

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

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| <b>IN THE MATTER OF:</b><br><br><b>Interstated Land Properties, LLC<br/>Story County, IA</b> | <b>ADMINISTRATIVE<br/>CONSENT ORDER<br/>NO. 2023-WW- 14</b> |
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**TO** Don Van Houweling, Owner  
14427 Wilden Dr.  
Urbandale, IA  
50323

James Bergkamp, Jr. Registered Agent  
218 S 9<sup>th</sup> St PO Box 8  
Adel, IA  
50003

**I. SUMMARY**

This administrative consent order (order) is entered into by the Interstate Land Properties, LLC (Interstate Land) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Interstate Land's stormwater National Pollutant Discharge Elimination System (NPDES) permit at its Blue Sky Estates Plat 1 Construction Site. Interstate Land agrees to pay an administrative penalty of \$6,500.00. 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:**

Emma Huston  
IDNR Field Office No.5  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> St  
Des Moines, Iowa 50319

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup>  
Des Moines, Iowa 50319-515-901-5642  
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 July 8, 2020, the Interstate Land was issued a notice of coverage under NPDES General Permit No. 2 No. 37783-37426 for storm water discharge associated with construction activity at the location of the Blue Sky Estates Plat 1 Construction Site (site). This site is located at Section 30, Township 82 Range 23W, Story County, Iowa. Storm water from this property flows into two unnamed tributaries to Ballard Creek. These unnamed tributaries flow along the north and east side of the site.

2. On March 3, 2023, the Department conducted a routine NPDES inspection of the site. Once on site the Department observed and/or documented the following:

(1) The site entrance/exit off 560<sup>th</sup> Ave was not stabilized with an adequate amount of gravel and a second entrance was not present as identified on the Storm Water Pollution Prevention Plan (SWPPP);

(2) No construction activities were taking place; however, the site had not been stabilized;

(3) Sheet, rill, and gully erosion was observed throughout the site. For instance, an area with a steep slope off 560<sup>th</sup> Ave in the north west corner of the site had significant erosion;

(4) A flow path of sediment down the slope toward the portion of the unnamed tributary that runs along the west side of the site was observed;

(5) Sediment entering the unnamed tributary was present in the culverts that drain the north west corner of the site;

(6) East of the site's north stockpile a section of silt fence was in poor condition and sediment had almost overtopped it;

(7) No internal sediment and erosion controls were present on site;

(8) A flow path of sediment into a concrete stormwater intake (intake) near the center of the site was observed and no sediment and erosion controls were installed around the intake structure;

(9) Upstream of the concrete box culvert rip rap had been installed along the stream bank for channel stabilization; however, it was observed that sediment had flown downslope and entered this portion of the stream from multiple areas;

(10) The storm water outlet discharging to the stream was full of sediment;

(11) On the north east end of the site there was a break in the perimeter silt fence and a sediment flow path to the unnamed tributary was observed. However, rip rap had been installed to reduce the sediment entering the unnamed tributary; and

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(12) On the east side of the site there was a stockpile of soil that had not been stabilized and a flow path from the stockpile to the unnamed tributary flowing along the east side of the site was visible.

Following the onsite inspection, the Department reviewed the weekly inspections from February 9, 2023, through March 2, 2023. During this time there were four inspections. All four inspection reports were nearly identical and the only corrective action recommended was “stabilization of the bare soil and slopes.” These inspections did not document the deficiencies on the site. Specifically, the inspections failed to identify that sediment had been discharged and the lack of sediment and erosion controls.

3. On March 8, 2023, a Notice of Violation (NOV) was sent to Interstate Land for the above-discussed violations. Included with this NOV was a copy of the investigation report, recommended corrective action, 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.

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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. 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.

6. 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.

7. 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 Interstate Land consents to do, the following:

1. Comply with all conditions of Interstate Land’s NPDES permit, which includes the SWPPP;
2. Cease all illegal discharges to waters of the state; and
3. Pay an administrative penalty of \$6,500.00 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

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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 Interstate 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 \$3,000.00 is assessed for this factor.

c. **Culpability**. Interstate Land 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. Further, multiple weekly inspections noted the need for stabilization. However, the site was not stabilized. Therefore, the amount of \$1,500.00 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 City. By signing this order, all rights to appeal this order are waived by the City.

**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, Interstate Land Properties, LLC

Dated this 4<sup>TH</sup> day of  
AUGUST, 2023

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Interstate Land Properties, LLC. (Copy of Order to Courtney Cswercko), FO 5, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.