

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

IN THE MATTER OF: OMG MIDWEST, INC. d/b/a CESSFORD CONSTRUCTION COMPANY, CESSFORD CONSTRUCTION CO. General Permit No. 5. File No. 6-29-00-1-05 Facility ID. IAG140095	CONSENT ORDER NO. 2009-WW-17
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TO: OMG Midwest, Inc.
Attn. James Gauger, President
5550 NE 22nd St.
Des Moines, IA 50316

Cessford Construction Company
Attn. Joseph McGuire
2320 Zeller Ave.
Le Grand, IA 50142

I. SUMMARY

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (Department) and OMG Midwest, Inc. d/b/a Cessford Construction Co. and Cessford Construction Company (hereafter Cessford) for the purpose of resolving Cessford's violations of the terms and conditions of its wastewater General Permit No. 5, applicable Department rules including general water quality standards. The order assesses a penalty and requires Cessford to upgrade its quarry wastewater disposal system, develop and implement an effective operations and maintenance plan to prevent future violations. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Mark Heidersheit, Environmental Specialist
Department Field Office #6
1004 West Madison
Washington, IA 51301
Ph: 319.653.2135

Relating to legal requirements:

David L. Wornson, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg
Des Moines, IA 50319
Ph: 515/242-5817

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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 1, and the rules promulgated or permits issued under those provisions, 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. Cessford owns and operates a stone quarry known as Nelson Quarry located at 67th Ave., Mediapolis, Iowa. The Cessford facility identification number is IAG140095. The quarry is a stone processing facility with quarry dewatering pollution control equipment. Cessford disposes of quarried material processing water and wastewater from its dewatering operations under the provisions of an NPDES authorized General Permit No. 5 issued by the Department to "Cessford Construction" pursuant to rules in chapter 567 IAC 64. The General Permit No. 5 expires August 28, 2011.

2. On Wednesday, May 13, 2009, the Department field office received a citizen's complaint regarding the discharge of wastewater from the Nelson Quarry that had turned a receiving stream white. The complainant had stated that he had been at the stream on Sunday, May 10, 2009 and had again observed the negative impact and white discoloration of the stream on Wednesday, May 13, 2009. The Department field office investigated the complaint on May 13, 2009 and confirmed by observation that this wastewater discharge from Nelson Quarry had turned the stream a whitish color as far downstream as the bridge at Highway 99, approximately 0.5 miles. See photos, Exhibit A attached.

3. The Department field office took water samples and had them tested for total suspended solids (TSS) and total dissolved solids (TDS). The laboratory results for TSS indicate that the discharge outfall and downstream results exceeded the numeric effluent limits established in Part III of General Permit No. 5.

Permit TSS Daily Max	Outfall Location	Downstream Location	Upstream Location
45 mg/L	590 mg/L	130 mg/L	11 mg/L

4. During the May 13, 2009 investigation and facility inspection, the Department inspector observed that a silt fence in the last control structure was not properly installed and the control structure appeared to be full of silt and not functioning properly to settle material prior to discharge.

5. The Department issued Notices of Violation dated May 18, 2009 and May 28, 2009 addressed to Cessford at their corporate office at 2320 Zeller Ave., Le Grand, Iowa. The notices claimed violations of the numeric effluent limitations in the permit, the duty to operate and maintain

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the disposal system and the general water quality standards established in Department rules. The Notices of Violation required Cessford to implement several remedial measures to prevent future permit and agency rule violations.

V. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part that if there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto, the Director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.186(1) prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. This section provides as follows:

A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. A pollutant whether treated or untreated shall not be discharged into any state owned natural or artificial lake.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60-69. Subrule 64.3(1) prohibits the operation of any waste disposal system contrary without or contrary to any condition of a permit. Subrule 64.1(4) states that any waste disposal system operation permit shall be issued as an NPDES permit under an EPA approved NPDES program if an NPDES permit is required for that disposal system. Rule 64.7 specifies the minimum terms and conditions that are to be included in an NPDES permit, including proper maintenance and operation of the treatment facility (64.7(5)"f") and compliance with applicable effluent limitations and general water quality standards as provided in chapters 567 IAC 61 and 62.

