

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: BUENA VISTA COUNTY NPDES Permit Discharge Authorization Number: IA - 19125 - 18901	ADMINISTRATIVE CONSENT ORDER 2011-WW- 09
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TO: Dave Patton
Buena Vista County Attorney
606 Geneseo Street
Storm Lake, Iowa 50588

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Buena Vista County (County) hereby agree to the following Administrative Consent Order (Order). The County agrees to properly install and maintain all required erosion control measures throughout the construction site, cease all discharges of sediment to neighboring properties and receiving water bodies, comply with all applicable conditions of NPDES General Permit No. 2, and pay an administrative penalty of \$10,000 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Roos
Iowa Department of Natural Resources
1900 N. Grand Ave. Gateway Mall North
Spencer, Iowa 51301
Ph: 712/262-4177

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

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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 authorizes the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The Department and the County hereby agree to the following statement of facts:

1. In the fall of 2010, the County submitted to the Department a Notice of Intent to be covered under National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 for a road construction project located at County Road C65 (630th St.), from Highway 110 to U.S. 71 and Highway 7 in Storm Lake, Buena Vista County (Project). Coverage was granted by the Department in a September 29, 2010 letter to the County.
2. The above cited Department letter noted that under General Permit No. 2, a storm water pollution prevention plan (SWPPP) should already have been developed, and that the SWPPP must be implemented at the start of construction activities and updated as conditions warrant. A SWPPP was created by the County, detailing the specific sediment and erosion control measures that the County was required to implement.
3. Storm water from the project area flows into the following: Outlet Creek (a tributary of the North Raccoon River), Boyer Creek (a tributary of the Boyer River), and Storm Lake. All qualify as "water of the state" under Iowa Code 455B.171(37).
4. On October 21, 2010, Department Field Office 3 received a complaint against the Project alleging that the required sediment and erosion control measures were not in place.
5. On November 1, 2010, Department Environmental Specialist Tom Roos investigated the complaint. Mr. Roos met with County Inspector Tim Cavanaugh to review the requirements of General Permit No. 2 and the Project's SWPPP. He stressed to Mr. Cavanaugh that all storm water control measures needed to be in place prior to the onset of winter.
6. On February 11, 2011, Department Field Office 3 received two separate complaints against the Project. The first alleged that the Project's borrow area, located adjacent to Outlet Creek, had no storm water control measures in place. The second alleged that the

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Project's sediment and erosion control measures appeared to be insufficient to prevent the movement of sediment offsite and onto private property.

7. On February 16, 2011, Mr. Roos conducted a complaint investigation and storm water inspection of the Project accompanied by County staff.

8. On February 24, 2011, the Department sent a Notice of Violation (NOV) letter to the County, detailing the findings of Mr. Roos' investigation, which included:

- a) The Project SWPPP had not been updated to reflect current site conditions.
- b) The SWPPP did not address the borrow area. No control measures were in place, leading to observed sediment discharge into Outlet Creek.
- c) The SWPPP specifies that ditch checks must be installed at 95 locations throughout the Project. None were installed at the time of Mr. Roos' inspection.
- d) The SWPPP requires that nine silt basins be constructed. None had been dug at the time of the inspection.
- e) Due to the County's failure to install the above control measures, silt fences running parallel to the road were overwhelmed, resulting in significant silt discharge onto the neighboring property and into Outlet Creek.
- f) Silt fences installed at outlet locations in Sections 21 and 22 were overwhelmed, resulting in sediment discharge off the Project into waterways draining to Storm Lake.
- g) A tile intake located near station 463 was not protected by any storm water control measures. This tile discharged sediment laden water directly to Outlet Creek.

9. Following receipt of the inspection report and NOV, the County installed silt fencing. Visits by Department Field Office 3 on April 11, 2011 and April 15, 2011 found these control measures to be ineffective, with the silt fences undermined and/or overtopped following the first significant rain event. Since the rain event, the County reports that the erosion control contractor was called to the site on May 9, 10, 11, and June 6. These efforts were also found to be inadequate.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code 455B 103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted

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federal regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 567 IAC 64.

