

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

---

**IN THE MATTER OF:**

**JM DEVELOPMENT LLC**  
**NPDES Authorization Number: 10937-10732**

**ADMINISTRATIVE  
CONSENT ORDER**  
**2009-WW-08**

---

**TO: Alexander Johnson**  
**Registered Agent**  
**JM Development LLC**  
**666 Grand Ave. Ste 2000**  
**Des Moines IA 50309-2510**

### I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and JM Development LLC (JM Development) for the purpose of resolving an issue pertaining to the operation of the Platinum Development project after JM Development failed to renew its National Pollutions Discharge Elimination System (NPDES) permit and operated out of compliance with the provisions of the permit. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**  
David Perry, Field Office 5  
Iowa Department of Natural Resources  
401 SW 7<sup>th</sup> St./Ste.1  
Des Moines, Iowa 50309-4611  
Ph: 515/725-0419

**Relating to legal requirements:**  
Jon Tack, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281- 8889

### II. JURISDICTION

The parties agree that 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 (water quality), and the rules promulgated or permits issued thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10 (455B) which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
JM Development LLC

**III. STATEMENT OF FACTS**

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

1. Platinum Development (Platinum) is a commercial and retail project in Ankeny Iowa being constructed by JM Development of Clive, Iowa.
2. On March 14, 2006 the Department issued a notice of coverage under NPDES General Permit No.2 (Authorization No. 10937-10732) to JM Development for the Platinum project.
3. On January 29, 2007, the Department sent written notice to JM Development of the need to renew or discontinue operating under its permit.
4. On March 14, 2007, the NPDES permit coverage expired.
5. On April 30, 2007, the Department sent a Notice of Violation (NOV) to JM Development for failure to renew or discontinue its permit.
6. On June 27, 2007, the Department received emails containing the last two months of inspection reports from Carla Moore of Storm Water Consultants, the contractor responsible for storm water inspections at the Platinum site. The reports and photographs showed insufficient controls and/or lack of maintenance from inspections from three periods; October 19, 2006- November 2, 2006; December 28, 2006 - February 22, 2007; and March 29, 2007 to June 26, 2007.
7. Authorization under General Permit No.2 requires the permit holder to have a "Pollution Prevention Plan" (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 such as temporary seeding or planting and structural controls such as dikes or silt fences, sediment traps or basins. Routine inspections and record keeping are required. There was a PPP for the construction activity discussed in this order; however, it was not adequate or followed properly. Adequate vegetation was not in place, nor was there adequate soil retention structures.
8. On June 29, 2007, the Department issued an additional NOV to Jay Ryan of JM Development for failure to have adequate sediment and erosion controls, which were observed on a June 26, 2007 site visit by Department personnel. The letter also noted a culvert that directed sediment toward a storm sewer system and sediment deposits in the concrete channels.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
JM Development LLC

9. On July 2, 2007, the Department contacted Storm Water Consultants requesting copies of additional months of their site inspections at Platinum. These site inspection documents indicate that monitoring by Storm Water Consultants had continued through June 26, 2007, even though the NPDES permit coverage had expired.

10. On July 17, 2007, the Department sent a letter to the City of Ankeny requesting copies of any and all correspondence about Platinum. The Department received no response.

11. Also on July 17, 2007, JM Development representative Chris Dawson left a voicemail requesting information on NPDES permit renewal. In response, Dave Perry, DNR environmental specialist, left a voice mail informing him to contact Joe Griffin at the DNR about permit renewal. The matter was subsequently referred to the Department's Legal Services Bureau.

12. In February of 2008, JM Development applied for and obtained coverage under NPDES General Permit #2.

12. As of July 21, 2008 the development of the project has proceeded and is nearing completion.

13. As of February 1, 2009, the project is completed.

#### **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 federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and 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 at an industrial plant. Number 10 under this definition includes "construction activity," including clearing, grading and excavation activities.

2. General Permit No. 2, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" 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 must be identified and

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
JM Development LLC

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.

3. 567 IAC subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6, 64.7, 64.8(2) and 64.9 for the following activities: 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 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. IAC 567-62.1(1) prohibits the discharge of any pollutants from a point source without a valid NPDES permit. JM Development violated these provisions by operating after its permit had expired and by failing to install the necessary sediment and erosion controls, and adequately vegetate the area.

## V. ORDER

1. THEREFORE, the Department orders, and JM Development agrees to pay a penalty of \$1,150 at the time of execution of this order;

## VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the NPDES permit 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, 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 these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
JM Development LLC

The administrative penalty is determined as follows:

**I. Economic Benefit**

Failure to renew the NPDES permit and install proper runoff controls along with the maintenance of those controls over the months of construction saved JM Development considerable monies. \$150 is assessed for avoided fees.

**II. Gravity of the Violations**

Failure to renew the NPDES permit and install proper runoff controls, along with maintenance of those controls over the months of construction threaten the integrity of the storm water program, in addition to degrading water quality, harming aquatic life and preventing the attainment of state water quality goals. \$500 applies for this factor.

**III. Culpability**

JM Development was informed twice of the need to renew the NPDES permit and neglected to initiate the required action in a reasonable amount of time. \$500 applies for this factor.

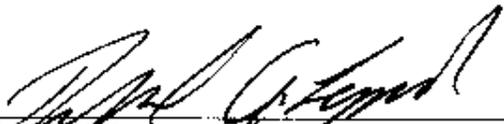
**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175 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 JM Development. By signature to this order, all rights to appeal this order are waived.

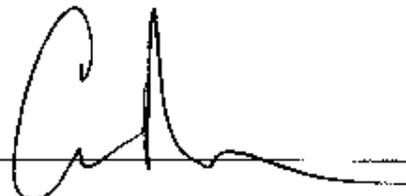
**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, 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. Order", of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
JM Development LLC

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 15 day of  
April, 2009.

  
\_\_\_\_\_  
JM DEVELOPMENT LLC

Dated this 31 day of  
MARCH, 2009.

JM Development LLC: Field Office 5; David Perry, I.C.7