

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

IN THE MATTER OF:

**Golden Hills Phase II, LLC
Pottawattamie County, Iowa**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2023-WW-27**

TO: Neal Drickey, Managing Member
Golden Hills Phase II, LLC
535 West Broadway, Suite 100
Council Bluffs, IA
51503

Daniel J Waters, Agent
1045 76th St suite 3000
West Des Moines, IA
50266

I. SUMMARY

This administrative consent order (order) is entered into between Golden Hills Phase II, LLC (Golden Hills) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Golden Hills' storm water National Pollutant Discharge Elimination System (NPDES) permit. Golden Hills neither admits nor denies the contents of this order and enters into it solely for the purposes of settlement. Golden Hills agrees to pay an administrative penalty of \$4,500.00. 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:

Alison Manz, Environmental Specialist Senior
IDNR Field Office No. 4
1401 Sunnyside Lane
Atlantic, IA 50022
712-243-1934

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8244

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street

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Golden Hills Phase II, LLC

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

Golden Hills neither admits nor denies the following statement of facts:

1. On September 17, 2020, Golden Hills 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 construction project titled Golden Hills Phase II. This project is located at the Section 27, Township 76N Range 44W (site). This location is locally known as 1407 Golden Hills Drive, Crescent, IA 51526. The owner was listed in the permit as Neal Drickey, managing member of Golden Hills. The contact in the permit was listed as Mark Westergard, E and A Consulting Group, Inc. Storm water from this site flows into a ditch that discharges to Crescent Creek, which is a tributary of Pigeon Creek.
2. On December 29, 2020, the Department received a complaint stating that dust was blowing from the Golden Hills site to the surrounding properties.
3. On December 30, 2020, the Department responded to the above complaint via e-mail and stated that once the snow melted it will conduct a site visit of Golden Hills.
4. On March 10, 2021, the Department went to Golden Hills to conduct a complaint investigation. Once on site, the Department met with Neal Drickey, owner of Golden Hills. The Department observed that neither temporary nor final stabilization methods had been implemented on site. The Department asked for a copy of the Storm Water Pollution Prevention Plan (SWPPP).
5. On March 17, 2021, Golden Hills provided a copy of its SWPPP to the Department. Following a review of the SWPPP the Department recommended that the SWPPP be updated to address the steep grading of the site.
6. On March 19, 2021, the Department returned to the site to investigate. Once on site the Department observed the following:
 - (1) Sediment had discharged from the sediment basin outlet on the northwest side of the site into the ditch on the west side of Old Mormon Bridge road. This ditch flows to Lapworth creek;
 - (2) Erosion and sediment movement throughout the site;
 - (3) A breach of diversion terrace on the southwest corner of the site; and
 - (4) Multiple erosion and sediment controls identified in the SWPPP had not been implemented.

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Following the onsite investigation, the Department sent Mr. Drickey and Mark Westergard an e-mail reiterating the importance of qualified personal inspecting the disturbed areas of the construction site and the Department specifically recommended that certain areas of the site be inspected. The Department also reminded Golden Hills that if there is precipitation sediment and erosion controls need to be monitored so that a discharge did not occur.

7. On March 22, 2021, Golden Hills e-mailed the Department an update regarding the actions it had taken in response to the above referenced e-mail. Golden Hill stated that it took the following actions:

- (1) Restored silt pond to original capacity;
- (2) Erected 600 feet of silt fence in various locations;
- (3) Repaired the terrace in the southwest work area;
- (4) Seeded the site with oats; and
- (5) Build terraces every 200 feet across future street area to direct water to the silt pond.

Photos were submitted to show the work performed.

8. On March 23, 2021, a Notice of Violation (NOV) was sent to Golden Hills for the above discussed violations. This NOV summarized the violations, the relevant law and provided recommended corrective actions. Included with this NOV were photographs taken during the March 19, 2021, visit.

9. On April 26, 2021, Golden Hills e-mailed the Department and stated that it had repaired two terraces, cleaned up the storm water detention basin, installed an additional silt fence and intended to hydro seed in the next few days.

10. On April 30, 2021, Golden Hills e-mailed the Department and stated that the hydro seeding had occurred and provided a photo showing the hydro seeding.

