

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2017-0359
Iowa Department of Transportation,)	
Ames, IA)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a))	
of the Clean Water Act,)	
33 U.S.C. § 1319(a))	
_____)	

Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order on Consent”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent, Iowa Department of Transportation., (“Respondent” or “Iowa DOT”), is and was at all relevant times an agency established by and under the laws of the State of Iowa.

3. The EPA, together with the Respondent (hereafter collectively referred to as the “Parties”) enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address Respondent’s alleged noncompliance with its National Pollutant Discharge Elimination System (“NPDES”) permits. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permits.

5. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent also

waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order on Consent. Respondent's signature on this Order is not intended to be, nor shall it be deemed, an admission of liability in any proceeding or litigation brought by a person or entity that is not a party to this Order.

Statutory and Regulatory Framework

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. The CWA prohibits the "discharge" of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged in accordance with the terms of a NPDES permit issued pursuant to that Section.

Stormwater

10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

11. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

12. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

13. 40 C.F.R. § 122.26(b)(14)(x) defines "stormwater discharge associated with industrial activity," in part, as discharges from construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five (5) acres of total land area.

14. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the

CWA, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

15. The IDNR issued and implemented NPDES General Permit No. 2 regulating stormwater discharges associated with construction activities. The most recent 5-year General Permit No. 2 has an effective date of October 1, 2012, and an expiration date of October 1, 2017.

16. Any person seeking coverage under NPDES General Permit No. 2 is required to submit a Notice of Intent (“NOI”) to the IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section II.C.1.G., a Storm Water Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in Part IV of the Permit, must be completed before the NOI is submitted to the IDNR and fully implemented and maintained on site concurrently with operations at the facility.

EPA’s General Allegations

17. Respondent is and was, at all times relevant, a principle department of the State of Iowa created pursuant to § 307.2 of the Iowa Code that is “responsible for the planning, development, regulation and improvement of transportation in the state as provided by law.” Iowa Code § 7E.5.

18. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. In exercising this responsibility, Respondent contracts for design and construction of projects related to roadways owned and operated by the State. Such projects include, but are not limited to, highway and bridge construction, repair and expansion. A table listing some of Respondent’s construction project sites inspected by the EPA is attached hereto as Appendix A.

20. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s construction project sites, listed in Appendix A, and discharge to various waters, including Bacon Creek, Badger Creek, Camp Creek, Floyd River, Fourmile Creek, Fox Creek, Indian Creek, Keg Creek, Middle Raccoon River, Missouri River, North River, Platte River, Raccoon River, South Skunk Creek, South Squaw Creek, Sugar Creek and Willow Creek, and their tributaries.

21. The waters identified in Paragraph 20, above, and their tributaries are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. The runoff and drainage from Respondent’s construction project sites is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

23. Stormwater from Respondent’s construction project sites contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. Respondent's construction project sites listed in Appendix A have "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(x), and are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. Stormwater runoff from Respondent's industrial activity at construction project sites listed in Appendix A results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

26. Respondent's discharge of pollutants associated with an industrial activity at each of Respondent's construction stormwater sites, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

27. After receipt of an NOI from Respondent for each of its construction project sites listed in Appendix A, the IDNR issued coverage under NPDES General Permit No. 2, with permit authorization numbers and effective dates as identified in Appendix A.

28. Respondent has operated under the Permits identified in Appendix A at all times relevant to this Order.

29. Between May 26, 2013 and August 6, 2015, the EPA performed a Construction Storm Water Compliance Evaluation Inspection ("Inspection") of each of Respondent's construction project sites listed in Appendix A under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its Permits and the CWA.

30. During the Inspections, the EPA inspectors reviewed Respondent's records related to each of the construction project sites and their respective Permits and observed the construction project sites and the respective receiving streams to which stormwater was discharged.

EPA's Specific Allegations

31. The allegations stated above are re-alleged and incorporated herein by reference.

Count 1 Failure to Implement SWPPP

32. Part IV. of General Permit No. 2 requires facilities to implement the provisions of the SWPPP required under Part IV as a condition of the permit.

33. Paragraph IV.D.2. of General Permit No. 2 requires each SWPPP to include a description of appropriate controls that will be implemented at the construction site, including at a minimum, erosion and sediment controls such as stabilization practices; structural practices; and post-construction stormwater management practices.

