

**IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY**

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STATE OF IOWA ex rel. IOWA	)	
DEPARTMENT OF NATURAL	)	
RESOURCES,	)	NO. EQCV318517
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>CONSENT ORDER, JUDGMENT</b>
NORTH CENTRAL IOWA REGIONAL	)	<b>AND DECREE</b>
SOLID WASTE AGENCY,	)	
	)	
Defendant.	)	

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The Court is presented with Plaintiff's Petition in Equity seeking civil penalties and injunctive relief pursuant to Iowa Code sections 455B.191(2) and 455B.307(3). The Court having read the Petition in Equity and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction over the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.

2. Defendant, having reviewed the Petition in Equity, admits, for purposes of settlement and for this action only, the violations alleged in the Petition in Equity.

3. At all times material hereto, Brent Johnson was a professional engineer licensed to practice engineering in the state of Iowa and conducted business in Fort Dodge, Webster County, Iowa. Brent Johnson was an employee of McClure Engineering.

4. At all times material hereto, McClure Engineering and Brent Johnson held themselves out to be a duly licensed, skilled and accomplished professional engineer capable of and duly authorized to perform professional engineering services for and on behalf of clients in the state of Iowa, including North Central Iowa Regional Solid Waste Agency.

5. At all times material hereto, North Central Iowa Regional Solid Waste Agency relied upon Brent Johnson and McClure Engineering to ensure that its operations were in compliance with all applicable laws, rules and regulations.

6. Defendant states that Brent Johnson and McClure Engineering were a proximate cause that North Central Iowa Regional Solid Waste Agency has not been or are not in compliance with all applicable laws, rules and regulations. However, North Central Iowa Regional Solid Waste Agency admits that it can be held legally responsible for the actions or inactions of Brent Johnson and McClure Engineering.

7. At all times material hereto, Terracon Consulting Engineers and Scientists held itself out to be a duly licensed, skilled and accomplished professional engineering firm capable and duly authorized to perform professional engineering services for and on behalf of clients in the state of Iowa, including North Central Iowa Regional Solid Waste Agency.

8. At all times material hereto, North Central Iowa Regional Solid Waste Agency relied upon Terracon Consulting Engineers and Scientists to ensure that its operations were in compliance with all applicable laws, rules and regulations.

9. Defendant states that Terracon Consulting Engineers and Scientists were a proximate cause that North Central Iowa Regional Solid Waste Agency has not been or are not in compliance with all applicable laws, rules and regulations. However, North Central Iowa Regional Solid Waste Agency admits that it can be held legally responsible for the actions or inactions of Terracon Consulting Engineers and Scientists.

10. At all material times hereto, Mike Grell was a co-director and certified landfill operator in the state of Iowa and conducted business as a co-director for the North Central Iowa Regional Solid Waste Agency, and held himself out to be a duly certified, skilled and an

individual capable and duly authorized to perform services as a co-director and certified landfill operator on behalf of companies, including North Central Iowa Regional Solid Waste Agency.

11. At all times material hereto, North Central Iowa Regional Solid Waste Agency relied upon Mike Grell as co-director and as a certified landfill operator to ensure that its operation at the landfill were in compliance with all applicable laws, rules and regulations.

12. Defendant states that the actions or inactions of Mike Grell were a proximate cause that North Central Iowa Regional Solid Waste Agency has not been, or are not in compliance with all applicable laws, rules and regulations. However, North Central Iowa Regional Solid Waste Agency admits that it can be held legally responsible for the actions or inactions of Mike Grell.

13. At all material times hereto, Deb Watson was a co-director and conducted business as a co-director for the North Central Iowa Regional Solid Waste Agency, and held herself out to be a duly certified, skilled and an individual capable and duly authorized to perform services as a co-director on behalf of companies, including North Central Iowa Regional Solid Waste Agency.

14. At all times material hereto, North Central Iowa Regional Solid Waste Agency relied upon Deb Watson as co-director to ensure that its operation at the landfill were in compliance with all applicable laws, rules and regulations.

15. Defendant states that the actions or inactions of Deb Watson were a proximate cause that North Central Iowa Regional Solid Waste Agency has not been, or are not in compliance with all applicable laws, rules and regulations. However, North Central Iowa Regional Solid Waste Agency admits that it can be held legally responsible for the actions or inactions of Deb Watson.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

**Civil Penalty**

16. Defendant is assessed a civil penalty of One Hundred Thirty-Five Thousand and no/100 Dollars (\$135,000.00) for the violations alleged in the Petition. Defendant shall pay the penalty within ten (10) days of entry of this Consent Order, Judgment and Decree. Defendant shall pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance.

17. Payment of the penalty and interest referred to in paragraph sixteen above shall be made payable to the State of Iowa and sent to Plaintiff's attorney, David S. Steward, at the address noted below.

