

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

IN THE MATTER OF:

**N-T Lands, L.L.C.
Mills County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER**

NO. ~~2022-WW~~ 2023-WW-03

TO Craig Nakamoto
N-T Lands, L.L.C.
23226 Center St.,
Glenwood, IA 51534

Matthew G. Woods, Registered Agent
N-T Lands, L.L.C.
10 N Walnut
Glenwood, IA 51534

I. SUMMARY

This administrative consent order (order) is entered into between N-T Lands, L.L.C. (N-T Lands) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of N-T Land's storm water National Pollutant Discharge Elimination System (NPDES) permit at its Lake Ohana Subdivision Phase 1C construction site and an illegal discharge to a water of the state without an NPDES permit at the Lake Ohana Subdivision (collectively referred to as sites). N-T Land agrees to pay an administrative penalty of \$8,000.00. 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:

Alison Manz
IDNR Field Office No. 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
712/243-1934

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

Lake Ohana Subdivision Phase 1C

1. On April 22, 2022, N-T Land was issued a notice of coverage under NPDES General Permit No. 2 No. 40903-40530 for storm water discharge associated with construction activity at the location of the Lake Ohana Subdivision Phase 1C construction site (Phase 1C). Phase 1C is located at Section 14, Township 73 Range 43W. Storm water from this property flows to Lake Ohana.
2. On May 25, 2022, the Department received a complaint alleging dirt was piled in multiple driveways in the Lake Ohana subdivision because of construction of a nearby street.
3. Following receipt of the above complaint the Department went to the location of Phase 1 C to investigate. Once on site the Department observed and/or documented the following:
 - (1) Grading and construction were incomplete and neither temporary nor effective final stabilization practices had been implemented;
 - (2) Off site sedimentation was observed along Chicory Street as well as the property on the southwest corner of the site; and
 - (3) Sediment was observed flowing from the site, into the storm water drains and into Lake Ohana.
4. On May 27, 2022, the Department called John Jorgensen of HGM Associates who is the contact listed in the NPDES permit for the site. During this call, the Department discussed the inspection. Following this call, the Department sent Mr. Jorgensen an e-mail that summarized the conversation and included photos from the inspection.
5. On June 3, 2022, Mr. Jorgensen sent the Department an e-mail stating that the silt had been cleaned off Chicory Street and that additional silt fences and an earthen berm had been installed to address the silt runoff on the south end of the project.
6. On June 23, 2022, a Notice of Violation (NOV) was sent to N-T Land for the above discussed violations. Included with this NOV was a summary of the investigation, recommended corrective action, and a summary of the law.
7. On June 27, 2022, Craig Nakamoto the owner of N-T Lands e-mailed the Department and stated that he had notified his road contractor and provided them a copy of the NOV. Further, it also appears that silt ran on to the road from a few homes which do not have established vegetation.

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Mr. Nakamoto stated that those homes had been contacted and asked to install soil retention barriers until vegetation was established.

8. On July 4, 2022, Mr. Nakamoto sent an e-mail to the Department stating that silt was draining from the north side of the site; however, the contractor doing the paving work had been contacted. Mr. Nakamoto detailed numerous sediment and erosion control measures that would eventually be taken on site. He stated that once the concrete is cured and storm sewer inlets are installed, which would be done later that week, silt socks will be placed in the storm sewer drain inlets until the entire paving and construction is completed. Further, a street washer will be brought in to clean Chicory Street and the paving company will bring in their vacuum truck to blow out the existing storm sewer and then vacuum up the silt out of the drain outlet. They will also bring an excavator to remove as much of the built-up silt they can reach in the storm outlet. Erosion control rip-rap will be installed in the ditches and stilt fences will be installed on the new lots that are at risk for erosion.

9. On October 12, 2022, the Department returned to the site and observed and/or documented the following:

- (1) Off site sedimentation;
- (2) Sediment on Chicory Street and on Cattail Bend;
- (2) Numerous sediment and erosion controls were in need of repair and maintenance; and
- (3) Sediment was observed flowing from the site, into a ravine, through a storm sewer and into Lake Ohana.

10. On October 27, 2022, a NOV was sent to N-T Lands for the above discussed violations. Included with this NOV was a summary of the violations, recommended corrective action, and a summary of the law.

Lake Ohana Subdivision

11. On October 1, 2004, N-T Lands 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 Lake Ohana Subdivision construction site (Lake Ohana Subdivision). Lake Ohana Subdivision is located at Section 14, Township 73N Range 43W. This permit expired on October 1, 2017, and was not renewed.

12. On May 10, 2022, the Department received a complaint alleging contractors working in the area were dumping loads of debris, concrete, and railroad ties near the dam area and this created a washout area.

13. On May 26, 2022, the Department went to the Lake Ohana subdivision to investigate. Once on site, the Department documented and/or observed the following:

- (1) A significant portion of the site had been developed or seeded; however, all of soil along the north of the property had not been properly stabilized with vegetation. Trenching through this area was observed as well as off-site migration of sediment; and
- (2) Sediment was observed flowing off the property and discharging into Lake Ohana.

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14. On June 23, 2022, a NOV was sent for the above referenced violations. Included with this NOV was a summary of the violations, the law and recommended corrective actions.

15. On July 4, 2022, Mr. Nakamoto sent the Department a response to the above referenced NOV. Mr. Nakamoto stated that the debris had been hauled away and provided pictures to show that the area that had been eroding into the lake had been graded and filled in. Further, he stated that sit fencing and gravel will be installed to stabilize the area around the boat ramp.

16. On July 19, 2022, Mr. Nakamoto sent the Department explaining that further remediation to stabilize the site had been taken and the debris, garbage and railroad ties had been hauled away. A copy of the invoice for this work was provided to the Department on July 30, 2022.

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.

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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 N-T Lands consents to do, the following:

1. Comply with all conditions of N-T Land’s NPDES permits which includes the Storm Water Pollution Prevention Plan;
2. Cease all illegal discharges to waters of the state;
3. No later than ~~March 15, 2023~~ ^{April 15, 2023}, remove sediment that has accumulated in the storm water collection system and at the location that the storm water collection system discharges into Lake Ohana; and
4. Pay an administrative penalty of \$8,000.00 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 installing and maintaining adequate storm water erosion and sediment control measures throughout the construction site. This avoided several thousand dollars

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in materials and labor expenses. Thus, it is reasonable to estimate that \$4,000.00 was saved. Therefore, \$4,000.00 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 N-T Land'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.

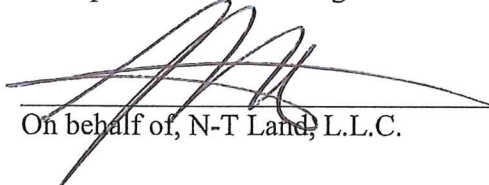
c. **Culpability.** N-T Land is engaged in the business of development and construction. This is a highly regulated activity and, therefore, N-T Land has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$2,000.00 is assessed for this 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 N-T Land. By signature to this order, all rights to appeal this order are waived by N-T Land.

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, N-T Land, L.L.C.

Dated this 30 day of
December, 2022

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

N-T Land, L.L.C. (Copy of Order to Courtney Cswercko), FO 4, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.