34. Paragraph VI.M. of General Permit No. 2 requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control which are

installed or used to achieve compliance with the conditions of the permit and the requirements of the SWPPP.

35. Respondent prepares a set of plans and specifications for each construction project site. Each set of plans includes a section entitled “Quantities and General Information,” which includes a subsection entitled “Project Description.” A portion of the Project Description is a standard-format “base” SWPPP. The Quantities and General Information section of the project plans also includes a subsection entitled “Estimated Project Quantities,” with proposed quantities for stormwater structural controls, such as linear feet of silt fence and acres of seeding and fertilizing. The SWPPP identifies the “site map” as multiple sources of information within the plans, including the Estimated Project Quantities and various portions of the Plan and Profile sheets, Situation plans, and Cross Sections.

36. Section II of the base SWPPP, Project Site Description, includes site-specific information regarding the project, including the location of the project, the acreage covered by the SWPPP, the water body or bodies to which runoff would flow, and references to other sections of the project plans related to SWPPP implementation.

37. Section III. of the base SWPPP, Controls, includes a reference to a site-specific work plan and sequence of operations for the contractor for accomplishment of stormwater controls and requires preservation of vegetation in areas not needed for construction. This section of the SWPPP also refers to Standard Specifications that define requirements to implement erosion and sediment control measures, indicates that actual quantities used may vary from the base SWPPP, requires that amendment of the plan will be documented by field book entries or by contract modification, and indicates that additional erosion and sediment control items may be required as determined by the inspector and/or contractor during stormwater monitoring inspections.

38. Section IV. of the base SWPPP, Maintenance Procedures, requires the contractor to “maintain all temporary erosion and sediment control measures in proper working order, including cleaning, repairing, or replacing them throughout the contract period.” This section further requires that such maintenance shall begin when the features have lost 50% of their capacity.

39. Respondent also requires contractors to follow its Standard Specifications for Highway and Bridge Construction, which include information and requirements for stormwater controls at Iowa DOT construction project sites.

40. During Inspections performed by the EPA at Respondent’s construction project sites listed in Appendix A, the inspector documented recurring and significant deficiencies related to Respondent’s SWPPP implementation, including but not limited to failure to:

- a. install appropriate erosion and sediment controls for the site conditions;
- b. maintain structural controls such as silt fences, wattles and curb inlet controls;

- c. implement appropriate control practices such as stabilizing areas where work has been completed by seeding and fertilizing; and
- d. prevent or minimize vehicle track-out.

41. Respondent's failure to install, maintain and/or implement the required erosion and sediment stormwater controls are failures to implement the SWPPP and violations of General Permit No. 2, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. §1342(p).

**Count 2
Failure to Amend SWPPP**

42. Part V. of General Permit No. 2 requires that a SWPPP be developed for each construction site covered by the permit, and that the SWPPP shall: be prepared in accordance with good engineering practices, identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction activities; describe and ensure the implementation of practices which will be used to reduce pollutants in storm water discharges associated with industrial activity for construction activities at the construction site; and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of the permit.

43. Paragraph IV.A.1. of General Permit No. 2 requires that the SWPPP shall be completed before the NOI is submitted to the IDNR and updated as appropriate.

44. Paragraph IV.A.2. of General Permit No. 2 requires compliance with the SWPPP prior to the initiation of construction activities.

45. Part IV.D. of General Permit No. 2 identifies the minimum requirements for a SWPPP, including but not limited to:

- a. per paragraph IV.D.1.D., a site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, the location of structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where stormwater discharges to surface water;
- b. per paragraph IV.D.2., a description of controls that will be implemented at the construction site;
- c. per paragraph IV.D.3, a description of procedures to maintain in good and efficient operating conditions vegetation, erosion and sediment control measures and other protective measures identified in the site plan; and

- d. per paragraph IV.D.4., qualified personnel provided by the discharger shall inspect disturbed areas of the construction site that have not been stabilized at least once every seven calendar days, and based on the results of the inspection, the description of potential pollutant sources and pollution prevention measures shall be revised as appropriate as soon as practicable after the inspection.

46. Part IV.C. of General Permit No. 2 requires in pertinent part that the permittee shall amend the SWPPP whenever:

- a. there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to Waters of the United States and which has not been address in the SWPPP;
- b. the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in paragraph IV.D.2. of the permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharge associated with industrial activity for construction activities; and
- c. the SWPPP site map shall be expeditiously changed to include changes at the site.

