

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

IN THE MATTER OF:

**LAND PROS, L.L.C.
Waukee, Iowa
NPDES General Permit No. 2
Authorization No. 9664-9459**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW-06**

**TO: Toby Torstenson, Company Organizer and Registered Agent
Land Pros, L.L.C.
6624 Peckham
Johnston, IA 50131**

I. SUMMARY

This administrative consent order (order) is entered into between Land Pros, L.L.C. (Land Pros) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order for the purpose of resolving storm water violations by Land Pros at the Meadow Brooke development in Indianola, Iowa. Land Pros agrees to pay an administrative penalty of \$4,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or responses regarding this order shall be directed to:

Relating to technical requirements:

Bill Gross, Environmental Specialist Senior
IDNR Field Office #5
607 East 2nd Street
Des Moines, Iowa, 50309-1831
Ph: 515/281-9069

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa, 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa, 50319-0034

II. JURISDICTION

The parties agree that this order is issued pursuant to Iowa Code section 455B.175(1).

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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) 10(455B), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Meadow Brooke is located in the NW ¼ of Section 29, T 76N, R 23W, in Warren County, Iowa. Meadow Brooke is a single and multi-family subdivision on the east side of Indianola along 20th St. north of Highway 92. The site generally slopes north northwest toward Short Creek near its northern boundary. Most slopes have a grade of 5 to 14 percent. The street utilities and most other utilities have been installed.

2. On June 29, 2005, the Department sent a letter to Mr. Torstenson acknowledging receipt of a Notice of Intent to be covered under Iowa's NPDES General Permit No. 2 for storm water discharges. The Department stated that by filing the Notice of Intent with the Department, Mr. Torstenson had committed to the terms and conditions of the permit. A pollution prevention plan (PPP) was to have been developed before the Notice of Intent was submitted to the Department. The PPP was to be implemented at the start of construction and updated accordingly.

3. Authorization under General Permit No. 2 requires the permit holder to have a PPP for the specific land disturbing activities. The PPP for construction activities is to be implemented so as to minimize pollution from precipitation or snowmelt runoff through or over the disturbed land. Typically, measures include soil stabilization measures such as temporary or permanent seeding, planting, mulching or other stabilization measures, and structural controls such as dikes, silt fences, sediment traps or basins. Routine inspections and record keeping are required. Although there was a PPP for the construction activity discussed in this order, it was not followed properly. Adequate storm water control devices were not installed and maintained during ground disturbing activities.

4. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or any records required to be kept, within a reasonable time. Although there were weekly inspections and inspections after rainfalls as required under the general permit, there was no action taken on the deficiencies identified in the inspections. There was also failure to provide stabilization of disturbed idle areas.

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5. On April 17, 2006, Field Office No. 5 (FO5) received a written complaint from Rick Shafer, urban conservationist for the Natural Resources Conservation Service (NRCS). The complaint stated that since early March the NRCS had unsuccessfully been trying to work with the developer to ensure adequate erosion and sediment controls. The Warren Soil & Water Conservation District filed an official complaint, which stated a number of problems including heavy amounts of sediment in a creek, a severely undersized sediment control basin, improper intake on the basin, erosion, damaged silt fences, and improper care of seeded and mulched areas. The complaint also stated that Mr. Torstenson had agreed to repair the silt fence and re-mulch on March 14, 2006, but that this had not been done by the April 6, 2006 inspection.

6. On April 18, 2006, Rick Shafer emailed FO5 to confirm receipt of the complaint and stated that the Meadow Brooke developers had not been cooperative. FO5 responded that the complaints had been referred to Bill Gross, FO5 Senior Environmental Specialist.

7. On April 24, 2006, Land Pros' stormwater consultant compiled an inspection summary for Meadow Brooke, which stated that in order to be in compliance, the site needed new mulch and seeding, silt fence repair and street cleaning.

8. On April 28, 2006, Bill Gross visited the site and found thin grass germination, overflow from an undersized sediment basin, and sediment in Short Creek. Those problems correspond to those listed in the April 24, 2006 inspection summary prepared by Land Pros' stormwater consultant, Environmental Solutions. A phone message was left for Mr. Torstenson, which was not returned. Another message was left on May 4, 2006.

9. On May 1, 2006, Land Pros' stormwater consultant compiled an inspection summary for Meadow Brooke, which stated that in order to be in compliance, the site needed new mulch and seeding, inlet protection and sediment basin repair.

10. On May 5, 2006, Nick Cimaglia of Environmental Solutions, a stormwater consulting firm, reported to FO5 that the site's PPP is posted on the internet. The website, www.goterosion.com, listed a number of problems on the site but did not identify any action taken to correct them.

11. On May 8, 2006, Bill Gross visited the site and found that the site still needed new mulch and seeding, silt fence repair, inlet protection, and street cleaning. The sediment basin had overtopped and eroded, forcing more sediment into the stream channel, and the silt fences were full or toppled. These problems had been found during the earlier FO5 site visits and still had not been remedied. The deficiencies were also listed in the May 1, 2006 inspection summary prepared by the stormwater consultant.

12. On May 9, 2006, the Department sent a Notice of Violation (NOV) by certified mail to Mr. Torstenson for water quality and stormwater permit violations.

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IV. CONCLUSIONS OF LAW

The parties agree to the following conclusions of law:

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2 (455B), "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" including 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.

2. 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 requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b", the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 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.

3. General Permit No. 2, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" (PPP) in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days.

4. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by

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the Department to determine compliance or any records required to be kept, within a reasonable time.

5. Department subrule 567 IAC 61.3(2) (455B) requires that all surface waters be free from floating debris, substances that will settle to form sludge deposits, and discharges of materials that produce objectionable conditions. The discharge of water and materials from the site and from the overflow of an undersized sediment basin deposited sediment and crushed rock into the streambed of Short Creek. The foregoing facts indicate this provision has been violated.

6. The stormwater runoff controls at Meadow Brooke were insufficient. The sediment basins overflowed and deposited sediment into Short Creek causing water quality violations. The area along the creek and other portions of the north slope were not adequately maintained. Problems were enumerated in the inspection log prepared by the stormwater consultant, but were not corrected within one week. The failure to implement appropriate and adequate stabilization and structural practices at the site under the PPP was in violation of General Permit No. 2.

V. ORDER

THEREFORE, the Department hereby orders and Land Pros consents to do the following:

1. Pay an administrative penalty of \$4,000.00. The penalty shall be paid in accordance to the following payment plan:
 - \$1,000.00 due no later than March 30, 2009;
 - \$1,000.00 due no later than April 30, 2009;
 - \$1,000.00 due no later than May 30, 2009; and
 - \$1,000.00 due no later than June 30, 2009.

If any of the above payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection 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

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



TOBY FORSTENSON, COMPANY ORGANIZER,
LAND PROS, L.L.C.

Dated this 4 day of
March, 2009



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11 day of
March, 2009

Land Pros, L.L.C., NPDES General Permit No. 2 Authorization No. 9664-9459, Field Office No. 5- Bill Gross, Legal Services- Diana Hansen, U.S. EPA, I.C.7.b.