

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

**IN THE MATTER OF:**

**JNB Oak Park, LP**

**Scott County, Iowa**

**NPDES No. 34714-34375**

**ADMINISTRATIVE  
CONSENT ORDER**

**NO. ~~20201-WW~~ 2021-WW-19**

**TO:** James Bergman, Registered Agent  
7152 Eldorado PT  
West Des Moines, IA  
50266-9034

**I. SUMMARY**

This administrative consent order (order) is entered into between JNB Oak Park, LP (JNB) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of JNB's storm water National Pollutant Discharge Elimination System (NPDES) permit. JNB agrees to pay an administrative penalty of \$8,000.00. 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:**

Brian Lee, Environmental Specialist  
IDNR Field Office No. 6  
1023 West Madison Street  
Washington, IA 52353  
319-653-2135

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515-725-8244

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**Payment of penalty to:**

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

**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**

JNB neither admits nor denies the following statement of facts:

1. On April 8, 2019, JNB was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the location of the construction project titled JNB Oak Park Retirement Community. This project is located at the Section 26, Township 77 Range 2W (site). The owner was listed in the permit as JNB and the contact was listed as Ricky Teed. JNB hired KMA Trucking and Excavating, LLC to manage all of its storm water controls. Storm water flows from this site into a street, then a ditch which flows into a culvert which discharges to a tributary of Mud Creek. Mud Creek is a tributary of the Mississippi River.
2. On April 18, 2019, the Brian Lee, an Environmental Specialist with the Department, conducted a routine NPDES General Permit No. 2 compliance inspection at the above referenced site. Once on site, the Mr. Lee documented the following violations: construction on site had begun, the storm water pollution prevention plan (SWPPP) was not signed by the permittee or the contractor, the SWPPP was not located on site and a concrete washout area had not been created despite concrete already being poured on site.
3. On April 23, 2019, a Notice of Violation (NOV) was sent to JNB for the above discussed violations. This NOV included a copy of the inspection report, a copy of the relevant law and a summary of the necessary corrective actions.
4. On September 16, 2019, the Department received a complaint alleging that dirt at the site was being piled on top off and over the silt fence. The complainant also alleged that the silt fence was missing in multiple areas of the construction site.

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5. On September 18, 2019, the Mr. Lee went to the site to investigate. Once on site, he observed that sediment had migrated off site to Isett Avenue and storm sewer work had taken place in the right-of-way without sediment or erosion controls.

6. On September 20, 2019, the Department sent an NOV for the above discussed violations. This NOV summarized the violations and the recommended corrective actions.

7. On September 20, 2019, Mr. Lee drove by the site and observed that the necessary erosion controls had not been installed in the ditch on the north side of the site.

8. On September 23, 2019, a representative of JNB called Mr. Lee and stated that new erosion controls had been installed along the perimeter of the site. Further, improvements were made to the erosion controls along the northwest corner of the site.

9. On September 25, 2019, Mr. Lee returned to the site for an inspection. Once on site he observed the following violations: turbid, sediment laden storm was observed discharging from the site to Isett Avenue then north into the ditch where it flowed into a culvert which flows directly to an unnamed tributary of Mud Creek (creek). Turbid, sediment laden storm was observed entering the creek. Laboratory samples were taken in the creek and the results are in the below table:

Location	nephelometric turbidity unit (NTU)
Upstream of the point where the water flows from JNB into the creek (site 1)	31
At the location where water from the culvert into the creek (site 2)	580
Downstream of site 2 (site 3)	130

10. On October 3, 2019, a NOV was sent to JNB for the above discussed violations. This NOV summarized the relevant law, the results of the laboratory samples and the recommended corrective action. Copies of the photographs taken by Mr. Lee documenting the violations were also included with this NOV.

**IV. CONCLUSIONS OF LAW**

JNB nether admits nor denies the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water



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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.

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" 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.

3. 567 IAC 61.3(2) "c" and "f" state that

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

...

f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

The above stated facts demonstrate noncompliance with these provisions.

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.

**V. ORDER**

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

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of any applicable NPDES permit; and
3. Pay an administrative penalty of \$8,000.00 within 30 days of the date the Director signs this order.

**VI. PENALTY**

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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 runoff control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$3,000.00 was saved. Therefore, \$3,000.00 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 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 JNB’s NPDES permit 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.** JNB is engaged in the business of construction. This is a highly regulated activity and therefore JNB has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, on multiple occasions the Department communicated to JNB the need to implement proper storm water controls. Nevertheless, adequate controls were not installed and a discharge occurred. Therefore, the amount of \$3,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

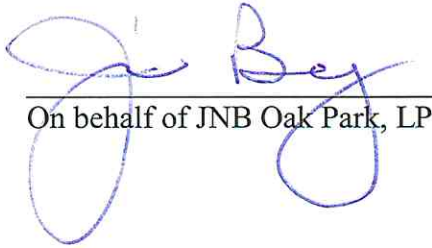
Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent JNB. By signature to this order, all rights to appeal this order are waived by JNB.



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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.

  
On behalf of JNB Oak Park, LP

Dated this 17<sup>th</sup> day of  
September, 2021

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

JNB NPDES Permit No. **22-00-1-05** (Copy of Order to Central Office Records File), FO 6,  
Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.