4. The Director is authorized to issue general permits for certain types of facilities including mining and processing facilities as described in this order. See 567 IAC 64.4(2), 567 IAC 64.3(4). General Permit No. 5 and its terms and conditions have been adopted by rule and apply to mining and processing facilities. See 567 IAC 64.15(5), 567 IAC 60.3(2)"m" (application forms), 567 IAC 64.6 (notice of intent for coverage). General Permit No. 5 establishes terms and conditions applicable to this facility. These terms and conditions include certain numeric effluent limitations (Part III), monitoring and reporting requirements (Part IV), proper operation and maintenance requirements and other standard conditions as specified in the permit.

5. The Commission has adopted "general" water quality standards which establish certain "narrative criteria" applicable to all surface waters. Sub-rule 567 IAC 61.3(2) in relevant part states:

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General water quality criteria. The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times for the uses described in 61.3(1)"a"...

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

6. Cessford owns and operates this facility pursuant to a General Permit No. 5 and is responsible for compliance with the terms of the permit and applicable Commission rules. Cessford has violated the general water quality standards in 567 IAC 61.3(2) "c" and "f", the numeric effluent limitations in Part III of the permit, the standard conditions of General Permit No. 5 and rule 567 IAC 64.7(5)"f" by failure to operate the wastewater disposal system as efficiently as possible and to provide the necessary trained staff to assure compliance with the permit conditions and applicable Commission rules. The discharge of pollutants to water of the state under terms not authorized by a permit constitutes a violation of the illegal discharge provisions of Iowa Code section 455B.186.

V. ORDER

THEREFORE, the Department orders and Cessford agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. By July 31, 2009, submit a plan to the Department field office in Washington, Iowa for upgrades to the existing wastewater disposal system sufficient to prevent effluent violations of the General Permit No. 5 numeric effluent limitations in Part III and the general water quality standards, including the turbidity standard in 567 IAC 61.3(2). Upon approval by the Department, implement the plan.

2. By July 31, 2009, submit a written operations and management plan to the Department field office in Washington, Iowa which establishes policy and procedures for how and when wastewater discharges will be released, monitored and samples laboratory tested for TSS and pHs, including an employee training program designed to prevent permit violations and violations of the general water quality standards, including the turbidity standards in 567 IAC 61.3(2). Upon approval by the Department, implement the plan.

3. Submit monthly laboratory reports of the discharge samples taken in accordance with the approved operation and maintenance plan under paragraph 2 above.

4. Pay a penalty in the amount of \$4,000 by check payable to the "Iowa Department of Natural Resources" no later than July 27, 2009. Any payment shall be accompanied by a copy of the first page of this Consent Order.

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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. 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 \$10,000.00 that 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 these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of this Consent Order with the assessment of penalties.

Economic Benefit: The facility may have avoided costs necessary to either upgrade their waste water disposal system or to provide sufficient training and management of discharges of wastewater sufficient to comply with their General Permit No. 5 and Department general water quality standards. The Department has insufficient information at this time to assess this factor but reserves the right to do so.

Gravity: The Department has responded to a citizen complaint which credibly established that unacceptable discharges were entering a stream as early as May 10, 2009 and continued with some frequency until May 13, 2009 when the Department inspector ordered the discharge to cease. Inspection of the settling pond and other pollution control equipment was not adequate to control and adequately treat discharges to comply with permit terms and conditions. The employee in charge did not appear to be adequately trained to observe an obvious water quality violation from the discharge. Applying an assessment of up to \$3,000, \$2,000 is assessed for this factor.

Culpability: Cessford owns several other quarry operations which have been inspected and operated under the terms of a General Permit No. 5 and should be aware of all regulatory requirements. The May 13, 2009 investigation and facility inspection revealed obvious inadequacies in the pollution control system and operational standards. These deficiencies indicate negligent if not grossly negligent action and inaction. Applying an assessment of up to \$3,000, \$2,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.5(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 Cessford. By signature to this order, Cessford waives all rights to appeal this order.

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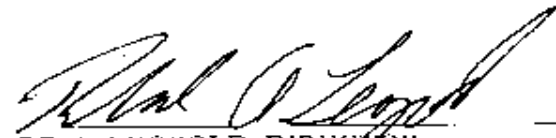
VIII. NONCOMPLIANCE

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 provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



OMG MIDWEST, INC. d/b/a Cessford Construction
Company, Cessford Construction Co.
By Its Authorized Representative

Dated this 9 day of
July, 2009



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 15 day of
July, 2009

OMG Midwest, Inc. and affiliated companies. DNR ID No. 6-29-00-1-05. Field Office No. 6. David Wornson. I.B.2.(c) & I.C.1.