

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Iowa Development Group, Inc.
NPDES Permit No. 400551-40173
Johnson County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2022-WW- 22**

TO: L & W Agents, Registered Agent
220 N Main St Ste 600
Davenport, IA 52801

Josh Entler NPDES contact
Iowa Development Group, Inc.
2916 HWY 1 NE
Iowa City, IA 52240

Matthew Adam, Director,
Iowa Development Group, Inc.
2916 HWY 1
Iowa City, Iowa
52240

I. SUMMARY

This administrative consent order (order) is entered into between Iowa Development Group, Inc. (Iowa Development) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Iowa Development's storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction of the Prairie Village Development. Iowa Development agrees to pay an administrative penalty of \$7,000.00. 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:

Jacob Forgie
IDNR Field Office No. 6
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**

Iowa Development Group, Inc.

1023 W Madison St.
Washington, IA 52353
319/653-2135

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 February 1, 2022, Iowa Development 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 Prairie Village Development south construction site (site) in Tiffin, Iowa. This site is approximately 75 acres and is located at Section 27, Township 80 Range 7W. Storm water from this property either flows to an unnamed tributary of Clear Creek (creek) or to a drainage ditch which flows to the unnamed tributary of the creek.

2. On May 26, 2022, the Department conducted a NPDES permit inspection. Once on site the Department observed that the majority of the site had been cleared and partially graded. Along the southern and eastern perimeter of the site silt fencing had been installed. The southern and east portions of the site are the lowest areas and the majority of the stormwater run-off from the site collects in these areas. Two large pools of water had collected along the southern and eastern perimeter silt fences in the lowest section of the site. The silt fence along the southern most area of the site, which is along Highway 6, had been undercut by sediment laden stormwater. Waddles had been added to the area, but they did not contain the sediment laden stormwater. Sediment laden stormwater was observed leaving the site from this area and flowing into a drainage ditch located on the north side of Highway 6. This sediment laden stormwater was observed flowing east and into the unnamed tributary of the creek.

Standing water was observed along the south eastern corner of the site. This area had a silt fence and a natural vegetative buffer which stopped sediment laden stormwater from flowing into the unnamed tributary to the creek.

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

Iowa Development Group, Inc.

The silt fence located along the eastern perimeter of the site had been overrun with sediment. The silt fence was installed as a sediment and erosion control for the perimeter and the stock pile of topsoil. Evidence of a flow path of sediment laden stormwater was observed from the eastern perimeter of the site to the unnamed tributary of the creek.

3. On June 7, 2022, a Notice of Violation (NOV) was sent to the Iowa Development for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective actions and a summary of the law.
4. On June 17, 2022, Iowa Development informed the Department that sediment and erosion controls had been installed throughout the site.
5. On June 28, 2022, the Department returned to the site and documented that a sediment basin had been installed in the south east portion of the site, and new silt fence had been installed throughout the majority of the sit.

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," which includes 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. 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]

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

Iowa Development Group, Inc.

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.

4. 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.

6. Part III. C (1) of NPDES General Permit No. 2 requires that erosion and sediment controls be installed and maintained. The above stated facts demonstrate noncompliance with this provision of law.

7. Part III. C (3) of NPDES General Permit No. 2 requires that

stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

The above stated facts demonstrate noncompliance with this provision of law.

8. Part VI. A of NPDES General Permit No. 2 requires that the permittee "comply with all conditions of th[e] permit." The above stated facts demonstrate noncompliance with this provision of law.

9. Part VI. D of NPDES General Permit No. 2 requires that the permittee "take all reasonable steps to minimize or prevent any discharge in violation of this permit." The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

THEREFORE, the Department orders, and the Iowa Development consents to do, the following:

1. Comply with all conditions of the Iowa Development's NPDES permits; and
2. Pay an administrative penalty of \$7,000.00 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.

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

Iowa Development Group, Inc.

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 the Iowa Development’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 \$2,500.00 is assessed for this factor.

c. **Culpability.** Iowa Development is engaged in the business of development and construction. This is a highly regulated activity and therefore it has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

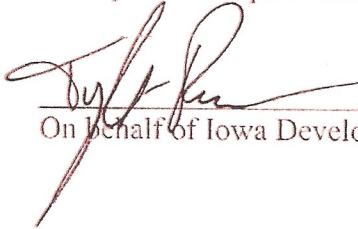
Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent the Iowa Development. By signature to this order, all rights to appeal this order are waived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

VIII. NONCOMPLIANCE

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

Iowa Development Group, Inc.

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 Iowa Development, Inc.

Dated this 22 day of

September, 2022

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Iowa Development, Inc. (Copy of Order to Central Office Records File), FO 6, Carrie Schoenebaum- Legal Services
Bureau, U.S. E.P.A., I.C.7.b.