2. Subrule 60.2 defines "Storm water" as "storm water runoff, snow melt runoff and surface runoff and drainage." It defines "Storm water discharge associated with industrial activity" to cover "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 specifically encompasses "construction activity including clearing, grading and excavation activities."

3. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for storm water point sources which require an NPDES permit under Section 402(p) of the Clean Water Act and 40 CFR 122.26. The NPDES General Permit No. 2 is such a permit.

4. General Permit No. 2, Part IV, requires the permittee to develop and implement a SWPPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. The SWPPP must include a description of all sediment and erosion control measures to be implemented. The permittee is required to implement these provisions as a condition of General Permit No. 2. The County has failed to implement many of the erosion and sediment control provisions required by its SWPPP in violation of Part IV of General Permit No. 2.

5. 567 IAC 64.3(1) provides that no one shall operate a wastewater disposal system "without, or contrary to any condition of, an operation permit issued by the director." General Permit No. 2 is "an operation permit issued by the director." The County's violation of the provisions of this permit is therefore a violation of Subrule 64.3(1).

6. Iowa Code 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging into any water of the state. The County has violated this provision by discharging sediment to the waters of the state listed in Statement of the Facts item 3.

7. 567 IAC 61.3(2) describes Iowa's "general water quality criteria" for all surface waters which requires that they "be free from materials attributable to wastewater discharges producing objectionable color, odor or other aesthetically objectionable conditions." The County's discharge of sediment to the above referenced waters violates this provision.

V. ORDER

THEREFORE, the Department hereby orders and the County agrees to the following:

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1. The County shall pay to the order of the Department an administrative penalty of \$10,000 within 30 days of receipt of this Order.
2. The County shall properly install and maintain all erosion control measures throughout the Project as required by its SWPPP and shall properly update the SWPPP as conditions warrant.
3. The County shall immediately cease all sediment discharge to neighboring properties and waters of the state.
4. The County shall immediately comply with all conditions of its NPDES General Permit No. 2.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

ECONOMIC BENEFIT: The County has failed to install and maintain required storm water control measures throughout the Project. The SWPPP required the following measures, shown with the estimated avoided costs based on the Iowa Department of Transportation's average bid cost sheet:

1. 3,095 feet of silt fencing @ \$1.69 per foot = \$5,230.55
2. 9 silt basins @ \$208.95 each = \$1,880.55
3. 54.6 acres of temporary seeding @ \$161.18 per acre = \$8,800.43

Total = \$15,911.53

GRAVITY: The County's failure to properly manage storm water from the Project has caused pollutants to enter waters of the state and resulted in the discharge of sediment onto neighboring properties. The discharge of sediment to waters of the state degrades water quality, harms aquatic life, and prevents the attainment of state water quality goals. Close adherence to the SWPPP is especially important at this Project given its close proximity to Outlet Creek and Storm Lake. Due to the significant impact of the County's actions, \$3,000 is assessed for this factor.

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CULPABILITY: The County was informed of the requirements of NPDES General Permit No. 2, and the need to stabilize the Project prior to the onset of winter, which it did not do. Given the proximity of the Project to a highly valued natural lake, the County has an increased obligation to be aware of and comply with all relevant permit requirements. As such, \$3,000 is assessed for this factor.

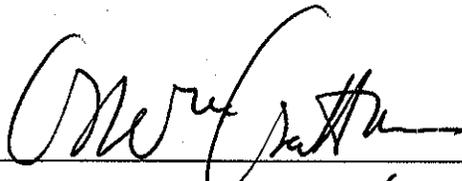
The total penalty calculation comes to \$21,911.53. As the Department may only assess administrative penalties up to \$10,000, the total assessed penalty is \$10,000.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, 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 County. By signing this Order all rights to appeal this Order are waived.

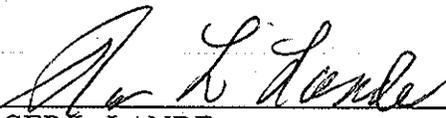
VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Dated this 27th day of July, 2011

David Wm. Patton
Buena Vista County Attorney
606 Geneseo Street, P.O. Box 1246
Storm Lake, Iowa 50588



ROGER L. LANDE
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1st day of August, 2011