

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
REGIONAL HEARING CLERK

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BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
)  
Iowa Department of Transportation, )  
JB Holland Construction, Inc., )  
Peterson Contractors, Inc., and )  
Scheckel Construction, Inc. )  
)  
Respondents )  
)  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
)  
\_\_\_\_\_ )

Docket No. CWA-07-2011-0004  
  
CONSENT AGREEMENT/  
FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and the Iowa Department of Transportation, JB Holland Construction, Inc., Peterson Contractors, Inc. and Scheckel Construction, Inc. (Respondents) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that the Respondents have violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

### Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondents are the Iowa Department of Transportation, JB Holland Construction, Inc., Peterson Contractors, Inc. and Scheckel Construction, Inc., who are authorized to conduct business in the State of Iowa.

### Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

6. 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.

7. 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 storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

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

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

10. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity,” in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

11. 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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. IDNR issued a general permit for the discharge of stormwater under the NPDES, General Permit No. 2. The general permit governs stormwater discharges associated with construction or land disturbance activity. The general permit became effective October 1, 2002, through October 1, 2007. This permit was reissued on October 1, 2007, and expires on October 1, 2012.

### Factual Background

13. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondents were the owner(s) and/or operator(s) of a construction site known as the U.S. Highway 30 Road Construction Project, located near and through the cities of Tama and Toledo, Iowa (“Site”). Construction activities occurred at the Site including clearing, grading, and excavation which disturbed five (5) or more acres of total land area or which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

15. Stormwater, snow melt, surface drainage and runoff water leaves the Site and flows into Tama Mud Creek and an unnamed tributary, which flow into the Iowa River. The runoff and drainage from the Site is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

16. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Site has “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Respondents discharged pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

19. Stormwater runoff from Respondents’ construction Site 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).

20. Respondents’ discharge of pollutants associated with an industrial activity, 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.

21. Respondent IDOT applied for and was issued NPDES permit coverage under the general permit described in Paragraph 12 above. IDNR assigned Respondent IDOT Permit No. IA-15984-15763 providing Respondent IDOT with NPDES permit coverage through July 15, 2011.

22. Respondent's permit requires the permittee to develop a Stormwater Pollution Prevention Plan ("SWPPP") that identifies any contractors that will be used to implement the plan and each contractor or subcontractor must sign a certification statement. Upon signing the certification, the contractor or subcontractor is a co-permittee with the owner and other co-permittee contractors.

23. Respondents JB Holland Construction, Inc., Peterson Contractors, Inc. and Scheckel Construction, Inc. signed this certification statement, in accordance with Part IV.G of Respondent IDOT's permit, and thus became co-permittees with IDOT on the U.S. Highway 30 Construction road construction Site.

24. Respondents' permit coverage is for the U.S. Highway 30 Road Construction Project around and through the cities of Tama and Toledo, Iowa. The total length of the road building project is approximately 7.5 miles and the total disturbed area is 420 acres.

25. On or about September 10-11, 2009, EPA inspectors performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the site in accordance with the CWA.

### Findings of Violation

#### Count 1

#### **Failure to Properly Design, Install and Maintain Best Management Practices (BMPs)**

26. The facts stated in Paragraphs 11 through 25 above are herein incorporated.

27. Part IV of Respondents' permit requires that the Respondents develop a plan that shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharge to ensure compliance with the terms and conditions of Respondents' permit. Part IV Section D.2 of Respondents' permit requires that the Respondents' SWPPP include structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the Site.

28. Part VI, Section M of Respondents' permit requires the permittees, at all times, to properly operate and maintain all systems of treatment and control that are installed or used by the permittees to achieve compliance with the conditions of this permit and with the requirements of the SWPPP.

29. Part IV, Section D.2, A.1 of Respondents' permit requires that stabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where construction activity will not occur for a period of 21 or more calendar days later than the 14<sup>th</sup> day after no construction activity has occurred in such area.

30. The EPA inspection referenced in Paragraph 25 above, revealed that Respondents had not adequately designed BMPs to protect receiving waters. Respondents' failure to adequately design BMPs resulted in the discharge of sediment offsite.

31. The EPA inspection referenced in Paragraph 25 above, revealed that Respondents had not adequately maintained silt fencing. Specifically, at least three hundred feet of silt fences were not properly maintained, and silt fences were undermined, overrun, or filled with sediment.

32. The EPA inspection referenced in Paragraph 25 above, revealed that Respondents had not properly installed rock check dams, allowing the migration of sediment offsite.

33. The EPA inspection referenced in Paragraph 25 above, revealed that Respondents had not properly stabilized portions of the Site in sloped areas along the ditch and near ramps after construction activities had ended.

34. Respondents' failure to properly install, design and maintain BMPs is a violation of Respondents' permit, 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).

### Count 2

#### **Failure to Develop an Adequate Stormwater Pollution Prevention Plan (SWPPP)**

35. The facts stated in Paragraphs 11 through 25 above are herein incorporated.

36. Part IV of the Respondents' permit requires that Respondents develop a SWPPP that shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharge from the construction activities at Respondents' construction site. The SWPPP shall describe and ensure the implementation of the practices which will be used to reduce the pollutants in stormwater discharge and to assure compliance with the terms and conditions of this permit, including the location of structural and nonstructural controls. The SWPPP shall be retained at the construction site from the date construction activities begin to the date of final stabilization.