47. During Inspections performed by the EPA at Respondent's construction project sites listed in Appendix A, the inspector found that Respondent had failed to amend the SWPPP and site map for some or all of the construction project sites listed in Appendix A, as required by General Permit No. 2, following site inspections that identified changes at such sites and/or ineffective pollution prevention controls.

48. Respondents' failure to amend SWPPPs and site maps are violations of the terms and conditions of General Permit No. 2 and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3
Failure to Conduct Adequate Inspections and Maintain Records**

49. Paragraph IV.D.4. of General Permit No. 2 requires that qualified personnel inspect disturbed areas of the construction site that have not been stabilized with a perennial, vegetative cover of sufficient density to preclude erosion at least once every seven calendar days. Paragraph IV.D.4.B. further requires that based on the results of the inspection, the description of potential pollutant sources and pollution prevention measures identified in the SWPPP shall be revised, as appropriate, as soon as practicable after the inspection, and that any changes to the SWPPP be implemented within seven days of the inspection.

50. In addition, paragraph IV.D.4.C. of General Permit No. 2 requires that the permittee must make and retain for at least three years a report summarizing the scope of the inspection as part of the SWPPP. The report must include the name(s) and qualifications of the inspectors, the date(s) of the inspection, major observations related to implementation of the SWPPP, and actions taken pursuant to paragraph IV.D.4.B. to identify new pollution sources and/or revised pollution controls.

51. Paragraph V of Respondent's base SWPPP requires that inspections shall be made jointly by the contractor and Iowa DOT personnel at least once every seven calendar days, and include the date of the inspection, a summary of the scope of the inspection, name and qualifications of the inspectors, rainfall amounts, a review of the effectiveness of erosion and sediment controls measures within disturbed areas, major observations related to implementation of the SWPPP, and identification of corrective actions required to maintain or modify erosion and sediment controls measures.

52. During Inspections performed by the EPA at Respondent's construction project sites listed in Appendix A, the inspector found that with regard to Respondent's inspections:

- a. there were periodically missing or late weekly inspection reports;
- b. the contractor did not consistently join the Iowa DOT personnel on the inspection and/or sign the report;
- c. inspection reports completed recently before EPA's inspections did not identify obvious long-term instances of noncompliance and failed control measures;
- d. in some instances, the Iowa DOT inspectors failed to conduct adequate inspections; and
- e. the inspection reports were sometimes not detailed enough to identify deficiencies in order to ensure appropriate follow-up and correction.

53. Respondents' failure to timely conduct inspections at construction project sites identified in Appendix A and/or retain copies of inspection reports, and failure to adequately describe new pollution sources, deficiencies related to pollution controls and actions taken to address them, are violations of the terms and conditions of General Permit No. 2, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4
Discharges of Non-Stormwater Pollutants**

54. Part III.A. of Respondent's Permit states in pertinent part that, "[a]ll discharges authorized by this permit shall be composed entirely of storm water."

55. During Inspections performed by the EPA at Respondent's construction project sites listed in Appendix A, the inspector documented discharges of non-stormwater pollutants to waters of the United States in violation of General Permit No. 2, including but not limited to:

- a. the EPA inspection on August 3 and 4, 2015, at the Alice's Road Project site, Permit No. IA-26490-26249, which identified stormwater runoff containing significant amounts of sediment leaving the Project site and entering tributaries of Sugar Creek and Fox Creek; and
- b. the EPA inspection on July 16, 2014, at the I-29/I-80 Bridge Reconstruction Project site in Council Bluffs, Permit No. IA-21642-21409, which identified stormwater runoff containing significant amounts of sediment leaving the Project site and entering the Missouri River.

56. Each discharge from Respondent's construction project sites that was not composed entirely of stormwater is a violation of the terms and conditions of General Permit No. 2, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Reasonable Time to Achieve Compliance

57. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that six (6) months is a reasonable time for Respondent to comply with the terms and conditions of IDNR General Permit No. 2 for stormwater discharges associated with construction activities.

Order for Compliance

58. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS, and Respondent hereby CONSENTS to take, the actions described below.

59. Respondent shall implement the actions described in Appendix B to this Order, Iowa Department of Transportation Stormwater Compliance Activities, to ensure long-term compliance with General Permit No. 2, as it may be amended, at all Iowa DOT construction project sites according to the schedule set forth therein.

60. The Respondent shall submit the following documents to the EPA and IDNR by the deadlines indicated below:

- a. within sixty (60) days of the effective date of this Order, a copy of or link to stormwater compliance inspection and Oversight Inspection procedures and the stormwater inspection forms that have been developed pursuant to Paragraphs 10 through 13 of Appendix B; and

- b. within ninety (90) days of the effective date of this Order, a copy of or link to the Base SWPPP Template that has been developed pursuant to Paragraph 5 of Appendix B.

61. Following receipt, the EPA will review the Base SWPPP Template, inspection procedures and inspection report forms submitted by the Respondent pursuant to Paragraph 60, and if appropriate, provide written comments within sixty (60) days and require modification and resubmission of a portion or all of such items pursuant to Paragraph 62, below. Review and comment on the base SWPPP or other submissions by the EPA does not relieve Respondents of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

62. If required by the EPA pursuant to Paragraph 61, above, Respondents shall within sixty (60) days of receipt of any written comments from the EPA regarding the SWPPP or other submissions, make modifications and changes, and resubmit such items to the EPA. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

63. *Semiannual Reporting to EPA and IDNR:* Respondent shall submit to the EPA, with a copy to the IDNR, semiannual reports describing the actions it has taken during the previous six-month period (January through June or July through December) to ensure continued compliance with the terms of General Permit No. 2 and this Order. These reports are due July 31, 2018, January 31, 2019, July 31, 2019, and January 31, 2020. Each report shall include, at a minimum:

- a. a copy of or link to any procedures, guidance, training, base SWPPPs, etc., related to Iowa DOT's stormwater construction program that were developed or modified (excluding, for purposes of the first semiannual report, any materials submitted pursuant to Paragraph 60);
- b. a current list of Iowa DOT personnel specifically identified in Appendix B, Paragraphs 2 and 3 of this Order that are responsible for implementing Iowa DOT's construction stormwater compliance program;
- c. a description of Iowa DOT's implementation of the construction stormwater compliance program as required by Appendix B of this Order, particularly with respect to SWPPP implementation and updating, stormwater training, contractor stormwater management requirements and inspections; and
- d. a copy of at least one representative sample of a site-specific SWPPP, a routine stormwater compliance inspection report and an Oversight Inspection report.

64. After Respondent has submitted at least three semiannual reports to the EPA pursuant to Paragraph 63 above, Respondent may submit a written request to the EPA to terminate the Order pursuant to Paragraph 73 below, based on a demonstration of Respondent's compliance with its Permits, the CWA and this Order. Upon receipt of such request, the EPA

will either terminate the Order or promptly notify the Respondent of the additional actions that need to be taken by Respondent to justify termination of the Order.

Submissions

65. All submissions to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that the Iowa Department of Transportation has complied with all the applicable requirements of the Order for Compliance. I also certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

66. All documents required to be submitted to EPA by this Order, shall be submitted by email when practical, or by mail to:

sans.cynthia@epa.gov

Cynthia Sans, or her successor
Compliance Officer (WENF)
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

67. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Ted Petersen, Supervisor
IDNR Field Office #5
7900 Hickman Rd., Suite 200
Windsor Heights, Iowa 50324

General Provisions

Effect of Compliance with the Terms of this Order

68. Compliance with the terms of this Order shall not relieve the Respondent of liability for, or preclude the EPA from, initiating an administrative or judicial enforcement action to

recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

69. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

70. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect the Respondent's facilities, and/or to request additional information from the Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

71. If any provision or authority of this Order, or the application of this Order to the Respondent, is held by federal judicial authority to be invalid, the application to the Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

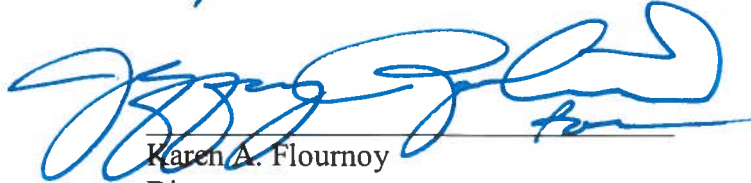
72. This Order shall be effective upon issuance by the Director of the Water, Wetlands and Pesticides Division of EPA Region 7. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

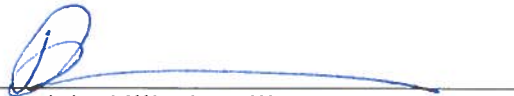
73. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall be given after the EPA determines that the requirements of this Order have been met.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this 22ND day of JANUARY, 2018.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the Respondent, Iowa Department of Transportation:

Mitchell J. Dillavou
Signature

1/16/2018
Date

Mitchell J. Dillavou
Name

Director, Highway Division
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.


