

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

**IN THE MATTER OF:**

**TK Development, L.L.C.  
NPDES Permit No. 40319-40051  
Polk County, Iowa**

**ADMINISTRATIVE CONSENT ORDER  
NO. 2022-WW- 30**

**TO:** TK Development, L.L.C.  
4215 SW 33<sup>rd</sup> St  
Des Moines, IA 50321

Dan Kraus, TK Land Development  
4215 SW 33<sup>rd</sup> St  
Des Moines, IA 50321

Lisa R. Wilson, Registered Agent  
TK Land Development, L.L.C.  
222 N.W. Sunrise Dr  
Waukee, IA 50263

**I. SUMMARY**

This administrative consent order (order) is entered into between TK Land Development, L.L.C. (TK) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of TK's storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction of the Southwoods Estates Plat 3. TK agrees to pay an administrative penalty of \$3,500.00. 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 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515-250-1798

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
Phone: 515-444-8165

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> 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 December 14, 2021, TK 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 Southwoods Estates Plat 3 Construction site (site) in Des Moines, Iowa. This site is approximately 16 acres and is located at Section 23, Township 78, Range 25W.
2. On July 7, 2022, 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) Perimeter and interior sediment and erosion controls had been installed but had failed and needed maintenance in several locations;
  - (2) In two locations on the northwest side of the site (which is at the bottom of a steep grade) a perimeter and silt fence had failed and sediment was observed discharging off site into Frink Creek;
  - (3) Multiple layers of silt fence had been installed inside the drainage ditches; however, all needed repair and showed evidence that during a prior rain event they had been overtopped with sediment laden stormwater;
  - (4) A storm water intake located at the north entrance to the site (Rose Avenue) did not have any sediment and erosion controls and was inundated with sediment;
  - (5) The entrance on the east side of the site (SW 56<sup>th</sup> Street) had been inundated with mud and silt and needed additional rock;
  - (6) A flow path of sediment laden storm water was observed leaving the east side of the site flowing towards 56<sup>th</sup> Street and into Frink Creek;
  - (7) Migration of sediment off site was observed by the Department caused by a truck delivering pipe; and
  - (8) The entire site had been graded and topsoil was stockpiled in two location however, stockpiles had not been stabilized.
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;
  - (2) A review of the required inspections from June 16 through 30, 2022, showed that the inspector failed to identify the lack of storm water and erosion controls on the intake located at the north entrance to the site (Rose Avenue); and
  - (3) The July 8, 2022, inspection did not document the discharge of sediment to Frink Creek and the necessary repairs to sediment and erosion controls located inside the drainage ditches.

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4. On July 18, 2022, a Notice of Violation (NOV) was sent to the TK 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.

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 IV. D (4) of NPDES General Permit No. 2 requires that "[q]ualified personnel ... shall inspect disturbed areas of the construction site that have not been stabilized... once every seven calendar days." The above stated facts demonstrate noncompliance with this provision of law.

6. 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



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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 TK consents to do, the following:

1. Comply with all conditions of the TK's NPDES permits; and
2. Pay an administrative penalty of \$3,500.00 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

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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 TK'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 \$1,500.00 is assessed for this factor.


c. **Culpability.** TK 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 \$1,000.00 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 of the TK. By signature to this order, all rights to appeal this order are waived by TK.

**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.

  
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On behalf of TK Development, L.L.C.

Dated this 9<sup>th</sup> day of  
November, 2022

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

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