

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Hightower Development, Inc. d/b/a
Park Place Northwest, LLC
NPDES Permit No. 34170-33857
Johnson County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER****NO. ~~2022-WW~~-2023-WW-01**

TO: Matthew J. Hektoen, Registered Agent
Hightower Development, Inc.
115 Third Street SE
Cedar Rapids, IA 52401

Scott Andersen, President and NPDES contact
Hightower Development, Inc.
2101 Scales Bend Road
North Liberty, IA 52317

Scott Andersen
Park Place Northwest, LLC
PO Box 5198
Coralville, IA 52241

I. SUMMARY

This administrative consent order (order) is entered into between Hightower Development, Inc. d/b/a Park Place Northwest, LLC (collectively referred to as Hightower) and the Iowa Department of Natural Resources (Department).¹ The parties hereby agree to the issuance of this order due to violations of Hightower’s storm water National Pollutant Discharge Elimination System (NPDES) permit for the construction of the Andersen Addition Residential and Commercial Development. Hightower 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.

¹ The deed to the land that is subject to the relevant NPDES permit is held by Hightower Development, Inc. (Hightower); however, the NPDES permit was issued to Park Place Northwest, LLC and the contact listed was Scott Andersen. Mr. Andersen is the president of Hightower. Park Place Northwest, LLC is not registered with the Iowa Secretary of State.

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

Relating to technical requirements:

Jacob Forgie
IDNR Field Office No. 6
Iowa Department of Natural Resources
1023 W Madison St.
Washington, IA 52353
319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources

502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-444-8165

Payment of penalty to:

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

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 November 2, 2018, Hightower was issued a notice of coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at the location of the Andersen Addition Residential and Commercial Development Construction (site) in Tiffin, Iowa. This site is approximately 120 acres and is located at Section 22, Township 80 Range 7W.
2. On July 26, 2022, the Department conducted an NPDES permit inspection. Once on site the Department observed the following:
 1. Significant erosion in multiple large sections of the site;
 2. Evidence that sediment had flowed south, away from the sediment basin, over a perimeter silt fence, into a wooded area, and into a tributary of Clear Creek;
 3. The site had been seeded; however, there were areas in which the seeding was sparse or had been washed out. Those areas required additional stabilization; and
 4. The perimeter silt fences were at least half full of sediment and needed to be cleaned out or replaced.

Following the investigation, Brian Stevens, of Erosion Control provided copies of the weekly storm water inspections to the Department. A review of these inspections showed that the inspections documented the same deficiencies observed by the Department.

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3. On August 8, 2022, a Notice of Violation (NOV) was sent to the Hightower 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.

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.

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. Part VI. A of NPDES General Permit No. 2 requires that the permittee "comply with all conditions of th[e] permit." The above stated facts demonstrate noncompliance with this provision of law.

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6. Part VI. D of NPDES General Permit No. 2 requires that the permittee “take all reasonable steps to minimize or prevent any discharge in violation of this permit.” The above stated facts demonstrate noncompliance with this provision of law.

V. ORDER

THEREFORE, the Department orders, and the Hightower consents to do, the following:

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

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 of proper sediment and erosion controls. This avoided several thousand dollars in labor expenses. Thus, it is reasonable to estimate that \$2,000.00 was saved. Therefore, \$2,000.00 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 Hightower’s 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 \$1,500.00 is assessed for this factor.

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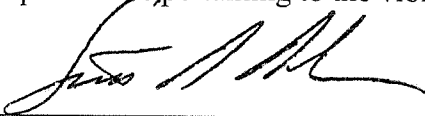
c. **Culpability.** Hightower is engaged in the business of development and construction. This is a highly regulated activity and therefore it has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$1,500.00 is assessed for this factor.

VII. WAIVER OF 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 the Hightower. By signature to this order, all rights to appeal this order are waived by Hightower.

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.



Scott Andersen, President Hightower Development, Inc.
d/b/a Park Place Northwest, LLC

Dated this 7th day of

January, ²⁰²³~~2022~~

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Hightower Development, Inc. (Copy of Order to Courtney Cswercko), FO 6, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.