

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: City of Altoona Polk County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2022-WW-24
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TO: Honorable Mayor Dean O'Connor
900 Venbury, Drive Suite A
Altoona, IA 50009

I. SUMMARY

This administrative consent order (order) is entered into between the City of Altoona (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of the City's storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction of the 8th Street SW Reconstruction Project Phase 1 (site). The City agrees to pay an administrative penalty of \$4,000.00. 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 9th Street
Des Moines, IA 50319-0034
712/262-4177

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. The City of Altoona is a Municipal Separate Storm Sewer System (MS4). On July 1, 2020, the City was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the 8th Street SW Reconstruction Project Phase 1 from Highway 65 to Prairie meadows Drive, in Altoona, Iowa. This site is located at Section 14, Township 79 Range 23W. Storm water from this property flows to an unnamed tributary of Little Four Mile Creek (creek).

2. On May 9, 2022, the Department conducted a NPDES permit inspection. Once on site the Department observed and/or documented the following:

(1) On the north and south side of 8th Street SW from 34th Avenue SW to 28th Avenue SW ground disturbing activities had occurred; however, the area was not stabilized and no perimeter controls were in place to prevent sediment from entering the creek;

(2) Dirt was stockpiled on the northwest corner of 8th Street SW and 34th Avenue SW and no sediment or erosion controls were in place to protect the creek;

(3) Stormwater intakes located on the south side of 8th Street SW between the sidewalk and the street had been wrapped with a filter sock but it had failed;

(4) Multiple stormwater intakes were completely plugged with sediment east and west of 34th Avenue SW;

(5) No curb controls were installed along 8th Street SW or 34th Avenue to prevent sediment from entering the street;

(6) Sediment was observed in the street at several locations along 8th Street SW and in the CarX parking lot on the northeast corner of 8th Street SW and 34th Avenue;

(7) Stormwater intakes throughout the site did not have any sediment controls in place or were completely full of sediment; and

(8) The entire site was inactive; however, no temporary or permanent stabilization had been implemented.

A copy of the SWPPP was not maintained on site. A copy was provided via e-mail to the Department upon request. The Department reviewed the stormwater pollution prevention plan (SWPPP) and documented that it did not identify the location of stormwater controls and that contractor certifications were not included. Further, weekly inspections were reviewed and the inspections did not identify the deficiencies noted above.

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3. On May 12, 2022, a Notice of Violation (NOV) was sent to the City 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 May 26, 2022, the City sent the Department a letter detailing the corrective measure it had implemented and planned to implement in response to the above referenced inspection and NOV.

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," 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.
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.
4. NPDES 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.

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V. ORDER

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

1. Comply with all conditions of the City's NPDES permits; and
2. Pay an administrative penalty of \$4,000.00 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 of 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 \$1,000.00 was saved. Therefore, \$1,000.00 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 City'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.

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c. **Culpability.** The City is a MS4 and routinely conducts stormwater inspections of construction sites within the City to determine compliance with the Department's stormwater permits. Because the City is an MS4 it has City staff certified to conduct stormwater inspections. Further, the City also retained an erosion control specialist to oversee this project. The City 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 the City. By signature to this order, all rights to appeal this order are waived by the 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 the City of Altoona

Dated this 3rd day of

October, 2022

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

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

