

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

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**IN THE MATTER OF:**

**Hudson Heights, LLC**  
**NPDES Permit No. 39923-39546**  
**Dallas County, Iowa**

**ADMINISTRATIVE**  
**CONSENT ORDER**  
**NO. 2022-WW- 25**

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**TO:** John Larson, Registered Agent  
PO Box 267  
Johnston, IA 50131

**I. SUMMARY**

This administrative consent order (order) is entered into between Hudson Heights, LLC (Hudson Heights) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Hudson Heights' storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction Hudson Heights Plat 1 (site). Hudson Heights agrees to pay an administrative penalty of \$5,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

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

**Relating to technical requirements:**

Dennis Thielen  
IDNR Field Office No. 5  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
712/262-4177

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515-444-8165

**Payment of penalty to:**

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

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**II. JURISDICTION**

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. On September 1, 2021, Hudson Heights was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at location of the Hudson Heights Plat 1 construction site in Van Meter, Iowa. This site is located at Section 28, Township 78 Range 27W. Storm water from this property flows to an unnamed tributary of the Racoon River.

2. On March 2, 2022, the Department conducted a NPDES permit inspection. Once on site the Department observed and/or documented that dirt work and grading had been commenced in the fall; however, at the time of the inspection the site was shut down for the winter. The site had not been stabilized prior to the winter shut down. Further, three stockpiles of topsoil were observed, none had been stabilized and no perimeter sediment or erosion controls had been installed on site.

A copy of the SWPPP was not maintained on site; however, a copy was provided via e-mail to the Department upon request. The Department reviewed the SWPPP and documented that it was not signed and it did not contain contractor certifications. Further, weekly inspections were not being conducted.

3. On March 8, 2022, a Notice of Violation (NOV) was sent to the Hudson Heights for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective actions and a summary of the law.

4. On May 16, 2022, the Department went back to the site to conduct a follow-up investigation. Once on site the Department documented and/or observed the following:

- (1) Construction grading equipment was in the process of grading the site and moving dirt;
- (2) Two sediment basins had been constructed, however neither basin had a standpipe;
- (3) A compost sock was the only sediment and erosion control installed along the creek.

The compost sock was failing and sediment and fill dirt was observed in the creek in multiple locations; and

(4) There were no sediment or erosion controls installed along the creek on the north side of the entrance to the site.

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A copy of the SWPPP was not maintained on site. A copy was requested by the Department but to date a copy has not been provided. The Department reviewed the weekly inspection reports from April 20 through May 16, 2022. These reports documented inadequate and failing sediment and erosion controls along the creek in multiple areas. The April 27, 2022, report specifically identified the failing compost sock on the creek and the need to install a standpipe in the south sediment basin.

5. On May 31, 2022, a NOV was sent to the Hudson Heights for the above discussed violations. Included with this NOV was a copy of the inspection report, recommended corrective action and a summary of the law. This NOV requested that an updated and properly signed SWPPP be submitted to the Department by June 15, 2022. To date neither an updated nor a signed SWPPP has been submitted.

**IV. CONCLUSIONS OF LAW**

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision of law.

2. Iowa Code sections 455B.103(A) and 455B.197 authorize the issuance of permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant." Number 10 under this definition includes "construction activity," which includes clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

3. 567 IAC 61.3(2)"c" and "e" state:

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

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate noncompliance with these provisions of law.

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4. Subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts demonstrate noncompliance with this provision.

5. NPDES Part IV. D (4) of NPDES General Permit No. 2 requires that “[q]ualified personnel ... shall inspect disturbed areas of the construction site that have not been stabilized... once every seven calendar days.” The above stated facts demonstrate noncompliance with this provision of law.

6. NPDES Part III. C (1) of NPDES General Permit No. 2 requires that erosion and sediment controls be installed and maintained. The above stated facts demonstrate noncompliance with this provision of law.

7. NPDES Part III. C (3) of NPDES General Permit No. 2 requires that

stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

The above stated facts demonstrate noncompliance with this provision of law.

8. NPDES Part IV. D (7) of NPDES General Permit No. 2 requires “[a]ll contractors and subcontractors identified in the plan must sign a copy of the certification statement[.]” The above stated facts demonstrate noncompliance with this provision of law.

9. NPDES Part V. B requires that if a SWPPP is “maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than three hours after being requested.” The above stated facts demonstrate noncompliance with this provision of law.

**V. ORDER**

THEREFORE, the Department orders, and the Hudson Heights consents to do, the following:

1. Comply with all conditions of the Hudson Heights’ NPDES permits; and
2. Pay an administrative penalty of \$5,000.00 within 30 days of the date the Director signs this order.

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**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 Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” An economic benefit was obtained through avoiding the cost installing and maintaining adequate storm water erosion and sediment control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses. Thus, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$1,000.00 is assessed for this factor.

b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa’s waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. The erosion and sediment controls contained in the Hudson Heights’ NPDES permits protect Iowa’s waterways from sedimentation. Such noncompliance thwarts the integrity of the NPDES permit and water quality programs. Therefore, the amount of \$2,000.00 is assessed for this factor.

c. **Culpability.** Hudson Heights’ is engaged in the business of development and construction. This is a highly regulated activity and therefore Hudson Heights’ has an obligation to be aware of the applicable regulations and comply with those regulations. Further, the Department went to the site multiple times and informed Hudson Height of the deficiencies and the weekly inspections done by its inspectors also identified deficiencies. Nevertheless, the violations persisted. Therefore, the amount of \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

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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 the Hudson Heights. By signature to this order, all rights to appeal this order are waived by Hudson Heights.

**VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

  
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On behalf of Hudson Heights, LLC

Dated this 26 day of  
September, 2022

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Hudson Heights, LLC (Copy of Order to Central Office Records File), FO 5, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.