I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

Mitchell J. Dillavou
Director, Highway Division
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

and by first class mail to:

Ted Petersen, Supervisor
IDNR Field Office #5
7900 Hickman Rd, Suite 200
Windsor Heights, IA 50324

1/22/18
Date


Signature

In the Matter of Iowa Department of Transportation
EPA Docket No. CWA-07-2017-0359
Administrative Order on Consent
Appendix A

**US EPA Stormwater Construction Inspections
at
Iowa Department of Transportation Construction Project Sites**

IDOT Region	Construction Project Sites and IDOT Project Numbers	General Permit No. 2	Permit Effective Dates	EPA Inspection Date(s)	Water of the US
1	Euclid Avenue Bridge Replacement # BRF-006-4(159)- -38-77	IA-24818-24561	2/21/2014 to 2/18/2017	7/17/2014	Fourmile Creek
1	Alice's Road - 105th St. & I-80 # IMN-080-3(175)119- -0E-25	IA-26490-26249	2/24/2015 to 2/24/2018	8/3/2015 to 8/4/2015	Fox Creek & Sugar Creek
1	I-80 Shoulder Recon # IMX-80-5(329)143- -02-77	IA-26492 - 26253	2/24/2015 to 2/16/2018	8/5/2015 to 8/6/2015	Sugar Creek, S. Skunk Creek & Camp Creek
3	I-29 Expansion Project; Sioux City # IM-NHS-029-7(48)149—03-97	IA-21067-20835	12/20/2011 to 12/20/2021	8/4/2015 to 8/5/2015	Missouri River, Floyd River & Bacon Creek
4	Reconstruction of I-29/US34 Interchange including Bridge Replacement # NHSN-534-I(93) - - 2R-65	IA-19073-18845	9/21/2010 to 9/21/2015	7/15/2014	Keg Creek
4	I-29/I-80 Bridge reconstruction in Council Bluffs #IM-NHS-29-3(86)52- -03-78	IA-21642-21409	4/25/2012 to 4/25/2017	7/16/2014	Missouri River
4	I-29 NB from W. of 24 th Street to just E. of Indian Creek # IM-NHS-080-1(3672)52--03-78	IA-21642-21409	4/25/2012 to 4/25/2017	7/16/2014	Indian Creek

IDOT Region	Construction Project Sites and IDOT Project Numbers	General Permit No. 2	Permit Effective Dates	EPA Inspection Date(s)	Water of the US
4	I-80 Bridge Replacement over Indian Creek # IMX-080—1(354)50- - 02-15	IA-22411-22174	8/24/2012 to 8/24/2015	7/16/2014	Indian Creek
4	IA-141 Bridge Replacement over the Middle Raccoon River #BRFN-141-5(18)- - 39-39	IA-24800-24547	2/18/2014 to 2/18/2017	7/17/2014	Middle Raccoon River
4	IA-141 Bridge Replacement over Willow Creek #BRFN-141-5(22)- - 39-39	IA-24800-24547	2/18/2014 to 4/5/2916	7/17/2014	Willow Creek
4	US34 Bridge Replacement over Platte River # BRFN-034-3(37)- - 38-02	IA-24816-24559	2/21/2014 to 2/18/2017	7/18/2014	Platte River
5	I-35 Reconstruction Project in Warren and Polk Counties, from Clanton Creek 2 miles S. of IA-92 to IA-5 in Warren County # 91-0352-336 and # 91-0352-294	IA-23052-22812	2/19/2013 to 2/19/2018	8/26/2013 to 8/28/2013	Badger Creek, North River & Raccoon River
5	IA 152 Bridge Replacement over I-35 # BRFN-152-0(3)- - 39-20	IA-24733-24482	1/27/2014 to 1/27/2017	7/18/2014	S. Squaw Creek

In the Matter of Iowa Department of Transportation
EPA Docket No. CWA-07-2017-0359
Administrative Order on Consent
Appendix B

Iowa Department of Transportation Stormwater Compliance Activities

Definitions

1. Terms used in this Appendix B to the Order that are defined in the Clean Water Act or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Appendix. As used in this Appendix to the Order, the following definitions shall apply:

- a. “BMPs” shall mean Best Management Practices used to control pollutants in stormwater runoff, as described in the General Permit No.2 and in the SWPPP.
- b. “Construction Activity” or “Construction Activities” shall mean the disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.
- c. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or state or federal holiday, the period shall run until the close of business of the next business day.
- d. “District Construction Engineer” shall mean the Iowa DOT engineer that provides district-wide oversight of district construction projects.
- e. “Environmentally sensitive area” shall mean any area which would be directly impacted by stormwater discharges from a Project, and which is designated critical habitat for any listed threatened or endangered species, or which contains an immediate downstream water body that is listed as impaired for sediment by the IDNR under Section 303(d) of the CWA, 33 U.S.C. § 1313(c).
- f. “Resident Construction Engineer” shall mean an Iowa DOT Engineer who provides professional administrative management and direction of all phases of construction in a designated field office.
- g. “Order” shall mean the Administrative Order on Consent between the U.S. Environmental Protection Agency, Region 7, and the Iowa Department of Transportation, EPA Docket No. CWA-07-2017-0359.
- h. “Oversight Inspector” shall mean the Iowa DOT Headquarters employee, Iowa DOT District employee, Iowa DOT construction field office employee other than the Project Inspector, or third-party consultant retained by Iowa DOT who has appropriate stormwater compliance certifications to conduct Oversight Inspections pursuant to Paragraphs 12 and 13, below.

- i. “Permit” or “Applicable Permit” shall mean the Iowa Department of Natural Resources (“IDNR”) General Permit No. 2 for stormwater discharges associated with construction activities at a Project site or an IDNR project-specific individual stormwater permit issued to Iowa DOT for a Project site.
- j. “Prime Contractor” shall mean the contractor charged with supervision and completion of construction for a Project and is awarded contract with Iowa DOT and receives payment from the Iowa DOT for work on a Project.
- k. “Project” shall mean any location in the State of Iowa where Iowa DOT is required to obtain a Permit for discharges associated with construction activities due to Iowa DOT engaging in Construction Activities that disturb one (1) or more acres of land.
- l. “SWPPP” shall mean a Stormwater Pollution Prevention Plan required by the Permit; “base SWPPP” shall refer to the template SWPPP document used as the basis for a site-specific SWPPP, and “Project SWPPP” shall refer to a site-specific SWPPP prepared for a particular Project.

Iowa DOT Construction Stormwater Management Personnel and Responsibilities

2. Designation of Stormwater Compliance Manager. Within thirty (30) days of the effective date of this Order, Iowa DOT shall designate an individual as its Stormwater Compliance Manager who shall have overall responsibility for the Iowa DOT stormwater compliance program and shall:

- a. be an Iowa DOT employee;
- b. have training and knowledge regarding stormwater requirements consistent with Certified Professional in Erosion and Soil Control (“CPESC”) Certification or certification through a course that meets or exceeds the requirements set out in Paragraph 7 and field experience with NDPEs Permits and SWPPPs;
- c. participate in the development and maintenance of the Stormwater Training Program pursuant to Paragraphs 7 and 8, below;
- d. be responsible for providing all written reports required by this Order;
- e. serve as Iowa DOT’s point of contact for the State and the EPA for Iowa DOT-wide compliance matters related to construction stormwater requirements;
- f. oversee the Inspection and Oversight Inspection process and procedures;
- g. oversee agency-wide stormwater program compliance activities, including preparation and dissemination of applicable guidance; and
- h. elevate to Iowa DOT senior management information regarding any unresolved, continuing stormwater noncompliance on any Project.

3. Designation of Project Stormwater Manager. Within sixty (60) days of the effective date of this Order, for all active Projects, and prior to commencement of construction at any new Project, Iowa DOT shall designate Resident Construction Engineers to be responsible for ensuring stormwater compliance for Projects. Each Project Stormwater Manager shall:

- a. be an Iowa DOT employee;
- b. complete timely stormwater training or certification pursuant to Paragraphs 7 and 8, below;
- c. oversee stormwater compliance at all Iowa DOT Projects in a field office to ensure compliance with applicable NPDES permits, SWPPPs and this Order;
- d. have the authority and responsibility to take actions necessary to ensure compliance with stormwater requirements and this Order including, where appropriate, issuing stop work orders, directing additional inspections at construction project sites that are experiencing problems with achieving permit compliance;
- e. have the authority and responsibility to order the taking of measures to cease, correct, prevent, or minimize the consequences of non-compliance with the stormwater requirements of the Applicable Permit and this Order;
- f. be authorized by Iowa DOT and have the responsibility to supervise all work necessary to meet stormwater requirements at the Project, including work performed by contractors, and sub-contractors;
- g. be authorized by Iowa DOT and have the responsibility to order employees, contractors and sub-contractors to take appropriate responsive action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements, and to order or recommend such other actions as necessary to meet stormwater requirements;
- h. be familiar with the Project SWPPP and site map;
- i. be responsible for monitoring inspection reports on a monthly basis, to determine whether deficiencies identified in inspection reports were adequately and timely addressed, and if not, have the authority and responsibility to direct immediate actions to correct the deficiencies; and
- j. be the point of contact for the Project for regulatory officials, Iowa DOT employees, contractors, sub-contractors and consultants regarding stormwater requirements.

4. Designation of Project Inspectors. Within thirty (30) days of the effective date of this Order, Iowa DOT shall designate one or more Iowa DOT employee(s) or consultant(s) working directly for Iowa DOT as a Project Inspector for each Project. The Project Inspector shall report to the Project Stormwater Manager. The Project Inspector shall have responsibility for conducting inspections required by the Permit and this Order and be familiar with the Project SWPPP and site map and have the authority and responsibility to update the Project SWPPP and site map.

Stormwater Pollution Prevention Plan

5. Base SWPPP Template Review and Revision. Within ninety (90) days of the effective date of this Order, Iowa DOT shall perform a thorough review and revision of all documents associated with the template for its base SWPPP to ensure the base SWPPP includes all requirements of General Permit No. 2, including an explanation of the roles and responsibilities for Iowa DOT personnel and contractors related to implementation of the SWPPP and references to applicable contract documents.

6. Project SWPPP Requirements. Iowa DOT shall have a Project-specific SWPPP that complies with its Permit and incorporates appropriate terms from the base SWPPP. The Project SWPPP shall be specific to the land disturbance activities at the site and include a site map depicted on a single page or a series of pages.

Erosion and Sediment Control Training and Certification

7. Erosion and Sediment Control (“ESC”) Training and Certification Program. Within sixty (60) days of the effective date of this Order, Iowa DOT shall implement an ESC Training and Certification Program, which has been created and run by Iowa DOT or a third party with expertise in erosion and sediment control training, as follows:

- a. The ESC Training and Certification Program shall consist of: i) an Erosion and Sediment Control Basics (“ESC Basics”) web-based training course; and ii) an Erosion Control Technician (“ECT”) certification course.
- b. If Iowa DOT implements any significant revisions to the ESC Training and Certification Program, it shall include a description of such revisions in the Semiannual Report for the period in which they are made, pursuant to Paragraph 63 of the Order. Upon request, Iowa DOT shall make available to the EPA copies of the revised training materials.

8. Iowa DOT shall ensure that the employees listed below complete either the ESC Basics training course or ECT certification course within one hundred and twenty (120) days of the effective date of this Order. Any employees hired or transferred to one of the positions listed below shall complete training pursuant to the ESC Training and Certification Program within ninety (90) days of assuming such position. Thereafter, the Iowa DOT employees listed below shall either complete the ESC Basics training course at least once every other year or the ECT certification course at least once every five (5) years (which requires a minimum of one (1) update between certification and re-certification). Iowa DOT employees subject to this ESC Training and Certification Program requirement include, at a minimum:

- a. the Stormwater Compliance Manager;
- b. all Project Stormwater Managers; and
- c. all Project Inspectors conducting inspections required by the Permit and Oversight Inspectors.

