

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

IN THE MATTER OF:

**The Crossing at Pleasant Hill, LLC
Polk County, Iowa
NPDES permit No. 42668-42289**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2024-WW- 13**

TO: Mike Pierson NPDES Contact and RA
The Crossing at Pleasant Hill
611 Monticello Drive
Burlington, IA 52601

I. SUMMARY

This administrative consent order (order) is entered into between The Crossing at Pleasant Hill, LLC (The Crossing) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of The Crossing's storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction site. The Crossing agrees to pay an administrative penalty of \$9,000.00. 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 Street
Des Moines, Iowa 50319-0034
319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
6200 Park Ave Ste 200
Des Moines, Iowa 50321-0034
Phone: 515-444-8165

Payment of penalty to:

Iowa Department of Natural Resources
6200 Park Ave Ste 200
Des Moines, Iowa 50321

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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 July 1, 2023, The Crossing was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the location of The Crossing at Pleasant Hill construction site (site) in Pleasant Hill, Iowa. This site is approximately 26 acres and is located at Section 3, Township 78, Range 23W. The majority of the storm water from this site flows through a culvert under East University Street and into an unnamed tributary of East Fourmile Creek. The rest flows storm water flows towards the North West corner of the site and 60th Street.
2. On January 2, 2024 the Department conducted a storm water NPDES permit inspection at the above referenced site. Once on site, the Department observed and/or documented the following:
 - (1) The entrance to the construction site had not been rocked and sediment from vehicles was observed in the street;
 - (2) The site had been graded and grading appeared complete. However, neither perimeter nor internal sediment and erosion controls had been installed on the site;
 - (3) Sediment logs had been placed on the west side of the site, along 60th Street. However, they had been damaged in multiple locations and needed to be replaced;
 - (4) Stormwater intakes along 60th Street and Martha Miller Drive did not have sediment controls and some were full of sediment;
 - (5) Sediment basins had been constructed on the north side of the site. The basins did not have standpipes installed or other technology to control the flow of stormwater; and
 - (6) Three stockpiles of sediment were observed on site but none had been stabilized. The entire site lacked temporary stabilization.

Following the inspection, the Department reviewed the Storm Water Pollution Prevention Plan (SWPPP) and the weekly inspection records for the prior four weeks (December 8 through 22, 2023). Inspections reports from December 8 through 15, 2023, indicated that the construction entrance had not been rocked. The December 22, 2023, weekly inspection stated that the construction site entrance should be rocked. The inspections did not identify the observations documented above by the Department. However, photos included with the inspection reports confirmed the Department's observations. Further, the site map included in the SWPPP indicated that a silt fence would be installed throughout the site as a perimeter control and ditch checks would also be installed. At the time of inspection, these sediment and erosion controls had not been installed.

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3. On January 10, 2024, a Notice of Violation (NOV) was sent to The Crossing for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective actions, and a summary of the law.
4. On February 15, 2024, the Department received an e-mail on behalf of The Crossing indicating that straw mulch would be applied to the site to stabilize it. This work was to begin February 16, 2024.
5. On May 22, 2024 and May 27, 2024, the Department returned to the site for a follow-up inspection. Once on site, the Department observed and/or documented the following:
 - (1) The site had been graded and grading appeared complete. However, neither perimeter nor internal sediment and erosion controls had been installed on the site;
 - (2) A flow path of sediment was observed flowing from the construction site through a culvert under East University and to an unnamed tributary of East Fourmile Creek;
 - (3) Sediment logs had been placed on the west side of the site along the curb of 60th Street; however, they had failed or been damaged in several locations and needed to be replaced;
 - (4) Sediment baskets had been installed on the stormwater intakes on 60th Street and Martha Miller Drive;
 - (5) A significant amount of sediment was deposited in the street at the intersection of NE 60th and East University Ave.;
 - (6) Three stockpiles of sediment were observed; however, only one had been stabilized;
 - (7) Sediment basins had been constructed on the north side of the site. The basins did not have standpipes installed or other technology to control the flow of stormwater; and
 - (8) The majority of the site lacked temporary stabilization.

Following the inspection, the Department reviewed the Storm Water Pollution Prevention Plan (SWPPP) and the weekly inspection records for the prior four weeks (April 26th through May 17, 2024). The inspections indicated that additional controls were needed on the north side along East University Ave, controls had not been installed on the north side along East University Avenue. The inspections did not identify the lack of temporary stabilization. Further, the site map included in the SWPPP indicated that silt fence would be installed throughout the site as a perimeter control and ditch checks would also be installed. At the time of inspection, these sediment and erosion controls had not been installed.

6. On May 31, 2024, a NOV was sent to The Crossing for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective actions, and a summary of the law.

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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.

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. NPDES 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.
7. NPDES Part III. C (3) of NPDES General Permit No. 2 requires that:

"stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days."

The above stated facts demonstrate noncompliance with this provision of law.

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9. 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 the The Crossing consents to do, the following:

1. Comply with all conditions of The Crossing’s NPDES permits; and
2. Pay an administrative penalty of \$9,000.00 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 10.30(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 10.30(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 The Crossing’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 \$3,000.00 is assessed for this factor.

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c. **Culpability.** The Crossing 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. Moreover, the Department informed The Crossing on multiple occasions the steps that needed to be taken to comply with its NPDES permit. Nevertheless, the necessary steps were not taken. Therefore, the amount of \$3,000.00 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 The Crossing. By signature to this order, all rights to appeal this order are waived by The Crossing.

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.

 - Mgr

On Behalf of The Crossing at Pleasant Hill, LLC

Dated this 23rd day of
September, 2024

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

The Crossing at Pleasant Hill, LLC(Copy of Order to Courtney Cswercko), FO 5, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.