

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

<b>IN THE MATTER OF:</b>  <b>Ders Development, LLC d/b/a Ders Group Johnson County, IA</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2023-WW-29</b>
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**TO** Scott Andersen  
PO Box 5198  
Coralville, IA  
52241

Matthew J. Hektoen, Registered Agent  
115 3<sup>rd</sup> Street SE  
Cedar Rapids, IA  
52401

**I. SUMMARY**

This administrative consent order (order) is entered into by Ders Development, LLC d/b/a The Ders Group (collectively referred to as Ders) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Ders' stormwater National Pollutant Discharge Elimination System (NPDES) permit at its Park Place Mixed Use Development Construction Site (site). Ders agrees to pay an administrative penalty of \$4,000.00. 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 Sr  
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

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**  
Ders Development, LLC d/b/a Ders Group

**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 September 15, 2016, Ders was issued a notice of coverage under NPDES General Permit No. 2 No. 29582-29314 for storm water discharge associated with construction activity at the location of the Park Place Mixed Use Development Construction Site (site). This site is located at Section 22, Township 80 Range 7W, Johnson County, IA. Storm water from this property flows south towards the Spencer Creek watershed and completed portions of the site have been connected to the City of Tiffin's storm water collection system.

2. On July 24, 2023, the Department conducted a routine NPDES inspection of the site. This inspection was focused on two portions of the site: Park Place Phase two and Park Place City Phase two Pin-Seekers. Once on site the Department observed and/or documented the following:

*Location: Park Place Phase Two*

- (1) Silt fencing was installed along the east perimeter of the site; however, portions of the fence had not been dug into the ground properly to stop sediment from flowing through and gaps were observed;
- (2) Storm water filter socks, used to protect the inlet of the storm water intake, were out of place, had been damaged and/or needed repair and maintenance;
- (3) Sediment had migrated off the site and onto Rock Ridge Road and Rock Ridge Court;
- (4) The undeveloped area surrounding Rock Ridge Road and Rock Ridge Court had not been stabilized despite the cessation of ground disturbing activities for at least 14 days;
- (5) No to minimal sediment and erosion controls had been installed on the lots located on Green Oak Pass and the cul-de-sacs connected to it. For instance, a downslope in a backyard did not have a silt fence, a large stockpile of sediment had no sediment or erosion controls, the storm drains had no inlet protection and areas that had no ground disturbing activities had not been stabilized;
- (6) Rill erosion was observed flowing south from Rock Ridge Court towards Oakdale Boulevard; and
- (7) Near the intersection of Oakdale Boulevard and Rock Ridge Road a storm water intake with a beehive style cover was observed. Silt fence had been installed under the beehive cover; however, it was compromising the proper function of the cover. Storm water filter socks also surrounded this storm drain but they were overwhelmed with silt; and
- (8) The Storm Water Pollution prevention plan did not reflect the placement of the silt fencing.

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**  
Ders Development, LLC d/b/a Ders Group

*Location: Park Place City Center Phase two Pin-Seekers*

- (1) Storm water inlets throughout the parking lot had various levels of protection. Some had no protection, while others had protection but needed maintenance;
- (2) The banks of a sediment basin located west of lot 39 had rill erosion and needed to be stabilized; and
- (3) Evidence of a discharge of sediment laden stormwater was observed to have flowed south from the end of the Pin-Seekers facility into the adjacent field.

Following the on-site inspection, the Department requested copies of the weekly storm water site inspections required by the NPDES permit. One inspection was submitted to the Department and the Department was informed that only the active portions of the site were being inspected.

3. On July 31, 2023, a Notice of Violation (NOV) was sent to Ders 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 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.

2. 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.

3. 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.

4. 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.

**V. ORDER**

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**  
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THEREFORE, the Department orders, and Ders consents to do, the following:

1. Comply with all conditions of Ders' NPDES permit;
2. Cease all illegal discharges to waters of the state; and
3. Pay an administrative penalty of \$4,000.00 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 \$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 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. The erosion and sediment controls contained in Ders' 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 \$1,000.00 is assessed for this factor.

c. **Culpability.** Ders 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.


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**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 Ders. By signing this order, all rights to appeal this order are waived by Ders.

**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, Ders Development, LLC

Dated this 12<sup>th</sup> day of

December, 2023

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

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