**Construction of Abutment Liner**

18. By December 31, 2016, Defendant shall construct the abutment liner (as identified in Exhibit A) in accordance with the "Abutment Liner/SW Area Closure" document dated August 19, 2015, and prepared and submitted on behalf of Defendant by HLW Engineering Group. By December 31, 2016, Defendant shall also submit, for review and approval, the construction quality control and assurance certification report to the Iowa Department of Natural Resources (DNR). The report shall be prepared in accordance with Iowa Administrative Code paragraph 567 113.7(6)"d" by a professional engineer licensed in the State of Iowa.

**SW Area Closure**

19. By December 31, 2016, Defendant shall construct the SW area closure (as identified in Exhibit A) in accordance with the "Abutment Liner/SW Area Closure" document dated August 19, 2015, and prepared and submitted on behalf of Defendant by HLW Engineering Group. By December 31, 2016, Defendant shall also submit, for review and approval, the construction quality control and assurance certification report to the Iowa Department of Natural Resources. The report shall be prepared in accordance with Iowa

Administrative Code paragraph 567 113.7(6)"d" by a professional engineer licensed in the State of Iowa.

**Installation of Seepage Collection Pipe**

20. By December 31, 2016, Defendant shall construct the seepage collection pipe (as identified in Exhibit A) in accordance with the "Abutment Liner/SW Area Closure" document dated August 19, 2015, and prepared and submitted on behalf of Defendant by HLW Engineering Group. By December 31, 2016, Defendant shall also submit, for review and approval, the construction quality control and assurance certification report to the Iowa Department of Natural Resources. The report shall be prepared in accordance with Iowa Administrative Code paragraph 567 113.7(6)"d" by a professional engineer licensed in the State of Iowa.

**Closure of Other Areas Requiring Final Cover**

21. By December 31, 2016, Defendant shall complete closure of all other areas requiring final cover (as identified in Exhibit A) in accordance with Section 1 of the Permit Renewal Documentation dated May 16, 2014, and prepared and submitted on behalf of Defendant by HLW Engineering Group. By December 31, 2016, Defendant shall also submit, for review and approval, the construction quality control and assurance certification report to the Iowa Department of Natural Resources. The report shall be prepared in accordance with Iowa Administrative Code paragraph 567 113.7(6)"d" by a professional engineer licensed in the State of Iowa.

**Supplemental Environmental Project**

22. By December 31, 2016, Defendant shall complete construction and be ready for operation of the Supplemental Environmental Project (SEP) consisting of a Household Hazardous Waste Regional Collection Center. Construction shall be according to the terms of

the contract entered into with Kolacia Construction, Inc. on August 16, 2015, and any amendments or change orders made thereto.

23. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

- a. that all cost information provided to Plaintiff in connection with Plaintiff's approval of the SEP is complete and accurate and that the Defendant in good faith estimates the cost to construct the SEP is approximately \$700,000; and
- b. that Defendant will not receive any reimbursement for any portion of the SEP from any other person or entity.

**Compliance Report**

24. By December 31, 2016, Defendant shall submit to the DNR a compliance report certifying completion of the requirements contained in paragraphs 18-22 of this Consent Order, Judgment and Decree. The compliance report shall include, but not be limited to, the dates and a description of all construction activities, including the date of completion, and include any final maps or photographs depicting the completed project.

**Stipulated Civil Penalties for Failure to Comply with Deadlines**

25. Except as provided herein, Defendant shall pay the following stipulated civil penalties:

- a. For each day Defendant fails to comply with each December 31, 2016 deadline contained in paragraphs 18-22 and 24 herein:

<u>Period of violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$250
31-60 days	\$500
Each day over 60	\$1,000

- b. If a particular violation, referred to in subparagraph (a) above, occurs for more than one hundred eighty (180) days, the stipulated civil penalty of \$1,000 per day per violation shall continue unless and until the State of Iowa files in this action an Application or other pleading requesting that the Court assess against the Defendant up to a maximum civil penalty of \$5,000 per day per violation for such additional violations occurring after

the date of the Application or other pleading. The Defendant reserves the right to contest the amount of any such penalties.

26. Payment of the stipulated civil penalties referred to in paragraph 25 shall be made no later than ten (10) days after receipt of a written demand from the Plaintiff for payment, or after a court order requiring such payment, whichever is later. Payments shall be made payable to the State of Iowa, and sent to the Iowa Attorney General's Office at 1305 E. Walnut Street, Des Moines, Iowa 50319. Payment of these stipulated civil penalties shall not relieve the Defendant from obligations established by this Consent Order, Judgment and Decree, applicable permits, or other provision of law. Payment of these stipulated civil penalties shall constitute full and final settlement of any penalty claims that were made or could have been made by Plaintiff in this action for the particular violations to which the stipulated civil penalties apply. In any event, Plaintiff may at any time seek entry of contempt and appropriate sanctions and relief for any willful failure to comply with the requirements of this Consent Order, Judgment and Decree.

