

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

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**IN THE MATTER OF:**

**Tim Dolan Development Co.  
Scott County, IA**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2023-WW-30**

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**TO** Tim Dolan, President  
PO Box 148  
Bettendorf, IA  
52722

Marjorie Dolan, Registered Agent  
18 Country Club Ct  
Le Claire, IA  
52753

**I. SUMMARY**

This administrative consent order (order) is entered into by Tim Dolan Development Co. (Dolan) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Dolan's stormwater National Pollutant Discharge Elimination System (NPDES) permit at its Stoney Creek North Third Addition Construction Site (site). Dolan agrees to pay an administrative penalty of \$5,500.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

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

**Relating to technical requirements:**

Jacob Forgie  
IDNR Field Office No.6  
Iowa Department of Natural Resources  
1023 W Madison Sr  
Washington Iowa 52353

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
  
502 East 9<sup>th</sup>  
Des Moines, Iowa 50319-515-901-5642  
Phone: 515-444-8165

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

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

Tim Dolan Development Co.

**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 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**

1. On October 1, 2019, Dolan was issued a notice of coverage under NPDES General Permit No. 2 No. 41360-40987 for storm water discharge associated with construction activity at the location of the Stoney Creek North Third Addition Construction Site (site). This site is located at Section 6, Township 78 Range 5E, Scott County, IA. Storm water from this property flows into Spencer Creek.

2. On April 18, 2023, the Department conducted a routine NPDES inspection of the site. Once on site the Department observed and/or documented the following:

(1) Perimeter controls had been installed on site; however, several locations were damaged or failing and need to either be cleaned, repaired, or replaced;

(2) The central section of the site, located south of 195<sup>th</sup> St and North of 250<sup>th</sup> St, had significant rill erosion in all areas except for a portion that had been sodded around a finished home;

(3) Rill erosion was observed south and west of 250<sup>th</sup> St surrounding the homes. This section slopes southwest towards Spencer Creek. A line of perimeter silt fence was in place along Spencer Creek; however, the silt fence was overwhelmed and damaged by sediment. The hillside leading down to the creek was heavily eroded and sediment was observed in the creek.

(4) The ground surrounding all the homes on the site was not stabilized and was significantly eroded;

(5) Inlet protection devices were installed in the storm drains in the street; however, they were full of sediment and had vegetation growing out of them. Thus, they needed cleaning; and

(6) The Storm Water Pollution Prevention Plan (SWPPP) was not located on site and the owner could not be reached. Therefore, the Department could not review the SWPPP.

3. On May 8, 2023, the Department returned to the site to conduct a follow up investigation. The Department observed the same conditions detailed above.

4. On April 28, 2023, a Notice of Violation (NOV) was sent to Dolan for the above-discussed violations. Included with this NOV was a copy of the investigation report, recommended corrective action, and a summary of the law.

**IV. CONCLUSIONS OF LAW**

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

Tim Dolan Development Co.

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision of law.

2. Iowa Code sections 455B.103(A) and 455B.197 authorize the issuance of 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 in 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 areas at an industrial plant." Number 10 under this definition includes "construction activity," which includes 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.

3. 567 IAC 61.3(2) "c" and "e" state:

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

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate noncompliance with these provisions of law.

4. Subrule 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 above stated facts demonstrate noncompliance with this provision.

5. Part III. C (1) of NPDES General Permit No. 2 requires that erosion and sediment controls be installed and maintained. The above stated facts demonstrate noncompliance with this provision of law.

6. Part V. A. of NPDES General Permit No. 2 requires that the SWPPP be available to the Department upon request within 3 hours of request. The above stated facts demonstrate noncompliance with this provision of law.

7. Part VI. A of NPDES General Permit No. 2 requires that the permittee "comply with all conditions of th[e] permit." The above stated facts demonstrate noncompliance with this provision of law.

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

Tim Dolan Development Co.

8. Part VI. D of NPDES General Permit No. 2 requires that the permittee “take all reasonable steps to minimize or prevent any discharge in violation of this permit.” The above stated facts demonstrate noncompliance with this provision of law.

**V. ORDER**

THEREFORE, the Department orders, and Dolan consents to do, the following:

1. Comply with all conditions of Dolan’s NPDES permit;
2. Cease all illegal discharges to waters of the state; and
3. Pay an administrative penalty of \$5,500.00 in accordance to the below schedule:
  - i. \$1,375.00 shall be due within 30 days of the date the Director signs this order;
  - ii. \$1,375.00 shall be due no later than April 1, 2024;
  - iii. \$1,375.00 shall be due no later than August 1, 2024; and
  - iv. \$1,375.00 shall be due no later than December 1, 2024.

If any payment is not received by the date in the above schedule the remainder of the penalty shall be due in full immediately.

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

a. **Economic Benefit.** 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” An economic benefit was obtained through avoiding the cost of installing and maintaining adequate storm water erosion and sediment control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$2,500.00 was saved. Therefore, \$2,500.00 is assessed for this factor.

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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

Tim Dolan Development Co.

indicated above, substantial civil penalties are authorized by statute. Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. The erosion and sediment controls contained in Dolan's NPDES permits protect Iowa's waterways from sedimentation. Such noncompliance thwarts the integrity of the NPDES permit and water quality programs. Therefore, the amount of \$2,000.00 is assessed for this factor.

c. **Culpability.** Dolan is engaged in the business of development and construction. This is a highly regulated activity and therefore it has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1) 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 Dolan. By signing this order, all rights to appeal this order are waived by Dolan.

**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.

  
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Tim Dolan, President Dolan Development Co.

Dated this 14 day of

December, 2023

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dolan Development Co.. Copy of Order to Courtney Cswercko), FO 6, Carrie Schoenebaum-Legal Services Bureau, U.S. E.P.A, I.C.7.b.