

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

IN THE MATTER OF: Crimson Development, Inc. Dallas County, IA NPDES permit No. 41193-40821	ADMINISTRATIVE CONSENT ORDER NO. 2023-WW- 21
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TO Mark Behr
PO Box 338
Adel, IA
50003

Brett Osborn Registered Agent
974 73rd St
West Des Moines, IA
50265

I. SUMMARY

This administrative consent order (order) is entered into by the Crimson Development, Inc. (Crimson Development) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Crimson Development's stormwater National Pollutant Discharge Elimination System (NPDES) permit at Livingston Estates construction site. Crimson Development agrees to pay an administrative penalty of \$7,000.00. 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:

Emma Huston
IDNR Field Office No.5
Iowa Department of Natural Resources
502 E 9th St
Des Moines, Iowa 52353
901-5642

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources

502 East 9th
Des Moines, Iowa 50319-515-901-5642515-
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

1. On June 1, 2022, Crimson Development, Inc. was issued a notice of coverage under NPDES General Permit No. 2 No. 41193-40821 for storm water discharge associated with construction activity at the location of the Livingston Estates Plat 1 Construction site (site). This site is located at Section 21, Township 79, Range 27W, Dallas County, IA. Storm water from this property flows into an unnamed tributary of Hickory Creek and an unnamed tributary of North Raccoon River.

2. On October 25, 2022, the Department conducted a routine NPDES permit inspection of the site. Once on site the Department observed and/or documented the following:

(1) Paving had begun on site however there no sediment and erosion controls had been installed and there was no stabilization of disturbed soils;

(2) The entrance to the site had not been stabilized with rock and sediment had been traced out to Prospect Avenue;

(3) A significant amount of concrete washout material had spilled onto the soil near the entrance of the site. There were multiple concrete washout bins near the southeast corner of the site and at least two were almost overflowing; and

(4) At the discharge point of an outlet pipe near the center of the site there was deep rill erosion in a path toward an unnamed tributary to Hickory Creek; and

(5) The Storm Water Pollution Prevention Plan along with the weekly inspection reports were not maintained onsite and were provided to the Department on November 11, 2022.

3. On November 4, 2022, a Notice of Violation (NOV) along with the above referenced inspection report was sent to Crimson Development. The NOV and inspection report summarized the relevant law and contained recommended corrective actions.

4. On May 23, 2023, the Department conducted an NPDES inspection of the site. Once on site the Department observed and/or documented the following:

(1) The site had not been stabilized, weeds were growing and there were areas of bare soil;

(2) Some lots had inadequate erosion and sediment controls and track out was observed;

(3) Along the south end of the site perimeter controls had not been installed despite the presence of an unnamed tributary to the North Raccoon River;

(4) Fill dirt deliveries had been made on Lot 4; however, the piles of dirt had not been stabilized;

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- (5) Filter socks needed placed on lot 4 needed maintenance;
- (6) Piping had been installed on Lot 2 to dewater the foundation and this discharge went directly into the unnamed tributary of North Racoon River;
- (7) Deep gully erosion along the ditches on patriot Drive were observed and the sediment and erosion control that had been installed needed maintenance. For instance, a silt fences and straw wattles had been overtopped and undercut;
- (8) Rip rap had been installed as a sediment control however, it was full of sediment; and
- (9) Along the east and west sides of Livingston Lane sediment had been discharged into an unnamed tributary to Hickory of Creek. Sediment was observed to have entered the stream where sediment controls had failed.

Following the onsite inspection, the Department reviewed the Storm Water Pollution Control Plan (SWPPP) and weekly inspection reports. Some deficiencies observed by the field office were documented in the weekly inspection reports. Further, the SWPPP was not signed neither signed by the owner nor the contractor.

5. On May 31, 2023, a Notice of Violation (NOV) along with the above referenced inspection report was sent to Crimson Development. The NOV and inspection report summarized the relevant law and contained recommended corrective actions.

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]

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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.

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 Crimson Development consents to do, the following:

1. Comply with all conditions of Crimson Development’s 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 \$7,000.00 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

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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 sediment control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$3,000.00 was saved. Therefore, \$3,000.00 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 Crimson Development’s NPDES permit 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.** Crimson Development 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. Crimson Development was notified in 2022 that the site had sediment and erosion controls deficiencies; however, the violations persisted. 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 of the Crimson Development. By signing this order, all rights to appeal this order are waived by the Crimson Development.

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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 Crimson Development, Inc.

Dated this 11th day of

Oct., 2023

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Crimson Development, Inc. Copy of Order to Courtney Cswercko), FO 5, Carrie Schoenebaum-Legal Services Bureau, U.S. E.P.A, I.C.7.b.