

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: DRH Realty of Iowa, LLC d/b/a D.R. Horton Warren County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2022-WW- 20
--	---

TO: C T Corporation Systems, Registered Agent
DRH Realty of Iowa, d/b/a D.R. Horton
Corporation
400 E Court Ave
Des Moines, IA 50309

D.R. Horton Corporation
1341 Horton Circle
Arlington, TX 76011

Darrick Turner
D.R. Horton
1910 SW Plaza Shops Lane
Ankeny, IA 50023

I. SUMMARY

This administrative consent order (order) is entered into between DRH Realty of Iowa, LLC d/b/a D.R. Horton (Horton) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Horton's storm water National Pollutant Discharge Elimination System (NPDES) permit at Summercrest Subdivision construction site (site). Horton agrees to pay an administrative penalty of \$5,000.00. 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

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
DRH Realty of Iowa, LLC d/b/a D.R. Horton

502 E 9th Street
Des Moines, IA 50319-0034
712/262-4177

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

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 October 16, 2020 Horton 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 Summercrest Subdivision construction site. Summercrest is located at Section 18, Township 76 Range 23W. Storm water from this property flows to an unnamed tributary of Cavitt Creek which flows north to the Middle River.

2. On January 13, 2022, the Department conducted a NPDES permit inspection. Once on site the Department observed and/or documented the following:

(1) The majority of the perimeter sediment or erosion controls that had been installed on the site were failing and were in need of repair;

(2) A stormwater retention basin located along the northeast edge and east edge of the property had only a filter socks in place. This basin lacked a standpipe or dewatering device which prevent sediment from discharging;

(3) The filter socks were full of sediment and sediment was observed offsite in the backyards of the properties on the east side of the site;

(4) The silt fence on the northwest corner was failing and in need of repair;

(5) No sediment controls were protecting stormwater intakes throughout the site;

(6) A significant amount of sediment was observed on the property located north of the site next to the stormwater outfall from the sediment basin; and

(7) The entire site had been graded and topsoil placed in two stockpiles. The stockpiles had not been stabilized.

Following the onsite inspection, a copy of the Storm Water Pollution Prevention Plan (SWPPP) was e-mailed to the Department as well as weekly inspections of the site dating from December 7, 2021, through January 17, 2022. The inspections stated that disturbed areas were

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
DRH Realty of Iowa, LLC d/b/a D.R. Horton

stabilized within the required time frames and stockpiles were either protected or stabilized. The January 4th and 11th inspection stated that all perimeter controls were correctly installed, maintained, and functional and no visible amount of sediment had been discharged beyond the permitted area.

3. On January 20, 2022, a Notice of Violation (NOV) was sent to Horton 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 February 17, 2022, Horton hand delivered a letter to the Department in response to the NOV which summarized the corrective measures taken at the site in response to the NOV.

5. On February 21, 2022, the Department returned to the site and documented that Horton had implemented the necessary corrective measures.

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. 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
DRH Realty of Iowa, LLC d/b/a D.R. Horton

V. ORDER

THEREFORE, the Department orders, and Horton consents to do, the following:

1. Comply with all conditions of Horton's NPDES permits; and
2. 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 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 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 Horton'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 \$1,000.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
DRH Realty of Iowa, LLC d/b/a D.R. Horton


c. **Culpability.** Horton is engaged in the business of development and construction. This is a highly regulated activity and therefore Horton 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 Horton. By signature to this order, all rights to appeal this order are waived by Horton.

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, DRH Realty of Iowa, LLC d/b/a D.R. Horton

Dated this 2 day of
August, 2022

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

DRH Realty of Iowa, LLC (Copy of Order to Central Office Records File), FO 5, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.