

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

IN THE MATTER OF:

**City of Indianola
Warren County, IA**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2023-WW-32**

TO Stephanie Erickson, Honorable Mayor
110 North 1st Street
Indianola, IA
50125

Charlie Dissell, Director of
Community & Economic
Development
110 North 1st Street
Indianola, IA
50125

I. SUMMARY

This administrative consent order (order) is entered into by the City of Indianola (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of the City's stormwater National Pollutant Discharge Elimination System (NPDES) permit at its Industrial Park Plat 3 Construction site (site). The City 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:

Dennis Thielen
IDNR Field Office No.5
Iowa Department of Natural Resources
502 East 9th
Des Moines Iowa 50319

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources

502 East 9th
Des Moines, Iowa 50319-515-901-5642
Phone: 515-444-8165

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street

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Des Moines, Iowa 50319-0034

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 15, 2023, the City was issued a notice of coverage under NPDES General Permit No. 2 No. 42219-41845 for storm water discharge associated with construction activity at the location of the Industrial Park Plat 3 Construction site (site). This site is located at Section 20, Township 76 Range 23W, Warren County, IA. Storm water from this property flows into either an adjacent field or Plug Run.

2. On July 19, 2023, the Department conducted a routine NPDES inspection of the site. Once on site the Department observed and/or documented the following:

(1) Three entrances on the north side of the site had little or no rock to prevent off site tracking of sediment;

(2) Two large fuel tanks located by the south entrance to the site did not have secondary containment;

(3) The north side of the site had been graded so that stormwater flowed into a drainage ditch. Sediment logs were placed in the drainage ditch to slow the flow of stormwater, however, the sediment logs were overwhelmed with sediment and needed maintenance. Evidence of a past discharge of sediment laden storm water was observed;

(4) The drainage ditch has two culvert intakes that discharge water under Hillcrest Avenue and flow north to an unnamed tributary of Plug Run. Sediment logs had been installed in these culverts however the sediment logs were overwhelmed with sediment and needed maintenance. Sediment was observed off site on the north side of East Hillcrest Avenue;

(5) A culvert intake located on the southeast side of the site had no sediment or erosion controls. Further, the sediment and erosion controls for this culvert's outfall had failed and sediment was observed off-site;

(6) A stormwater retention basin on the northwest side of the site had been constructed and dewatering equipment was installed (i.e. pumps and hoses). However, no sediment and erosion controls were installed;

(7) The dewatering hose discharged into a box culvert under East Hillcrest Avenue which flows north into an unnamed tributary of Plug Run. Turbid discolored water was observed in the unnamed tributary to Plug Run;

(8) Two stockpiles of topsoil were on site and were not stabilized;

(9) The majority of the site appeared have been inactive for an extended period of time however it had not been stabilized; and

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(10) Rill and gully erosion were present in the areas that had not been stabilized.

Following the onsite inspection, the Department reviewed the Storm Water Pollution Prevention Plan (SWPPP) and weekly inspection logs. The SWPPP did not include controls or best management practices for the dewatering basin, it did not have information regarding how topsoil would be preserved and did not contain all contractor certifications. The weekly inspection logs noted that when dewatering activities occurred there needed to be sediment controls such as a filter bag at the end of the hose.

4. On July 27, 2023, a Notice of Violation (NOV) was sent to the City 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.

5. On September 26, 2023, the Department returned to the site for a follow-up inspection. The Department observed that the area had been seeded and grass was growing, perimeter sediment and erosion controls had also been repaired.

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.

V. ORDER

THEREFORE, the Department orders, and the City consents to do the following:

1. Comply with all conditions of the City’s NPDES permit; and
2. 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 \$1,000.00 was saved. Therefore, \$1,000.00 is assessed for this factor.

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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 City'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 \$2,500.00 is assessed for this factor.

c. **Culpability.** The City has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$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.


On behalf of, The City of Indianola

Dated this 18th day of

December, 2023

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES