

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Strahan Construction Company, Inc.
NPDES Permit No. 39700-39323
Polk County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2022-WW- 29**

TO: Reid Strahan, President and RA Strahan
Construction Company, Inc.
477 SW Camden Dr
Ankeny, IA 50023

Luke Strahan, Strahan Construction Company, Inc.
477 SW Camden Dr
Ankeny, IA 50023

I. SUMMARY

This administrative consent order (order) is entered into between Strahan Construction Company, Inc. (Strahan) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Strahan's storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction of the Timber Valle Estates. Strahan agrees to pay an administrative penalty of \$6,000.00. 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:

Emma Huston
IDNR Field Office No. 5
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
515-901-5642

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. On August 1, 2021, Strahan 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 Timber Valley Estates construction site (site) in Ankeny, Iowa. This site is approximately 32 acres and is located at Section 32, Township 80, Range 24W. Storm water from this site flows into Rock Creek which is a tributary of the Des Moines River.

2. On November 17, 2021, the Department conducted a storm water NPDES permit inspection at the above referenced site. Once on site, the Department observed and/or documented the following:

- (1) There were no perimeter sediment and erosion controls on the site which includes along the north side of the site that abuts Rock Creek;
- (2) Clearing, grubbing, and tree removal had occurred on site; grubbing was occurring while the Department was on site;
- (3) Chance Chesnut, a contractor on site, stated that tree removal work had been on going for several weeks and was expected to end that day. However, he stated that grading had not yet commenced; and
- (4) The site has several areas with steep topography that had no sediment and erosion controls; and
- (5) The entrance to the site had not been rocked to prevent off site migration of sediment.

While on site Department staff reiterated the requirement to stabilize areas that are not disturbed for 14 days.

3. Following the inspection, the Department reviewed the Storm Water Pollution Prevention Plan (SWPPP). A review of the SWPPP revealed the following:

- (1) Contractor certifications were not included in the SWPPP; and
- (2) The inspector noted that silt perimeter controls would be installed after grubbing was completed and that rock had been installed on the site entrance.

3. On November 18, 2022, a Notice of Violation (NOV) was sent to the Strahan 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 April 8, 2022, the Department went to the site to conduct a follow up inspection. Once on site, the Department observed and/or documented the following:

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- (1) A silt fence had been installed around the north perimeter of the site and it was in good condition;
- (2) Multiple layers of silt fence had been installed on the portion of the site that abuts Rock Creek;
- (3) Two sediment basins (north and west basin) had been constructed on site; however, standpipes had not been installed in either basin. It appeared at the time that water was being pumped from the west basin to a grassy area on site;
- (4) Fuel was stored on site near the entrance with no secondary containment;
- (5) Sediment tracking off site and into NW 37th street was observed;
- (6) Sediment was observed discharging at the outlet located south of the site entrance. The sediment was discharged to a pile of rip rap;
- (7) The entire site had not been stabilized prior to the winter shutdown, which includes the two stockpiles of topsoil; and
- (8) Rill erosion was observed throughout the site.

5. Following the inspection, the Department reviewed the SWPPP. A review of the SWPPP revealed the following:

- (1) Inspections were conducted on March 3, 15, 29 and April 6, 2022;
- (2) The March 3rd inspection recommended placing a sediment log on the south side of the entrance and the installation of silt fence on the south side of the rip rap to slow down the flow of sediment; and
- (3) The March 29, 2022, inspection noted rill erosion was occurring in numerous locations and recommended the placement of additional rock at the entrance of the site.

6. On April 19, 2022, a Notice of Violation (NOV) was sent to the Strahan 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.

7. On August 8, 2022, the Department went to the site to conduct a follow up inspection. Once on site, the Department observed and/or documented the following:

- (1) The entrance and exit to the site used by vehicles was not rocked and sediment tracking was observed;
- (2) The site had not been stabilized;
- (3) No sediment and erosion controls had been installed around any of the inlet or outlets throughout the site;
- (4) Several inlet and outlets were partially submerged in mud and conveying sediment laden storm water;
- (5) Evidence that indicating that sediment laden stormwater had flowed through the pipe, over the rip-rap, and entered the Rock Creek was observed;
- (6) No sediment controls had been installed around the outlet north of the recently paved road;
- (7) Sediment laden stormwater flowed northeast to the north basin. No stand pipe had been installed in this sediment basin or the west basin;
- (8) Sediment was observed discharging from the north sediment basin into a drainage pipe which flows to Rock Creek.

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- (9) Sediment laden storm water was observed discharging from the north sediment basin out fall into Rock Creek; and
- (10) Gully erosion was present on the eastern edge of the site where there is a steep slope.

8. Following the inspection, the Department reviewed the SWPPP. A review of the SWPPP revealed the following:

- (1) Inspections were conducted on July 9, 15, 22, 28 and August 4, 2022;
- (2) The site was inactive during all inspections but for the August inspection; and
- (3) Each inspection recommended multiple actions be taken to comply with the SWPPP.

The actions recommend in the SWPPP inspections had not been taken when the Department inspected the site on August 15, 2022.

9. On August 15, 2022, a Notice of Violation (NOV) was sent to the Strahan 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.

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]

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.

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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.

5. NPDES 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. 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.

8. NPDES Part IV. D (7) of NPDES General Permit No. 2 requires “[a]ll contractors and subcontractors identified in the plan must sign a copy of the certification statement[.]” 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 Strahn consents to do, the following:

1. Comply with all conditions of the Strahn’s NPDES permits; and
2. Pay an administrative penalty of \$6,000.00 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

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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 \$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 Strahn’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 \$2,000.00 is assessed for this factor.

c. **Culpability.** Strahn 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. Moreover, the Department informed Strahn on multiple occasions the steps that needed to be taken to comply with its NPDES permit. Nevertheless, the necessary steps were not taken. Therefore, the amount of \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

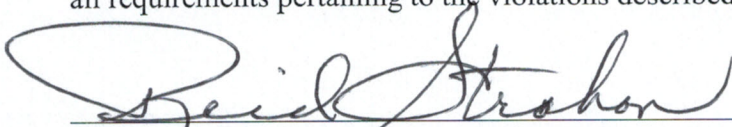
Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent the Strahn. By signature to this order, all rights to appeal this order are waived by Strahn.

VIII. NONCOMPLIANCE

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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 Strahan Construction Company, Inc.

Dated this 7th day of

November, 2022

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

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