

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:**

**DAVID HANSEN  
DEBRA D. IMHOFF**

**IOWA COUNTY, IOWA**

**ADMINISTRATIVE ORDER  
NO. 2012-FP-02**

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**TO: David Hansen  
2127 F-15 Blvd.  
Marengo, IA 52301**

**Debra D. Imhoff  
2127 F-15 Blvd.  
Marengo, IA 52301**

### I. SUMMARY

This Administrative Order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

Paul Brandt  
Iowa Department of Natural Resources  
Field Office #6  
1023 W. Madison  
Washington, IA 52353-1623  
Ph: (319) 653-2135

**Relating to legal requirements:**

Randy Clark, Attorney II  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-8891

**Appeal, if any, to:**

Director  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, IA 50319-0034

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

### II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.279 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code §§455B.261 through 455B.281 or the rules adopted pursuant thereto, and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. At the time of events leading up to the issuance of this Order, David Hansen (Mr. Hansen) owned real property, generally described as a portion of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13, T81N, R11W (Marengo Township), Iowa County, Iowa. Coon Creek flows through this property and drains between 10 and 14 square miles at this location. The mailing address for this property is the same as the mailing address for Mr. Hansen and Debra D. Imhoff.

2. On December 15 and 31, 2009, Department of Natural Resources (DNR) Field Office #6 (FO6) staff investigated complaints that Mr. Hansen was constructing a levee on the flood plain of Coon Creek north of Marengo, Iowa. FO6 staff observed new earthwork adjacent to Coon Creek, starting immediately north of the bridge on County Road F-15 and extending north along the west side of Coon Creek. Mr. Hansen was present on December 31, 2009, and stated that he was not building a levee but a driveway for a small housing development on the west side of his property and that he had obtained approval from Iowa County for the driveway. Further investigation by FO6 staff revealed that Mr. Hansen had obtained County approval for only a driveway entrance from County road V-66 onto the west side of Mr. Hansen's property.

3. By letter dated December 16, 2009, Iowa County Auditor and Flood Plain Coordinator, Linda Griggs, directed Mr. Hansen to stop the flood plain construction and to contact the DNR to obtain a permit.

4. On March 1, 2010, FO6 staff participated in a conference telephone discussion with Mr. Hansen and his attorney, Gary Shea. In response to Mr. Hansen's question concerning what he needed to do to achieve compliance, FO6 staff advised that he obtain a flood plain development permit from the DNR before proceeding with construction. Mr. Hansen also explained flooding impacts on his property that he attributed to a downstream levee along Coon Creek constructed by a neighboring landowner.

5. On March 3, 2010, the DNR Flood Plain Management Section received a complaint from Linda Griggs, Iowa County Auditor and Flood Plain Coordinator, that Mr. Hansen was constructing a levee along Coon Creek without a permit. FO6 staff revisited the Hansen property on March 11, 2010, and met with Mr. Hansen; Mr. Hansen was provided a joint application packet to use in applying for a flood plain development permit.

6. By letter dated August 11, 2010, Iowa County Auditor and Flood Plain Coordinator, Kristen Miller, directed Mr. Hansen to stop the flood plain construction and to contact the DNR to obtain a permit.

7. By letter dated August 16, 2010, Iowa County Auditor and Flood Plain Coordinator, Kristen Miller, informed Mr. Hansen that she had contacted one of DNR's flood plain engineers regarding Mr. Hansen's project; the engineer confirmed that the project violated DNR requirements and that Mr. Hansen had not applied for a permit. Ms. Miller again directed Mr. Hansen to stop his project and contact the DNR to obtain a permit.

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8. By letter dated September 27, 2010, FO6 notified Mr. Hansen that his unauthorized earthwork project violated Iowa law and directed him to: stop any additional earthwork until the DNR reviewed an application for approval; by November 29, 2010, remove all dirt in the floodway, which extends westward for a distance of 157 feet from the west bank of Coon Creek; and complete and submit the enclosed application booklet for DNR review. Mr. Hansen was also informed that failure to comply with these directives could result in enforcement action.

9. FO6 staff revisited the Hansen property on October 19, 2010 and observed that the previously observed soil deposit had not been removed. On October 21, 2010, Mr. Hansen telephoned FO6 offices in response to the visit; he stated that he would not remove any soil because his neighbors downstream along Coon Creek and on the other side of Coon Creek had added soil to their properties and that he needed to do the same to prevent flooding on his property. By letter to Mr. Hansen dated October 26, 2010, FO6 confirmed its inspection, the telephone conversation with Mr. Hansen and enclosed a copy of the letter to Mr. Hansen dated September 27, 2010.