**Effect of Consent Decree**

27. This Consent Order, Judgment and Decree constitutes full and complete settlement of the claims made, or which could have been made, by the DNR in this action against the Defendant relating to the operation of the landfill on or before the date of entry of this decree.

**Notice and Copy Recipients**

28. For purposes of implementation of this Consent Order, Judgment and Decree, all technical submittals, documents or correspondence shall be sent to the following:

**For the DNR**

Michael W. Smith, P.E.  
Environmental Engineer Senior  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319

**For NCIRSWA**

Cynthia Turkle, Interim Director  
North Central Iowa Regional Solid Waste  
Agency  
2150 South 22<sup>nd</sup> Street  
Fort Dodge, IA 50501

All legal notices, documents or correspondence shall be sent to the following:

**For Plaintiff**

David S. Steward  
Assistant Attorney General  
Environmental Law Division  
Lucas Building, Ground Floor  
321 E. 12th Street, Room 018  
Des Moines, IA 50319

**For Defendant**

Stephen G. Kersten  
Kersten Brownlee Hendricks LLP  
805 Central Ave., Ste. 700  
Fort Dodge, IA 50501-3940

A party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

**Force Majeure**

29. If Defendant is unable to meet any of the deadlines set forth in this Consent Order, Judgment and Decree, Defendant shall provide notice to Plaintiff within thirty (30) days specifying the delayed event, the cause of the delay, its possible duration, Defendant's efforts to remedy the situation, and the expected effect of the delay upon the schedule contained in this order. Defendant shall adopt all reasonable measures to avoid or minimize such delays. Failure by Defendant to provide notice to Plaintiff of an event which causes or may cause a delay or impediment to performance shall render the Force Majeure provisions of paragraphs 29 through 33 voidable by Plaintiff as to the specific event for which Defendant has failed to comply with such notice requirement, and, if voided, are of no effect as to the particular event involved.

30. Plaintiff shall notify Defendant in writing regarding Plaintiff's position as to Defendant's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days after receipt. If Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of Defendant, and Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s)

affected by the delay by a period equivalent to the delay actually caused by such circumstances. Defendant shall not be liable for any stipulated penalties for the period of any such delay.

31. If Plaintiff does not accept Defendant's claim that a delay or impediment to performance is caused by a Force Majeure event, to avoid payment of stipulated penalties, Defendant must submit the matter to this Court for resolution within thirty (30) business days after receiving notice of Plaintiff's position by filing a petition for determination with this Court. Once Defendant has submitted this matter to this Court, Plaintiff shall have twenty (20) business days to file its response to said petition.

32. If Defendant submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of Defendant, including any entity controlled by Defendant, and Defendant could not have prevented the delay by the exercise of due diligence, Defendant shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances. Defendant shall bear the burden of proving that any delay of any requirement(s) of this Consent Order, Judgment and Decree was caused by or will be caused by circumstances beyond its reasonable control, including any entity controlled by it, and the Defendant could not have prevented the delay by the exercise of due diligence. Defendant shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances.

33. Unanticipated or increased costs or expenses associated with performance of Defendant's obligations under this Consent Order, Judgment and Decree shall not constitute circumstances beyond the reasonable control of Defendant, or serve as a basis for an extension of time. In light of the fact that the parties cannot predict with certainty the underlying conditions that will be encountered as work proceeds, the parties recognize that the identification of unforeseen conditions may require additional time as a Force Majeure. In addition, failure of a

permitting authority to issue a necessary permit or other required approval in a timely fashion is an event of Force Majeure provided that Defendant can meet its burden of demonstrating that it has:

- a. submitted a timely and complete application;
- b. responded to requests for additional information by the permitted authority in a timely fashion; and
- c. prosecuted appeals of any disputed terms and conditions imposed by the permitting authority in an expeditious fashion.

Where the Defendant has successfully appealed a permit or condition thereof all dates affected by such appeal shall be appropriately extended. For the purposes of this paragraph, “successfully appealed a permit or condition thereof” includes the settlement of the appeal providing for modification of the permit condition.

**Modification**

34. This Consent Order, Judgment and Decree and any schedule or activity required herein may be amended as necessary to accommodate changed circumstances by the written agreement of the parties (without court approval) or by further Order of the Court.

**Jurisdiction Retained**

35. The Court retains jurisdiction of this matter to insure compliance with the terms of this Consent Order, Judgment and Decree.

**Court Costs**

36. The costs of this action are taxed to the Defendant in the amount of \$185.00.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** EQCV318517  
**Case Title** STATE EX REL. IDNR V. N. CENT. IA REG'L SW AGENCY

So Ordered

A handwritten signature in black ink, appearing to read "Kurt J. Stoebe".

Kurt J. Stoebe, District Court Judge,  
Second Judicial District of Iowa