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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Corson Excavating, LLC Scott County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2024-WW-08
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TO Todd Corson
PO Box 472
Princeton, IA
52768

Todd Corson Registered Agent
325 Fillmore St
Princeton, IA
52768

I. SUMMARY

This administrative consent order (order) is entered into by Corson Excavating, LLC (Corson Excavating) 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. Corson Excavating agrees to pay an administrative penalty of \$1,500.00. 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:

Jacob Forgie
IDNR Field Office No.6
1023 W Madison St.
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
6200 Park Ave. Ste 200
Des Moines, Iowa 50321
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. At the location of 2468 184th St., Pleasant Valley, Iowa, Corson Excavating performed clearing, grading and dewatering activities.
2. On March 16, 2024, the Department received a complaint alleging that sediment laden water was flowing into Spencer Creek which is a tributary to the Mississippi River.
3. On March 18, 2024, the Department went to multiple construction sites in the Spencer Creek watershed to check for activity that would cause the discharge referenced in the above complaint. After going to multiple construction sites and not finding the source of the discharge, the Department observed clearing and grubbing activities at the above referenced site (site). Once on site, the Department spoke to Todd Corson and Ron Clein, of Corson Excavating. They stated that they had been hired to clear trees for the property owner with the goal of creating a pond and a park like area. Mr. Corson stated that on March 16, 2024, he utilized the excavator to lower the water level in the pond by an estimated 2 feet. He said that he spent approximately an hour and a half using the bucket to remove water from the pond and drop it on the east side of the berm. This dewatering practice resulted in sediment laden water leaving the property flowing east and entering a tributary of Spencer Creek where it continued to flow into Spencer Creek.
4. On March 20, 2024, a Notice of Violation (NOV) for the above referenced violations. Included with this NOV was a summary of the relevant 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]

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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.

V. ORDER

THEREFORE, the Department orders, and Corson Excavating consents to do, the following:

1. Cease all illegal discharges to waters of the state; and
2. Pay an administrative penalty of \$1,500.00 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 \$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 avoiding the use of proper dewatering equipment. It’s reasonable to estimate that several thousand dollars were saved. Thus, it is reasonable to estimate that \$500.00 was saved. Therefore, \$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. Such noncompliance thwarts the

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integrity of the water quality programs. Therefore, the amount of \$500.00 is assessed for this factor.

c. **Culpability.** Corson Excavating is engaged in the business of excavation. 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 \$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 Corson Excavating. By signing this order, all rights to appeal this order are waived by Corson Excavating.

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 Corson Excavating, LLC

Dated this 7th day of
June, 2024

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Corson Excavating, FO 6, Carrie Schoenebaum- Legal Services Bureau