9.1	3.6 C	14.4 ppm	27 mg/L
Upstream (Site 3)	8.7	4.8 C	14.2 ppm	4 mg/L
Mixing Zone (Site 4)	8.2	3.6 C	14.1 ppm	360 mg/L

4. After samples were taken the Department returned to the construction site and walked, west along a fence, to the portion of the site where the majority of the construction activity was occurring. At this location the Department observed, straw wattles were observed protecting the storm drains in the parking lot outside of the fenced area. As the Department approached the west end of the site, it observed an employee placing a straw wattle around one of the storm drains (site 5) that had not been protected. At this location the Department observed a brown/tan sediment laden liquid surrounding this drain. This sediment laden liquid was the same color that was observed in the river. The Department also observed skid loader tracks leading to the drain and it appeared that the sediment laden material had been pushed towards the drain.

5. While on site Department staff met with Landon Perkins the site superintendent, an employee of Henkel Construction, who stated that while excavating the swimming pool on November 18, 2021, a layer of blue clay had been encountered. Mr. Perkins stated that on the morning of November 19, 2021, the excavation site had partially filled with water so they began to dewater it. Mr. Perkins stated that he was aware that the sediment laden storm water was flowing into the river and caused discoloration but he was not aware that it was problematic. Mr. Perkins and the Department walked to the location of site 5. At this location, the Department asked Mr. Perkins if this was the location the sediment laden storm water had flowed into the storm sewer. Mr. Perkins confirmed that it was. Mr. Perkins explained that the drain had a wattle around it earlier but the wattle had failed and the water was running over and/or through it. He said that they received a new wattle shortly before the Department arrived on site. Mr. Perkins stated that the pump had been turned off so that no more water was being discharged. The Department instructed him to dispose of the water from the excavation dewatering in a different manner prior to conducting further pumping. The Department recommended various methods to legally dispose of the sediment laden storm water.

6. On November 22, 2021, the Department returned to the site for a follow-up investigation. Once on site the Department met with Mr. Perkins. Mr. Perkins stated that they had rerouted the outlet hose for the sump pump to the grass area.

¹ Celsius

² Parts per million

³ Milligrams per Liter

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7. On December 2, 2021, the Department returned to the site for a follow up inspection. While on site the department documented minor maintenance issues with sediment and erosion controls. The Department also observed the excavation site for the swimming pool and documented that additional sediment and erosion controls had been installed around the storm drain located at site 5. The Department also observed the hose from the dewatering pump had been routed to the grass area next to the parking lot and a perforated plastic tile with clean crushed rock had been installed for the pump to sit in for the dewatering process.

8. On December 13, 2021, a Notice of Violation (NOV) was sent to Mason City for the above discussed violations. Included with this NOV were copies of the inspection reports, recommended corrective actions and a summary of the law.

9. On December 23, 2021, Henkel Construction, on behalf of Mason City, sent the Department a letter detailing the steps it had taken to comply with the NPDES permit following the above referenced discharge.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision of law.

2. 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.

3. 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.

4. 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]

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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.

V. ORDER

THEREFORE, the Department orders and Mason City consents to do the following:

1. Cease all illegal discharges to waters of the state;
2. Comply with all conditions of Mason City's NPDES permit; and
3. 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 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 \$2,000.00 was saved. Therefore, \$2,000.00 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

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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 Mason City'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 \$3,000.00 is assessed for this factor.

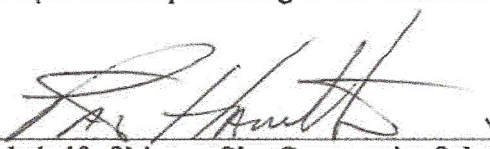
c. **Culpability.** Mason City has an obligation to be aware of the applicable regulations and comply with those regulations. Mason City is engaged in construction of a natatorium and field house. This is a large construction project and is a highly regulated activity. Therefore, the amount of \$3,000.00 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 Mason City. By signature to this order, all rights to appeal this order are waived by Mason City.

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 Mason City Community School District
Superintendent of Schools

Dated this 4 day of
August, 2022

~~Kayla Lyon, DIRECTOR~~ ALEX MOON, DEPUTY DIRECTOR for Kayla Lyon, Director
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