

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

IN THE MATTER OF:  <b>RANDY LESS</b>	ADMINISTRATIVE CONSENT ORDER  NO. 2023-FP-01
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To: Randy Less  
2434 197<sup>th</sup> Ave.  
Manchester, IA 52057

Re: Non-compliance with Iowa flood plain regulations.

**I. SUMMARY**

This administrative consent order (Order) is issued to Mr. Randy Less to address certain on-going violations of state law restricting construction activities in regulated flood plain.

As detailed below, Mr. Less must discontinue unexempted, unpermitted/unreviewed construction work in the floodplain; pay an administrative penalty of \$2,500.00; perform either of: (1) submit a floodplain permit application within 15 days of this order, or (2) restore the area to its original condition, and; comply with all Iowa floodway and floodplain regulations in the future. Any further construction in the floodplain without DNR authorization will result in referral of this matter to the Iowa Attorney General.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Jeffery Schwierjohann, Env. Specialist  
Iowa Department of Natural Resources  
Field Office No. 1  
1101 Commercial Ct., Ste. 10  
Manchester, IA 52057  
Phone: 563-927-2640

**Relating to legal requirements:**

Bradley Adams, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, IA 50319  
Phone: 515-664-8894

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code § 455B.279, which authorizes the Director to issue any order necessary to secure compliance with or prevent violation of 455B, Division III, Part IV (Water Allocation and Use; Floodplain Control), and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

The following facts are relevant to this matter.

1. Mr. Less owns property located at 2434 197th Avenue, Manchester, Iowa.
2. On April 5, 2023, DNR Field Office (FO) 1 received a complaint alleging that Mr. Less was clearing trees, adding concrete blocks along the Maquoketa River, and that Mr. Less desired to add a new well to the site.
3. On April 6, 2023, it was discovered Mr. Less had submitted a permit application to develop an event center on the site in 2021. The last correspondence with Mr. Less regarding that permit was in January 2022. Mr. Less failed to submit additional information requested by DNR and the permit process ceased at that point.
4. On April 12-13, 2023, FO 1 staff confirmed that new development was taking place on the site.
5. On April 18, 2023, FO 1 staff performed a site investigation with Mr. Less present and informed Mr. Less that he could not continue to develop in the floodplain without a permit from Iowa DNR and the Army Corps of Engineers (USACE). Mr. Less said his contractor had “taken care of all that,” but could not produce any permits or permit numbers.
6. On the same day, FO 1 staff followed up with Mr. Less via email and provided the phone number for Iowa DNR’s Floodplain section in Des Moines. FO 1 staff noted in the email that he should not conduct any more work in the floodplain until the state permit issue was resolved and requested that he send a copy of his USACE permit, or at least the permit number.
7. On the same day, Mr. Less contacted FO 1 about the above-mentioned email informing him that no additional work could be done. FO 1 staff again referred him to Floodplain Section to check on the permit status. Mr. Less stated that he would not cease development of the site.

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8. On the same day, Mr. Less spoke with the DNR floodplain section and was told he could not continue to develop the site.

9. On April 19, 2023, Ms. Asia Azam (Environmental Engineer Senior, Flood Plain and Dam Safety Section) sent a follow-up email to Mr. Less laying out specific details for the application process and informed him that he “needs to submit an application to this department and the US Army Corps of Engineers for approval before you further proceed with the project.”

10. On April 21, 2023, Mr. Less was issued a Notice of Violation for unauthorized floodplain development.

11. On May 3, 2023, FO 1 received a complaint alleging that Mr. Less was continuing to conduct grading and tree removal activities in the floodplain, and that he had also established a large burn pile with prohibited materials such as asphalt shingles and vinyl siding.

12. On May 4 and 5, 2023, DNR confirmed that work was continuing at the site.

13. On May 8, 2023, another NOV was issued to Mr. Less. Observations made from the road by FO 1 staff verified many of the complainant’s observations.

**IV. CONCLUSION OF LAW**

1. Iowa Code §§ 455B.263-455B.264 authorize the Environmental Protection Commission to adopt rules regulating floodplain development and gives the Department jurisdiction over floodplain development. 567 IAC 71.12(1) establishes that the construction, operation, and maintenance of miscellaneous structures, obstructions, or deposits in rural areas must be approved by the DNR when such works obstruct more than 3 percent of the cross-sectional area of the stream channel at bankfull stage or where such works obstruct more than 15 percent of the total cross-sectional area of the floodplain at any stage. The facts above establish a violation of this regulatory requirement.

**V. ORDER**

**THEREFORE**, the DNR orders the following:

1. Mr. Less shall immediately cease and desist from unexempted, unpermitted, and/or unreviewed construction work in the floodplain.

2. Mr. Less must pay an administrative penalty of \$2,500.00 within 60 days of the date this Order being signed by the Director.

3. Mr. Less must either: (1) submit a floodplain permit application within 15 days of this order, or (2) restore the area to its original condition within 30 days after signing this order.

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4. Mr. Less must comply with all Iowa floodway and floodplain regulations in the future, including obtaining Iowa DNR approval prior to any future construction in the regulated flood plain.

**VI. PENALTY**

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.279(2) provides for civil penalties of up to \$500.00 per day for flood plain permit violations. Iowa Code § 455B.191 provides for civil penalties of up to \$5,000.00 per day for water quality violations.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator.

- i. Economic Benefit. 567 IAC chapter 10 requires that the DNR 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.”

Economic savings in this case derive from avoided costs of surveying, and time and effort needed for completing a permit application. \$500.00 is assessed for this factor

- ii. Gravity. Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety, and whether the violation threatens the integrity of the regulatory program.

The DNR has jurisdiction over all floodplains and floodways in the state and any person who desires to construct or maintain a structure, dam, obstruction, deposit or excavation, or allow the same in any flood plain or floodway must contact the DNR to determine whether approval is required. In this matter, approval was required and the structure violated Iowa regulations.

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Floodplain work must be reviewed to ensure flooding is not exacerbated on this and other properties and is crucial to the floodplain program. It prevents expensive flood damage. \$750.00 is assessed for this factor.

- i. Culpability. The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

Mr. Less knew his work would be conducted in a floodplain and that a permit was required as evidenced by his application in 2021 for the event center. Mr. Less conducted the work anyway, knowing he was violating the Iowa Administrative Code. \$750.00 is assessed for this factor.

- iv. Mitigating or Aggravating Factors. 567 IAC 10 instructs the department to consider other relevant factors which arise from the circumstances of each case.

Prior to the Notice of Violation being sent out, Mr. Less was directed to stop development in the floodplain until permits were in place. These directions were given by Mr. Schwierjohann of Field Office 1 in a face to face discussion, via email and by phone. These directions were also given to Mr. Less by Ms. Asia Azam via phone call and email. Mr. Less's response to these directions were that he would keep working regardless of having a permit. \$500.00 is assessed for this factor.

## **VII. APPEAL RIGHTS**

As this Order is entered by consent of the parties, there is no right of appeal.


## **VIII. NONCOMPLIANCE WITH THIS ORDER**

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order. Nothing in this Order restricts the DNR from future actions related to other existing structures or construction on Mr. Less's property which are or may be in the regulated flood plain.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

  
[Randy Less \(Jul 18, 2023 12:21 CDT\)](#)

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Randy Less

07/18/2023

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Date

CC: DNR Field Office 1; Bradley Adams