IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER NO. 2014-WS-04
H & W Contracting, LLC	

TO: **Tom Hurd, President**
3416 W. Hovland Ave.,
Sioux Falls, SD
57017

I. SUMMARY

This administrative consent order (order) is entered into between H & W Contracting (H & W Contracting) and the Iowa Department of Natural Resources (Department). H & W Contracting agrees to in the future obtain all construction permits required by the Department prior to construction and to pay a penalty of $3,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

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

Relating to technical requirements:
Julie Sievers
Environmental Specialist Senior
IDNR Field Office No. 3
112 W. 5th Street, Suite 3
Storm Lake , IA 50588
Ph: 712/732-8350

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

Payment of penalty to:
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

The parties hereby 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 I, 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

The parties agree to the following statement of facts.

Current Violations

1. The City of Storm Lake (City) is involved in a construction project related to the installation of sanitary sewer collection system mains. The City received a grant from the Federal Emergency Management Administration (FEMA) to construct a sanitary sewer main around the west side of Storm Lake which connects to the City's wastewater treatment plant. This project is one of 5 parts of the project which is locally known as FEMA 3. The City has contracted with Northern Dewatering Inc. and H & W Contracting to construct this project.

2. On September 24, 2013, Julie Sievers a Senior Environmental Specialist with the Department, was contacted by Scott Olesen, the City's Code Enforcement Officer, regarding construction of dewatering wells for the sanitary sewer project FEMA 3. Following receipt of this phone call, Ms. Sievers went to the site investigate. Once on site, she observed employees of Northern Dewatering, Inc. installing several wells. Mr. Olesen and Kim Johnson, the Buena Vista County Sanitarian, were present along with Matt Cruse, of Veenstra & Kimm Engineering. Darren Pals, of H & W Contracting arrived shortly after Ms. Sievers, as well as Justin Yarosevich, the Assistant City Manager and Doug Rainforth, the City's Water Quality Manager.

Ms. Sievers consulted with Ms. Johnson, and Russell Tell, a Senior Environmental Specialist with the Department's private well program, and determined the following: wells were being constructed, a private well construction permit was required and that a certified well contractor was required to be on site. Ms. Johnson and Mr. Tell stated that they had not issued construction permits for these wells. Because the required permits were not obtained construction of the dewatering wells was stopped.

3. On September 25, 2013, H & W Contracting applied for and was issued the necessary well construction permits by Buena Vista County. On the same date, H & W Contracting also applied for and received a water use registration for withdrawal of more than 25,000 gallons per day of water and a discharge authorization for the discharge of the water.

4. On October 3, 2013, a Notice of Violation (NOV) was sent to the City, Northern Dewatering, Inc. and H & W Contracting. This NOV summarized Ms. Sievers' investigation and the relevant law. This NOV also stated that the requirements had been discussed with the City and Mr. Cruse on at least two occasions during the project and on one occasion prior to the construction of the wells and that the matter was being referred for an enforcement action.

Past Violations

5. On November 5, 2010, a NOV was sent to the City, Northern Dewatering, Inc. and H & W Contracting for construction of wells without a permit at the Bargloff Addition Sanitary Sewer Project located in Storm Lake, Iowa. This NOV also reminded the entities that a certified well driller must be on site during construction of the wells.

IV. CONCLUSIONS OF LAW

The parties agree to the following conclusions of law.

1. Iowa Code section 455B.187 states that "A contractor shall not engage in well construction or reconstruction without first being certified as required in this part and department rules adopted pursuant to this part." The above stated facts demonstrate noncompliance with this provision. Furthermore, this section also states that "[t]he commission shall adopt rules pursuant to chapter 17A to implement this paragraph." The below rules were adopted by the Environmental Protection Commission (Commission) pursuant to this provision.

2. 567 IAC 38.3(1) states:

> A landowner or landowner's agent shall not drill or construct a new private water well without first obtaining a well construction permit issued by the department or by a county board of supervisors or the board's designee authorized to issue permits pursuant to this chapter. Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational-use wells, monitoring wells, heat pump wells, industrial wells, and dewatering wells, except that dewatering wells shall be exempt from the construction standards of 567—Chapter 49 (nonpublic water wells).

The above stated facts show noncompliance with this provision.

3. 567 IAC 82.2 (1) states:

> All well services shall be performed by a certified well contractor pursuant to this chapter, except that a person may perform well services on the person's own property without being certified. A certified well contractor shall notify the department or the county prior to performing well drilling services for a well that does not have the required construction permits. A certified well contractor shall notify the department prior to drilling a well if the use of the water requires a water use allocation and the owner has not applied for or been issued a water use allocation.

On September 24, 2013, a certified well contractor was not on site or in direct charge when the wells were being constructed. Thus, the above stated facts demonstrate noncompliance with this provision.

4. 567 IAC 82.2 (2) states "[a] certified well contractor shall be present at the well site and in direct charge of the well services being performed or provided." The above stated facts show noncompliance with this provision.

V. ORDER

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

1. H & W Contracting shall cease all illegal construction of dewatering wells;

2. H & W Contracting shall submit records to the Department which establish that the wells were plugged in accordance 567 IAC chapter 39;

3. H & W Contracting shall pay a penalty of $3,000.00 within 30 days of the date the Director of the Department 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 of violation for the 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 $10,000.00, 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 this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating water supply permit requirements, is the

issuance of this order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit**. H & W Contracting saved a significant amount of time and money by not obtaining the required construction permit prior to construction. The most significant cost saving was in the continued construction work on the project despite the lack of permits and the failure to have a certified well driller on site. In addition H & W Contracting failed to pay the $125.00 fee for the construction permit prior to construction and the $75.00 fee for the water use registration. While these fees have now been paid, some money was saved in delaying the payment of these fees. For these reasons $1,000.00 is assessed for this factor.

b. **Gravity of the Violation**. H & W Contracting failed to apply for construction permits prior to construction of the dewatering wells. The permit process establishes standards for well construction, well maintenance and well plugging. These standards protect groundwater resources and public health. Failure to obtain construction permits prior to construction thwarts the integrity of the program. Therefore, $1,000.00 is assessed for this factor.

c. **Culpability**. In determining the degree of intent or negligence the standard of care required by the laws of the state of Iowa should be considered. The Department asserts that H & W Contracting's actions were negligent rather than intentional. Generally negligence is defined as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." *Black's Law Dictionary,* 470 (2nd Pocket Edition, 2001). The violations involved in this order were violations of conditions of multiple rules and statutory provisions. A reasonable person should be aware of the laws which govern their business. H & W Contracting employs individuals who specialize in sanitary sewer systems. It follows that such employees have a duty to be aware that the construction of dewatering wells requires a permit issued by the Department. In fact, the H & W Contracting was made aware of these requirements by the Department on at least 3 occasions prior to the 2013 construction. Therefore, $1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(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 the City. By signature to this order, all rights to appeal this order are waived.

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 administrative penalties pursuant to an administrative order or

referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Tom Hurd, President
H & W Contracting, LLC

Dated this 10 day of June, 2014

Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26th day of June, 2014

Field Office No. 3 (Spencer)- Ken Hessenius, Field Office No. 3 (Storm Lake)- Julie Sievers, Legal Services- Carrie Schoenebaum, U.S. EPA, II.A.1.