37. The inspection referenced in Paragraph 25 above, revealed that Respondents' SWPPP failed to adequately describe best management practices and stormwater management practices by failing to identify on a site map the locations for the installation of BMPs, particularly silt fences, ditch locations, and locations of temporary sedimentation basins.

Additionally, Respondents' SWPPP was not available onsite while construction activities were ongoing.

38. Respondents' failure to adequately develop a SWPPP and to retain the SWPPP at the construction Site is a violation of Respondents' permit, 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).

### **Count 3**

#### **Failure to Perform and Document Site Inspections**

39. The facts stated in Paragraphs 11 through 25 above are herein incorporated.

40. Part IV, Section D.4 of the Respondents' permit requires that qualified personnel shall inspect areas of the construction site that have not been finally stabilized at least once every seven calendar days and within 24 hours of the end of a storm with rainfall that is .5 inches or greater.

41. The EPA inspection referenced in Paragraph 25 above, revealed that Respondents, on at least 25 occasions, did not perform and document Site inspections at a minimum of every seven calendar days, as required by Respondents' permit.

42. Respondents' failure to perform and document site inspections is a violation of Respondents' permit, 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).

### **CONSENT AGREEMENT**

43. Respondents and EPA agree to the terms of this CAFO and Respondents agree to comply with the terms of the Final Order portion of this CAFO.

44. Respondents admit the jurisdictional allegations of this CAFO and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

45. Respondents neither admit nor deny the factual allegations set forth above.

46. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above, and their right to appeal the Final Order portion of this CAFO.

47. Respondents and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

48. The undersigned representatives of the Respondents certify that they are fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondents to it.

49. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

50. This CAFO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

51. Respondents certify by the signing of this CAFO that to the best of their knowledge, Respondents' facility is in compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

52. The effect of settlement described in Paragraph 50 above is conditional upon the accuracy of the Respondents' representations to EPA, as memorialized in Paragraph 51 above, of this CAFO.

53. Respondents agree that, in settlement of the claims alleged in this CAFO, Respondents shall pay a penalty of \$60,000 as set forth in Paragraph 1 of the Final Order.

54. Respondents understand that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

### FINAL ORDER

#### **Payment Procedures**

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of Sixty Thousand Dollars (\$60,000) to be paid in full no later than 30 days after the effective date of this CAFO. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2011-0004.

Copies of the check(s) shall be mailed to:

Kristen Nazar  
Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

and to

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

2. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CAFO shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

#### **Parties Bound**

3. This Final Order portion of this CAFO shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents, with respect to matters included herein, comply with the terms of this CAFO.

#### **General Provisions**

4. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

5. Complainant reserves the right to take enforcement action against Respondents for any future violations of the CWA, and its implementing regulations, and to enforce the terms and conditions of this CAFO.

6. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.



7. Respondents and Complainant shall bear their respective costs and attorney's fees.
8. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

3-10-11  
Date

Karen A. Hearn  
William A. Spratlin      Actg. Dir. WWPD  
Director  
Water, Wetlands and Pesticides Division

3/10/11  
Date

Kristen Nazar  
Kristen Nazar  
Assistant Regional Counsel  
Office of Regional Counsel

RESPONDENT:  
IOWA DEPARTMENT OF TRANSPORTATION

Jan. 3, 2011  
Date

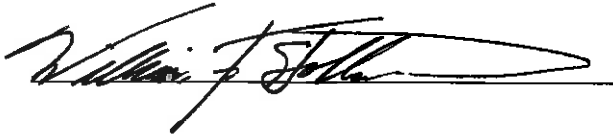
John M. Smythe

Name (Print) John M. Smythe

Title Director, Office of Construction

RESPONDENT:  
JB HOLLAND CONSTRUCTION, INC.

12-22-10  
Date

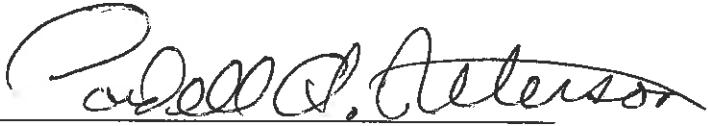


Name (Print) WILLIAM F. HOLLAND

Title VP / SEC

RESPONDENT:  
PETERSON CONTRACTORS, INC.

12/28/10  
Date



Name (Print) **cordell q. peterson**

Title President

RESPONDENT:  
SCHECKEL CONSTRUCTION, INC.

1/20/2011  
Date


Scheckel Const. Inc. by Tom Scheckel

Name (Print) Tom Scheckel

Title Pres.

IT IS SO ORDERED. This Final Order shall become effective immediately.

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer

  
\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I hand delivered the original and one true copy of this Consent Agreement and Final Order (CAFO) to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, true and correct copies of the signed original CAFO to:

Mr. Richard Mull  
Iowa Department of Justice  
1305 E. Walnut Street  
Des Moines, Iowa 50319

Mr. Garrett L. Boehm, Jr  
Johnson & Bell PC  
33 West Monroe St., Suite 2700  
Chicago, Illinois 60603-5404

Mr. Charles F. Becker  
Belin McCormick P.C.  
666 Walnut Street, Suite 2000  
Des Moines, Iowa 50309

Mr. Tom Scheckel  
Scheckel Construction, Inc.  
21334 Highway 62  
Bellevue, Iowa 52031

3/22/11  
Date

Kathy Robinson