11. On July 15, 2021, the Department returned to the site to investigate. Once on site, the Department observed the following:

- (1) The northwest outlet ditch was full of sediment;
- (2) Inadequate sediment and erosion controls throughout the site; and
- (3) A storm water drain in the street was unprotected and that the street appeared to have recently had sediment removed from it.

The Department took pictures documenting these observations and provided copies of the pictures to Golden Hills.

12. On August 4, 2021, the Department received a complaint alleging that Golden Hills does not have adequate silt fences and best management practices (BMPs) have not been implemented. The complainant stated that Golden Hills Drive had flooded with silt two or three times and filled the highway ditch.

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13. On August 11, 2021, the Department went to the site to investigate. Once on site, the Department observed inadequate sediment and erosion controls throughout the site. This resulted in off-site discharge of sediment. Photos of these observations were taken by the Department and provided to Golden Hills via e-mail on August 12, 2021.

14. On August 17, 2021, the Department received an e-mail from Mark Westergard of E & A Consulting Group, Inc. (E & A). Mr. Westergard explained that E & A assisted Golden Hills in the preparation of the grading and in the SWPPP.

15. On August 18, 2021, an NOV was sent for the above discussed violations. This NOV summarized the relevant law and recommended corrective actions. Included with the NOV were numerous pictures documenting the violations.

16. On August 20, 2021, Golden Hills informed the Department that additional sediment and erosion controls had been installed.

17. On September 16, 2021, E & A forwarded a revised SWPPP to the Department.

18. On October 27th and November 2, 2021, the Department returned to the site to investigate. Once on site, the Department documented the following: (1) sediment and erosion controls were still inadequate; (2) temporary and/or permanent vegetation had not been properly established on most of the site; and (3) sediment was observed flowing into the storm water drains.

19. On October 29, 2021, E & A e-mailed the Department a list of erosion controls that it suggested that Golden Hills implement over the next few days if weather permitted.

20. On November 3, 2021, a NOV was sent to Golden Hills for the above discussed violations. This NOV summarized the relevant law and recommended corrective actions. Included with the NOV were numerous pictures documenting the violations.

21. On August 24, 2023, the Department conducted follow-up inspection. During this inspection the Department documented the following:

- (1) Sediment controls in need of repair and/or maintenance;
- (2) Off site migration of sediment; and
- (3) Areas that had not been properly stabilized.

IV. CONCLUSIONS OF LAW

Golden Hills neither admits nor denies the 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.

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

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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" including 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 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.

4. NPDES General Permit No. 2 Part III C 1 requires "effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum such controls must be designed, installed and maintained to:

A. Control storm water volume and velocity to minimize soil erosion in order to minimize pollutant discharges [.]” The above stated facts show noncompliance with this provision of law.

5. NPDES General Permit No. 2 Part IV requires that “A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. . . . In addition, the plan shall describe and ensure the implementation of practices [.]” The above stated facts show noncompliance with this provision of law.

V. ORDER

THEREFORE, the Department orders, and Golden Hills consents to do, the following:

1. Comply with all conditions of any applicable NPDES permit which includes the SWPPP;
2. Immediately update the SWPPP to reflect the current site conditions; and
3. Pay an administrative penalty of \$4,500.00 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

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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 installing and maintaining adequate storm water runoff control measures throughout the construction site. This avoided several thousand dollars in materials and 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 Golden Hill’s NPDES permit 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.** Golden Hills is engaged in the business of construction. This is a highly regulated activity and therefore Golden Hills has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, on multiple occasions the Department communicated to Golden Hills the need to implement proper storm water controls. Nevertheless, adequate controls were not installed and a discharge occurred. Therefore, the amount of \$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 Golden Hills. By signature to this order, all rights to appeal this order are waived by Golden Hills.

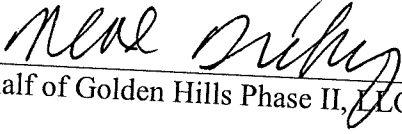
VIII. NONCOMPLIANCE

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

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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.



On behalf of Golden Hills Phase II, LLC

Dated this 27 day of
November ~~2022~~ 2023

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

FO 4, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.