

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

<b>IN THE MATTER OF:</b>  <b>MARC ZAISER/MEZ, L.C.</b> <b>Des Moines County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2010-WW-19</b>
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**TO: Marc Zaiser**  
**14568 Washington Road**  
**West Burlington, IA 52655**

**MEZ, L.C.**  
**c/o Marc E. Zaiser, Registered Agent**  
**14568 Washington Road**  
**West Burlington, IA 52655**

### I. SUMMARY

This Administrative Consent Order (Order) is entered into between the Iowa Department of Natural Resources (Department) and Marc Zaiser/MEZ, L.C. (Mr. Zaiser) for the purpose of resolving storm water control 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:**

Ryan Stouder  
IDNR Field Office #6  
1004 W. Madison  
Washington, IA 52353  
Ph: 319/653-2135

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

### 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 pursuant thereto; 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. Marc Zaiser, doing business as MEZ, L.C., owns real property described as 6125 Pegtown Road, Mediapolis, Iowa in the NE $\frac{1}{4}$  of Section 11, T71N, R2W, (Benton Township) Des Moines County

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2 On June 21, 2008, Department Field Office 6 (FO6) investigated a complaint regarding storm water runoff at the above-described 6125 Pegtown Road property. The inspection led to the discovery of a large dam overlooking Highway 99 and a pond, approximately 10 acres in size. At the time of the initial investigation there was a concern that the dam would fail. Mr. Zaiser was required to draw down the water level of the pond. In order to ensure the proper draw down of the water level, numerous inspections of the site were conducted after the initial inspection on June 21. An inspection was conducted by FO6 staff each day June 23 through June 27, 2008. On June 25, 2008, Highway 99 was barricaded by the Des Moines County Sheriff's office and the Des Moines County Engineer due to the concern of the pond dam failure. On June 27, 2008 a Notice of Violation (NOV) was issued for the unauthorized construction of a dam at the 6125 Pegtown Road property.

3 A follow up investigation by FO6 staff was conducted on June 30, 2008 and July 2, 2008. Through the course of the investigations, it was determined that greater than one acre of soil was disturbed when constructing the dam. Soil erosion from the construction site was also observed. The soil erosion was observed discharging into a water of the state, a tributary locally named Haight Creek (Creek). There was also evidence of sediment runoff waste in the Creek. The water of the Creek appeared tan in color. FO6 staff notified Mr. Zaiser of the requirement to obtain coverage under National Pollutant Discharge Elimination System General Permit No. 2 - Storm Water Discharge Associated with Industrial Activity for Construction Activities (Permit) for the pond site. On July 7, 2008, Mr. Zaiser was issued a NOV for failure to obtain coverage under the Permit and for lack of storm water controls at the site. The NOV was suspended until July 21, 2008 in order to allow Mr. Zaiser the opportunity to obtain coverage under the Permit. On July 14, 2008, Lewis Beik, the engineer for Mr. Zaiser, was notified of the Permit requirements and sediment runoff controls that were needed for the site by FO6 staff. The pollution prevention plan (PPP) requirements were also discussed at this time.

4 As of July 25, 2008 no notice of intent for coverage under the Permit had been received by the Department. A follow up investigation was conducted by FO6 staff on July 28, 2008. At that time two improperly installed silt fences were found in place. Sediment discharge to the Creek resulting in discoloration in the Creek was observed. The construction site was found to be dormant and without stabilization. In a conversation between Mr. Beik and FO6 staff on July 30, 2008, Department concerns regarding the installation of silt fences were relayed. A second NOV was issued to Mr. Zaiser on August 4, 2008 for a failure to obtain coverage under the Permit and lack of storm water controls. The NOV was suspended until August 11, 2008 in order to allow Mr. Zaiser to obtain coverage under the Permit.

5 The Department received the completed "Notice of Intent for NPDES Coverage Under General Permit No. 2" from Mr. Zaiser on August 14, 2008. By letter dated August 25, 2008, the Department acknowledged coverage under the Permit and notified Mr. Zaiser of the following: submission of the Notice of Intent is tantamount to a commitment to comply with the terms and conditions of the Permit; that the Permit requires implementation of the PPP at the start of construction; the PPP and inspection records must be kept on-site; when "final stabilization" as defined in the Permit is achieved a Notice of Discontinuance must be submitted to the Department.

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6. On June 12, 2009 a follow up investigation was conducted by FO6 staff. During the visit, insufficient installation of silt fences and insufficient erosion controls were observed. The construction remained dormant and without stabilization. Sediment discharge to the Creek resulting in discoloration in the Creek was again observed. On July 6, 2009, a NOV was issued requiring the following: compliance with the Permit, submittal of the PPP, installation of erosion control for sediment retention, compliance with general water quality criteria, and immediate remedial measures to prevent further storm water runoff from the construction site.

7. Another follow-up investigation was conducted by FO6 staff on October 6, 2009. As was observed on June 12, 2009, insufficient installation of silt fences and insufficient erosion controls were observed, and the construction site remained dormant and without stabilization. By NOV dated November 19, 2009, Mr. Zaiser was again required to do the following: comply with the Permit, submit the PPP, install erosion control for sediment retention, comply with general water quality criteria, and conduct immediate remedial measures to prevent further storm water runoff from the construction site.

