

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

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**IN THE MATTER OF:**

**Keystone Equity Group, LLC**

**Dallas County, Iowa**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2021-WW-05**

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**TO:     Khoa Bui Registered Agent  
         5031 Timberwood Ct.,  
         West Des Moines, IA  
         50265**

**I. SUMMARY**

This administrative consent order (order) is entered into between Keystone Equity Group, LLC (Keystone Equity) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order concerning the construction of plat 1 and 2 sanitary sewers without first obtaining a construction permit from the Department.

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

**Relating to technical requirements:**

Tom Atkinson

IDNR Field Office #5

502 E. 9<sup>th</sup> Street

Des Moines, Iowa 50319-0034

**Relating to legal requirements:**

Carrie Schoenebaum,

Attorney at Law

Iowa Department of Natural Resources

Wallace State Office Bldg. 502 E. 9<sup>th</sup> Street

Des Moines, Iowa 50319-0034

Ph: 515/281-0824

**Payment of penalty to:**

Iowa Department of Natural Resources

Henry A. Wallace Building

502 E 9<sup>th</sup> Street

Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Keystone Equity, LLC

## 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 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the director to assess administrative penalties.

## III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts.

1. Keystone Estates (development) is a residential development located in the 400-500 block of Spruce Street (Section 19 – Township 78 – Range 27) in Desoto, IA. This residential development is being developed by Keystone Equity. This development includes 1,748 feet of eight inch PVC sanitary sewers that discharge to the City of De Soto wastewater treatment facility.

2. On July 31, 2020, the Department received a wastewater construction permit application for plat 1 of this development. The application stated that “in order to complete construction in a timely manner, the sanitary sewer improvements were completed prior to sending the required IDNR schedules and proposed construction drawings.” This letter was signed by Jason A. Ledden, of Snyder & Associates, which is a full service civil and structural engineering firm.

3. On August 20, 2020, Marty Jacobs, an Environmental Engineer with the Department, sent a letter to Keystone Equity indicating that the construction plans for plat 1 were in substantial compliance with the Iowa Waste Water Facility Design Standards, but since construction occurred prior to the issuances of a construction permit a permit would not be issued by the Department.

4. On August 26, 2020, the Department received a wastewater construction permit application for plat 2 of this development from Mr. Ledden.

5. On August 27, 2020, Tom Atkinson, an Environmental Specialist Senior with the Department, called Mr. Albright to discuss the construction of the sanitary sewers. Mr. Albright stated that the sewers in both plat 1 and 2 were substantially complete.

6. On September 1, 2020, the Department sent a Notice of Violation (NOV) to Keystone Equity for construction of the sanitary sewers in plat 1 and 2 without first obtaining wastewater construction permits from the Department.

7. On September 9, 2020, Mr. Jacobs sent Keystone Equity a letter indicating that the construction plans for plat 2 were in substantial compliance with the Iowa Wastewater



**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Keystone Equity, LLC**

Facility Design Standards, but since construction occurred prior to the issuance of a construction permit a permit would not be issued by the Department.

**IV. CONCLUSIONS OF LAW**

The parties agree that the following conclusions of law are applicable to this matter.

1. Iowa Code section 455B.183 states that:

[i]t is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department:

a. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems.

The above stated facts show noncompliance with this provision.

2. 567 IAC 64.2(1) states "no person shall construct, install or modify any wastewater disposal system or part thereto or extension or addition thereto without, or contrary to any condition of a construction permit issued by the director or by local public works department authorized to issue such permits under 567 IAC Chapter 9[.]" Therefore, the above stated facts show noncompliance with these rules.

**V. ORDER**

THEREFORE, the Department orders and Keystone Equity agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Keystone Equity shall cease all illegal construction and in the future obtain the proper permits prior to construction;
2. Keystone Equity shall pay a penalty of \$5,000.00 within 30 days of the date the Director of the Department signs this order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Keystone Equity, LLC

## VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (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 and deterring this party and others from violating waste-water permit requirements, is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** Keystone Equity saved a significant amount of time and money by not obtaining the required construction permits prior to construction. Money was saved by not delaying construction until the proper permits were obtained. For these reasons \$2,000.00 is assessed for this factor.

b. **Gravity of the Violation.** Failure to obtain construction permits prior to construction thwarts the integrity of the program because such permits ensure that a waste-water collection system is constructed in a manner that protects public health and safety. Therefore, \$2,000.00 is assessed for this factor.

c. **Culpability.** In determining the degree of intent or negligence the standard of care required by the laws of the state of Iowa should be considered. The Department asserts that the Keystone Equity's actions were negligent rather than intentional. The violations involved in this order were violations of conditions of the Iowa Code and Iowa Administrative Code. A reasonable person should be aware of the laws that govern their business. Keystone Equity is a development company and contracts and/or employs licensed engineers that specialize in creating the design and specifications for utilities. Such entities have a duty to be aware that the construction of a waste-water collection system requires a permit issued by the Department. In fact, the Keystone Equity demonstrated that it understood the permitting requirements by submitting a permit application but still constructing the sewers without the required permits. Therefore, \$1,000.00 is assessed for this factor.

## VII. APPEAL RIGHTS

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



IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
Keystone Equity, LLC

**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 provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

Whitney, Manager Dated this 3<sup>rd</sup> day March, 2021  
On behalf of Keystone Equity

Kayla Lyon Dated this 3rd day March, 2021  
Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

1, A.1. Carrie Schoenebaum; Tom Atkinson; Satya Chennupati, Marty Jacobs