Contract Stormwater Management Requirements

9. Prime Contractor Designation of Water Pollution Control Manager. Iowa DOT shall require as a term of its contracts for all Projects let on or after October 16, 2018, that prior to initiating any Construction Activities at a Project, the Prime Contractor shall designate a “Water Pollution Control Manager” (“WPCM”). The WPCM shall:

- a. complete training every other year or certification every five (5) years as referenced in Paragraph 7;
- b. be authorized by the Prime Contractor and have the authority to supervise all work performed by the Prime Contractor and sub-contractors that involves stormwater requirements or affects stormwater compliance;
- c. be authorized by the Prime Contractor and have the responsibility to order the Prime Contractor’s employees and subcontractors to take appropriate corrective action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements and to order or recommend such other actions or sanctions as necessary to meet stormwater requirements;
- d. be familiar with the Project SWPPP;
- e. be the point of contact for Iowa DOT regarding stormwater compliance;
- f. be responsible for reviewing and signing or delegating review and signing of inspection reports to a trained or certified individual from the Prime Contractor, acknowledging awareness of any deficiencies and ensuring the correction of all deficiencies; and
- g. visit the Project on a frequent basis and in no instance less than once per week during construction activities. When the Prime Contractor is not mobilized onsite, the Prime Contractor may delegate this responsibility to a subcontractor.

Inspections

10. Inspection Procedures. Within sixty (60) days of the effective date of this Order, Iowa DOT shall establish and implement a set of stormwater compliance inspection procedures for Projects that complies with the terms of General Permit No. 2 and this Order. Iowa DOT shall memorialize these inspection procedures and forms in a written guidance or similar document, and distribute the document to its field offices state-wide. The procedures shall be binding on Iowa DOT. At a minimum, the inspection procedures shall require the following:

- a. each Project shall be subject to routine stormwater compliance inspections at the frequency required by the Permit by a trained or certified Project Inspector using the inspection report form(s) developed pursuant to Paragraph 11, below;
- b. Projects identified in Paragraph 12, below, shall be subject to additional Oversight Inspections in accordance with that Paragraph;
- c. all installed BMPs and other pollution control measures shall be inspected for proper and timely installation, operation and maintenance in accordance with stormwater requirements of the Permit;
- d. all stormwater outfalls shall be inspected for evidence of erosion or sediment deposition;
- e. the Project Inspector shall complete an inspection report for each inspection within one (1) day of the inspection where wireless communication is available, otherwise within two (2) days;
- f. a copy of the inspection report shall be provided to the WPCM;
- g. the WPCM or delegate per Paragraph 9 shall review and sign each inspection report; and
- h. Iowa DOT shall take action to ensure that all deficiencies identified during the inspection are corrected as required by the Permit.

11. Inspection Report Form. Within sixty (60) days of the effective date of this Order, Iowa DOT shall develop and implement the use of a Stormwater Inspection Form that, at a minimum, shall:

- a. clearly identify each deficiency with the stormwater requirements of the Permit and Project SWPPP observed;
- b. document all actions that need to be undertaken to correct the noted deficiencies and achieve or maintain compliance, or prevent or minimize non-compliance, with stormwater requirements of the Permit and Project SWPPP;
- c. reflect the date each corrective action is implemented or deficiency otherwise addressed;

- d. clearly indicate each deficiency from the current or prior inspection that was not corrected; and
- e. be signed and dated by the Project Inspector who conducted the inspection.

12. Oversight Inspections. Within sixty (60) days of the effective date of this Order, Iowa DOT shall establish and implement a set of procedures for conducting and following-up after Oversight Inspections at all Projects that disturb five acres or more of soil and that are located in an environmentally sensitive area. The procedures for Oversight Inspections shall: ensure that Oversight Inspections occur at least once every one hundred and twenty (120) days during any period where there is active construction at a Project; and ensure for completion of follow-up actions consistent with the requirements of Paragraph 13, below.

13. Oversight Inspection Process Follow-up. Following an Oversight Inspection performed pursuant to Paragraph 12, above, the following shall occur:

- a. within seven (7) days of each Oversight Inspection, the inspector shall provide to the Project Stormwater Manager or Project Inspector written findings that clearly identifies any SWPPP implementation deficiencies and/or missing or deficient stormwater controls, and recommendations to correct the deficiencies;
- b. Iowa DOT and the Prime Contractor shall, within seven (7) days following the next routine stormwater compliance inspection, correct each identified deficiency and implement each recommendation by the Oversight Inspector, unless rejected and a reason provided; and
- c. within fourteen (14) days of the receipt of the Oversight Inspection report, the Project Stormwater Manager or the Project Inspector shall document resolution of identified deficiencies or the basis for rejecting any finding or recommendation. This documentation may be satisfied by including the required information in a routine stormwater compliance inspection report.

14. Other Permits or Approvals. Where any compliance obligation under this Order requires Iowa DOT to obtain a federal, state, or local permit or approval, Iowa DOT shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.