
IN THE MATTER OF:

Home Depot U.S.A., Inc.

Polk County, Iowa

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2023-WW- 16

TO: Edward P. Decker, President
2455 Paces Ferry Rd.,
Atlanta, GA 30339

Michelle A O'Brien, Manager-Regulatory Compliance
2455 Paces Ferry Rd., C-19
Atlanta, GA 30339

Corporation Services Company
505 5th Ave Ste 729
Des Moines, IA 50309

I. SUMMARY

This administrative consent order (Order) is entered into between Home Depot U.S.A., Inc. (Home Depot) and the Iowa Department of Natural Resources (Department) for the purpose of addressing an illegal discharge of a pollutant to a water of the state.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jeff Theobald, Environmental Specialist
DNR Field Office #5
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-577-9296

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-444-8165

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Home Depot U.S.A., Inc.

II. JURISDICTION

This Order is issued pursuant to the provisions of 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 1 (wastewater) and the rules adopted or permits issued pursuant to that part; 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

Home Depot neither admits nor denies following statement of facts:

1. The Home Depot location that is subject to this order is located at Section 5, T79N, R25W in Polk County, Iowa. This location is locally known as 1700 36th St West Des Moines, IA (Home Depot refers to this store as No. 2103). HD Development of Maryland, Inc. is the deed holder of this property; however, at this location Home Depot operates a retail store. Storm water from this property flows to the City of West Des Moines' storm drains, which flow from this location to a drainage ditch located on 100th Street in West Des Moines, IA (site 1). This drainage ditch flows north east and into Walnut Creek. Walnut Creek is a tributary to the Racoon river.

2. On October 26, 2021, the Department received a report from John Mahoney, of the City of West Des Moines Public Works and Engineering Department (City), stating that at approximately 8:30 am City staff were informed that a red substance was flowing through the drainage ditch on 100th St in West Des Moines. Mr. Mahoney indicated that the red substance had been traced by the City through the storm drainage system to a storm drain intake located on the property of the Home Depot. At approximately 10:00 am City staff spoke to Home Depot staff who stated that red paint dye had been dumped into a floor drain in the garden center. Following this discovery, the City and Home Depot placed bags of mulch along the flow route to slow the discharge of the red dye and contain as much as possible. Five bags of mulch were placed in the manhole east of the Home Depot garden center drain that had dye in it. Two bags of mulch were placed at the outlet from a detention pond located on the north east corner Home Depot's property. One bag of mulch was placed inside the manhole located on the south east corner of 36th St and University Ave, and on the east side of NW 100th St three bags of mulch were placed above the point that the pipe discharges into the drainage. Following this, Home Depot stated that they had a response team in route and it would arrive in approximately one hour.

Upon receipt of the report from the City, the Department went to the site to investigate. The Department began its investigation at the location of site 1. At this location the Department observed a red substance in the water flowing from site 1 to a drainage ditch located along NW 98th St in Clive, IA (site 2). At the location of site 2 multiple rock dams had been installed by the City (for an unrelated project) to slow the flow of water in the drainage ditch. At this location, the Department observed a red substance in the water in

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Home Depot U.S.A., Inc.

several of the rock dams that were located east of NW 98th Street. Next, the Department proceeded to the location of Home Depot (site 3). Once at this location the Department observed red colorant flowing over the parking lot and into a storm drain which flows north to the location of site 1.

At approximately 3:30 Mark Stanley of Home Depot, stated that an environmental clean up company would arrive soon to clean up the site. As of approximately 3:30 pm the environmental company hired by Home Depot had not yet arrived. Therefore, the Cities of West Des Moines and Clive (Cities) began cleaning up the red substance. To do this, the Cities flushed the storm drain by a process called jetting and hired Accujet, LLC to remove the contaminated water from the storm drain that flows to the drainage ditch between the location of site 1 and site 2. This was done until the capacity was reached in the vacuum trucks. Home Depot also used a vacuum truck and removed contaminated water from the pooled areas between site 2 and 3. Next, at approximately 10:00 pm booms were set up in the drainage ditch between site 1 and site 2. After this, further cleanup was ceased for the day.

3. On October 27, 2021, the Department returned to the location of site and walked to the location of site 2. While on site, the Department observed that between the location of these sites the colorant's solids had settled out of the water and lined the bottom of the drainage ditch. While the Department was on site heavy rains began and the red colorant was washed out of the drainage ditch. The Department instructed Home Depot to install more booms and reinstall the ones placed the day before. Home Depot was also told to clean up the culvert at 100th St and the rocks in the drainage ditch east of NW 98th St.

4. On October 28, 2021, Home Depot, Kevin Havlicek of Arcadis (consultant hired by Home Depot) and the City met to discuss further clean-up. Home Depot agreed to do the following:

- a. Immediately maintain the booms and keep them in place for approximately one week;
- b. Conduct additional clean-up in the following 4 culverts: the small culverts located in NW corner of Home Depot's property in the storm drain retention area, the culvert on 100th St. and the culvert on NW 98th St.; and
- c. Areas that had residual colorant will be power washed under the direction and oversight by Mr. Havlicek and a vacuum truck will be used to capture liquids during this clean-up.

5. On November 5, 2021, a Notice of Violation (NOV) was sent for the above-discussed violations. Included with this NOV was a copy of the inspection report, a summary of the law, and the recommended corrective actions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Home Depot U.S.A., Inc.

IV. CONCLUSIONS OF LAW

Home Depot neither admits nor denies the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate noncompliance with this provision of law.
2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. 567 IAC 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts demonstrate noncompliance with these provisions.
3. 567 IAC 61.3(2)“c” states:

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]

The above stated facts demonstrate noncompliance with this provisions of law.

4. 567 IAC 62.1 (1) states “[t]he discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit.”

The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

By the execution of this Order, the Department orders and Home Depot agrees to do the following:

1. Within 30 days of the date the Director signs this Order Home Depot shall conduct stormwater training of management and associates that work in the Paint Department and Garden Center at Store No. 2103. This training shall include the following:
 - a Potential Sources of pollution and pollutants;
 - b Material management practices to reduce release risks for pollutants;
 - c Good housekeeping measures for operation at the store; and
 - d Spill response actions and procedures should a release occur.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Home Depot U.S.A., Inc.

2. By September 16, 2023, Home Depot shall submit documentation to the Department that shows the above training has been completed; and
3. Pay a penalty in the amount of \$5,500.00 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 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 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 by Home Depot by avoiding the cost of properly disposing of the red dye and through failure to train its staff how to properly dispose of the product. Therefore, \$500.00 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. An illegal discharge to a water of the State degrades water quality. Degradation of Iowa’s waterways is a serious problem. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Further, such noncompliance water quality program. Therefore, the amount of \$3,000.00 is assessed for this factor.

c. Culpability. Home Depot operates a sophisticated nation-wide business. This is a highly-regulated activity. Home Depot 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Home Depot U.S.A., Inc.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Home Depot. For that reason, it waives its right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Mike Maddocks

On behalf of Home Depot U.S.A., Inc.

Dated this 31st day of

August, 2023

Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

NPDES #9926001; Field Office #2; Carrie Schoenebaum; EPA; Water Quality Bureau; I.B.2.c.C.1