10. On December 3, 2010, FO6 staff again visited the Hansen property and observed that Mr. Hansen had not complied with the requirement in its September 27, 2010 letter to remove the soil in the floodway by November 29, 2010. By letter dated December 7, 2010, FO6 informed Mr. Hansen that his case was being referred to the DNR's Legal Services Bureau for enforcement action due to his failure to comply with the directives in its September 27, 2010 letter.

11. Commencing August 1, 2011 and continuing through October, 2011, DNR's Legal Services Bureau communicated with Mr. Hansen via telephone and letter in an effort to enter into an administrative consent order to resolve this matter; Mr. Hansen repeatedly indicated he would do so, but subsequently failed to sign the order.

12. On November 28, 2011, Mr. Hansen conveyed, via Quit Claim Deed, his interest in the real property in this matter to Debra D. Imhoff. Debra D. Imhoff has lived at the same address as Mr. Hansen since 2007.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code §455B.275(3) requires that approval be obtained from the DNR if a person desires to construct or maintain an obstruction or deposit on any floodway or flood plain as defined in Iowa Code §455B.261. Iowa Code §455B.275(1) prohibits the erection, use or maintenance of obstructions or deposits on the floodway or flood plain which adversely affect the efficiency of or unduly restrict the capacity of the floodway and declares them to be public nuisances.

2. Iowa Code §455B.275(8) requires the EPC to establish regulatory thresholds by administrative rules. The regulatory thresholds are set forth in 567 IAC Chapter 71. More specifically, 567 IAC 71.4 and 71.12(2) require DNR approval for the construction, operation and maintenance of levees or dikes, and miscellaneous structures, obstructions or deposits on the floodway or flood plain of any river or stream draining more than ten square miles in rural areas.

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3. The above-summarized facts establish that the foregoing statutory and rule provisions have been and are being violated and support the additional conclusion that the deposits and obstructions described herein constitute a public nuisance.

**V. ORDER**

HEREFORE, the DNR orders David Hansen and Debra D. Imhoff to do the following:

1. Debra D. Imhoff shall complete either of the following actions within 60 days of receipt of this Order:
  - a. First, remove all soil deposits from the floodway, which extends westward for a distance of 106.5 feet from the west bank of Coon Creek; the soil deposits must be removed to natural ground elevation. Then, request approval of a proposal to retain the remainder of the soil deposits by submitting an application and supporting engineering plans certified by a registered professional engineer as specified in 567 IAC 70.4(2)"a". The plans must depict and certify that all artificially placed soil deposits have been removed in the above-required 106.5 foot area and the proposal must be designed to satisfy all DNR criteria for miscellaneous construction as provided in 567 IAC 72.11. In addition, any other modification measures in accordance with the proposal must be completed within 90 days after obtaining DNR approval; or
  - b. Remove soil deposits from the entire flood plain area on Ms. Imhoff's property and restore the area to pre-project conditions.
2. David Hansen shall pay an administrative penalty of \$10,000.00 within 30 days of receipt of this Order, subject to appeal rights stated in Section VII of this Order.

**VI. PENALTY**

1. Iowa Code §455B.279(2) authorizes the assessment of civil penalties of up to \$500.00 per day per violation of flood plain laws, rules or permits.
2. Iowa Code §455B.109 authorizes the EPC 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; 567 IAC Chapter 10. Pursuant to these provisions the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty of \$10,000.00. The administrative penalty is determined as follows:
  - a. Economic Benefit. Mr. Hansen has enjoyed long term financial savings by proceeding with flood plain construction prior to obtaining approval. However, Mr. Hansen will incur significant costs by removing the soil deposits as required in this Order. Therefore, no amount 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 that type of violation. As

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indicated above, moderate civil penalties are authorized by statute. To the extent that obstructions in the floodway (the area reserved to convey flood flows) increase the water surface profile, Mr. Hansen's actions threaten public safety. Further, the integrity of the flood plain regulatory program is threatened in that Mr. Hansen's actions encourage others to disregard approval requirements. Unauthorized flood plain construction and maintaining that construction has persisted for more than one year after the DNR directed Mr. Hansen to remove the deposits. For these reasons, \$500.00 per day could be assessed for this factor for continuous violations over a period of more than one year. However, in view of the maximum administrative penalty and the Culpability factor, below, \$5,000.00 is assessed for this factor.

c. Culpability. Mr. Hansen has been notified regarding his responsibility to comply with permit requirements for construction on the flood plain but he has persisted in violating these requirements. For this reason, \$500.00 per day could be assessed for this factor for the above-described continuous violations over a period of more than one year. However, in view of the maximum administrative penalty and the Gravity factor, above, \$5,000.00 is assessed for this factor.

### **VII. APPEAL RIGHTS**

Pursuant to Iowa Code §455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC Chapter 7, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

### **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 additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.279.

  
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ROGER L. LANDE, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 8<sup>th</sup> day of  
April, 2012.