8. A follow-up investigation was conducted by FO6 staff on March 18, 2010. While additional silt fences had been installed, some of the previously installed fences had been damaged from runoff and sediment. Inspection reports were not available at the site and evidence of sediment leaving the site was observed. Generally, the site was almost absent of vegetation and continued to be dormant without adequate vegetation. By NOV dated March 30, 2010, Mr. Zaiser was required to: conduct required site inspections and submit inspection reports to FO6; implement stabilization measures on bare areas as soon as feasible; and install additional erosion control measures to ensure sediment is retained on site.

9. FO6 staff conducted another follow-up investigation on September 10, 2010. While some progress had been made in achieving storm water runoff control despite adverse weather conditions during the spring and summer, 80% vegetative cover had still not been established. Further, a new area where vegetation had been denuded with no runoff controls was observed.

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

1. Iowa Code section 455B.183 (1) prohibits the operation of a waste disposal system, without a permit from this Department. The foregoing facts indicate a violation of this provision.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Inasmuch as Mr. Zaiser either did not have coverage under the Permit or did not comply with the conditions of the Permit, the foregoing facts establish that this provision has been violated.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.

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4. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. 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 areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading and excavation activities except operations that result in the disturbances of less than one acre of total land area which are not part of a larger common plan of development or sale.

5. ~~567 IAC 64.4(2)~~ provides that the Director may issue general permits which are consistent with 567 IAC 64.4(2)"b" and the requirements specified in 567 IAC 64.6, through 64.9 for the following activities: (1) 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). 567 IAC 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. 567 IAC 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 567 IAC 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. 567 IAC 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. The foregoing facts establish violations of these provisions.

6. 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 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. The foregoing facts establish that this requirement has been violated.

7. 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. The foregoing facts establish that this requirement has been violated.

**V. ORDER**

**THEREFORE** Marc Zaiser/MEZ, L.C. is hereby ordered to do the following:

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1. Comply with all conditions of NPDES General Permit No. 2.
2. Comply with all provisions of your pollution prevention plan (PPP) until you provide Notice of Discontinuation to the Department.
3. Inspect and repair as necessary erosion/sediment control devices weekly and within 24 hours of each 0.50"+ rainfall event. Until the Notice of Discontinuation is provided, maintain a written log of inspections and repairs at the construction site, and respond to information requests of the Department.
4. Pay an administrative penalty of \$7,500.00 within 10 days after the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code section 455B 191 authorizes the assessment of civil penalties of up to \$5,000.00 per day per violation for the violations involved in this matter. Criminal sanctions are also provided for negligent and intentional discharge violations.

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; Chapter 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 this Order with a penalty. The administrative penalty assessed by this Order is based on the following documented violations: four days involving discharge to water of the state without a permit; four days involving water quality violations; four days of failure to have coverage under the Permit or failure to have a PPP in violation of the Permit. The penalty is determined as follows:

a. Economic Benefit. Mr. Zaiser's failure to obtain Permit coverage and implement, inspect, repair and maintain pollution prevention measures allowed him to save time and avoid operational costs conservatively estimated at \$1,500.00.

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 the type of violation. As indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above cited violations is with administrative penalties, which are much lower than those that could be obtained through court action.

Sedimentation of Iowa's waterways is a serious problem, and the regulatory agencies have recognized that uncontrolled runoff from construction sites is a significant contributor to these problems. While it is not necessary to document a specific water quality impact from a specific site, this case involves documented discharge of sediment to water of the State resulting in repeated water quality violations. Further, the storm water permit program requires that best

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management practices be implemented at all regulated sites, and where construction is conducted without maintenance of the necessary controls, it threatens the integrity of the program and thwarts achievement of state-wide water quality goals. In addition, the Department expended a number of hours on the investigation and follow-up of this matter. For these reasons, \$3,000.00 is assessed for this factor.

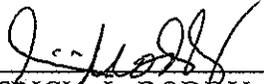
c. Culpability. Mr. Zaiser failed to obtain coverage under the Permit upon commencement of the construction project which disturbs greater than one acre of soil. Mr. Zaiser has been notified in writing, of the required actions that must be taken on multiple occasions. When Mr. Zaiser was notified of his noncompliance with state law and provided with opportunities to become compliant, he delayed his response causing further unlawful discharges and water quality violations. Mr. Zaiser's continued disregard for the compliance conditions and the above facts establish a high degree of culpability. For these reasons, \$3,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175 and 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 Mr. Zaiser. By signing this Order, Mr. Zaiser waives all rights to appeal.

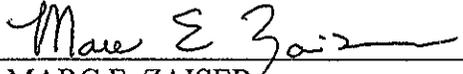
**VIII. NONCOMPLIANCE**

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 §455B.191. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the water quality violations described in Division IV of this Order.

  
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PATRICIA L. BODDY, INTERIM DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27 day of

December, 2010

  
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MARC E. ZAISER

Dated this 9<sup>th</sup> day of

December, 2010

CON 11-34 #16207; Field Office 6; Randy Clark; Dennis Ostwinkle; EPA; I.C.1, I.C.6 a, I.C.7.a, I.C.7.b