

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

<b>IN THE MATTER OF:</b>  <b>Watts Development Group, Inc.</b> <b>NPDES Permit No. 39751-39377</b> <b>Johnson County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2022-WW- 31</b>
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**TO:** Michael Pugh, Registered Agent  
Watts Development Group, Inc  
425 E Oakdale Blvd Ste 201  
Coralville, IA 52241

Gary Watts, President  
Watts Development Group, Inc.  
425 E Oakdale Blvd Ste 201  
Coralville, IA 52241

Adam Hahn  
Director of Construction Services  
Watts Development Group, Inc.  
425 E Oakdale Blvd Ste 201  
Coralville, IA 52241

**I. SUMMARY**

This administrative consent order (order) is entered into between Watts Development Group, Inc. (Watts) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Watts’ storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction of the Trail Ridge Estates. Watts agrees to pay an administrative penalty of \$3,000.00. 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

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources

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

Watts Group Development, Inc.

Iowa Department of Natural Resources  
1023 W Madison St.  
Washington, IA 52353  
319/653-2135

502 East 9<sup>th</sup> Street  
Des Moines, Iowa 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

**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 1, 2021, Watts 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 Trail Ridge Estates Construction site (site) in Solon, Iowa. This site is approximately 21 acres and is located at Section 23, Township 81, Range 6W.
2. On July 14, 2022, the Department received a complaint alleging improper dewatering practices at the site resulting in a discharge to a tributary of Mill Creek. Following the receipt of this complaint, Department staff went to the site to investigate. Once on site, the Department observed BJ Miller (a contractor hired by Watts to do excavating and grading on the site) pumping water out of the storm water basin located in the center of the site and into a storm drain located next to the basin. The storm drain discharges to the north into a tributary of Mill Creek, which flows directly to Lake McBride. The Department observed brown discolored water flowing out of the storm drain outfall and into a tributary of Mill Creek. Mr. Miller stated that the pump had been running for approximately 15 to 20 minutes and agreed to turn the pump off. While on site the Department discussed proper dewatering techniques with Mr. Miller.
3. On June 27, 2022, a Notice of Violation (NOV) was sent to the Watts 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**

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

Watts Group Development, Inc.

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. 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.

6. 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 Watts consents to do, the following:

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1. Comply with all conditions of the Watts' NPDES permits; and
2. Pay an administrative penalty of \$3,000.00 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 utilizing proper dewatering techniques on site. This avoided several thousand dollars in 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 Watts' 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.

c. **Culpability.** Watts 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**

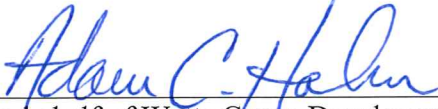
**IOWA DEPARTMENT OF NATURAL RESOURCES  
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Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent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

**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 Watts Group Development, Inc.

Dated this 25 day of

October, 2022

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Watts Group 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.