

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

**IN THE MATTER OF:**

**FG80 Holdings, LLC  
Scott County, IA  
NPDES permit No. 40218-39837**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2023-WW-20**

**TO** Kevin Koellner  
FG80 Holdings, LLC  
1805 State St. Ste 101  
Bettendorf, IA

L & W Agents, Inc.  
220 N Main St Ste 600  
Davenport, IA 52801

**I. SUMMARY**

This administrative consent order (order) is entered into by the FG80 Holdings, LLC (FG80) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of FG80's stormwater National Pollutant Discharge Elimination System (NPDES) permit at its Forest Grove Development Project construction site. FG80 agrees to pay an administrative penalty of \$6,000.00. 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  
Iowa Department of Natural Resources  
1023 W. Madison St  
Washington, Iowa 52353

**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 October 13, 2021, FG80 was issued a notice of coverage under NPDES General Permit No. 2 No. 40218-39837 for storm water discharge associated with construction activity at the location of the Forest Grove Development Project Construction NE of Middle Rd. and Forest Grove Dr. construction (site). This site is located at Section 2, Township 78 Range 4E, Scott County, IA. Storm water from this property flows into Spencer Creek.
  
2. On July 19, 2022, the Department conducted a routine NPDES permit inspection of the site. Once on site the Department observed and/or documented the following:
  - (1) On the west perimeter of the site rill erosion and sediment migration was observed. The perimeter silt fence had held but it was approximately 50% full of collected sediment;
  - (2) Sediment was observed to have flowed out of the sediment basin located on the west side of the site. However, this sediment was stopped by a natural vegetative buffer;
  - (3) Multiple low-lying areas on the north and east perimeter had sediment washout filling the silt fence. Earthen sediment traps had been installed but they did not provide adequate sediment control; and
  - (4) Silt fencing in low lying areas had been overwhelmed.
  
3. On July 26, 2022, a copy of the above referenced inspection report was sent to FG80. This inspection report contained recommended corrective actions.
  
4. On April 18, 2023, the Department and the City of Bettendorf conducted a routine NPDES inspection of the site. Once on site the Department observed and/or documented the following:
  - (1) Three permanent sediment basins were installed on site. Each basin had multiple areas with significant erosion impacting them. The sides of the basins had been seeded and matted; however, the matting had slid down slope and was out of place in multiple sections;
  - (2) Most of the site had been seeded but the seed did not germinate well and large sections of the site had little to no stabilization;
  - (3) Silt fence had been installed throughout the site but it needed to be cleaned, repaired, or replaced in many areas and there were areas where the silt fence was not extended as far as necessary to properly cover the site;
  - (4) On the northeast perimeter of the site there is a sharp slope that has multiple rows of silt fence. However, the silt fence was overwhelmed with sediment and a flow path of sediment was observed. The sediment flowed over rows of silt fence into a waterway on the neighboring

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agricultural land, into the drainage ditch along the southern edge of Interstate 80 and into Spencer Creek. Sediment was observed in the creek.

(5) On the eastern edge of the site where the Iron Tee complex is being constructed there is another steep slope leading to an agricultural waterway. Four rows of silt fence had been installed along this slope but all of the silt fence was damaged or overwhelmed with sediment. Another flow path of sediment was observed from this agricultural waterway leading into a tributary of Spencer Creek.

5. On May 2, 2023, a Notice of Violation (NOV) was sent to FG80 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.

6. On May 16, 2023, the Department went back to the site and met with contractor hired by FG80 to implement stormwater sediment and erosion controls. The Department observed significant improvement in the sediment and erosion controls.

**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.

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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 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 FG80 consents to do, the following:

1. Comply with all conditions of FG80' NPDES permit, which includes the Stormwater Pollution Prevention Plan;
2. Cease all illegal discharges to waters of the state; and
3. Pay an administrative penalty of \$6,000.00 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 \$6,000.00 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

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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 sediment control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$2,500.00 was saved. Therefore, \$2,500.00 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. 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 FG80 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 \$2,500.00 is assessed for this factor.

c. **Culpability**. FG80 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 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 FG80. By signing this order, all rights to appeal this order are waived by the FG80.

**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 FG80 Holdings, LLC

KEVIN P. KOELMA

Dated this 22 day of SEPTEMBER

\_\_\_\_\_, 2023

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

FG80 Holdings, LLC. Copy of Order to Courtney Cswercko), FO 6, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.