

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

IN THE MATTER OF: JTB Investments, L.L.C. d/b/a Norwalk Ready-Mix Warren County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2023-WW-33
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TO Rod Bohlender
PO Box 309
Norwalk, IA
50211

Dennis L. Puckett Registered Agent
6601 Westown Parkway
West Des Moines, IA
50266

I. SUMMARY

This administrative consent order (order) is entered into by the JTB Investments, L.L.C. (JTB) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to an illegal discharge to a water of the state. JTB agrees to pay an administrative penalty of \$6,500.00. 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

II. JURISDICTION

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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. At the location of 100 Armstrong Drive, De Soto, Iowa, JTB operates a construction site titled Norwalk Ready-Mix De Soto (site). Storm water from this property flows into two unnamed tributaries to the South Raccoon River. These two tributaries merge on the north east corner of the site and discharge into the South Raccoon River approximately .9 miles northeast of the site.

2. On May 17, 2023, the Department received a complaint alleging that sediment laden storm water was flowing from the site into an unnamed tributary.

3. On May 18, 2023, the Department went to the site to investigate. Once on site, the Department observed that the unnamed tributary on the north end of the site had been excavated and straightened. A significant amount of sediment in the stream on the north end of the site was observed. Excavated sediment material had been pushed into the stream along the north east end of the site. And last, sediment laden stormwater was observed in an outlet structure discharging into the unnamed tributary on the north west corner of the site.

4. On May 24, 2023, a Notice of Violation (NOV) along with the above referenced inspection report was sent to JTB. Included with this NOV was the relevant inspection report, recommended corrective actions and a summary of the law.

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. 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.

V. ORDER

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

1. Cease all illegal discharges to waters of the state;
2. JTB shall obtain an NPDES stormwater general permit No. 2 for the above referenced construction site; and
3. Pay an administrative penalty of \$6,500.00 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 \$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 economic benefit should be made where clear data are not available.” An economic benefit was obtained by continuing to operate the construction site despite the discharge of sediment laden storm water to a water of the state. It’s reasonable to estimate that several thousand dollars were saved. Thus, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$1,000.00 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

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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. Such noncompliance thwarts the integrity of the water quality programs. Therefore, the amount of \$3,000.00 is assessed for this factor.

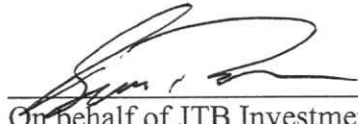
c. **Culpability.** JTB is engaged sells ready-mix concrete for all kinds of construction projects. This is a highly regulated activity and therefore it has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$2,500.00 is assessed for this 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 JTB. By signing this order, all rights to appeal this order are waived by the JTB.

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 JTB Investments, L.L.C.

Dated this 19 day of

DECEMBER, 2023

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

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