

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**ADMINISTRATIVE CONSENT ORDER**

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**IN THE MATTER OF:**

**Century Heights Phase III, L.C.  
Scott County, Iowa**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2023-WW- 26**

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**TO:** Robert Fick, RA Century Heights  
Phase III, L.C.  
3211 E 35<sup>th</sup> Street Court  
Davenport, IA 52807

**I. SUMMARY**

This administrative consent order (order) is entered into between Century Heights Phase III, L.C. (Century Heights) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Century Height's storm water National Pollutant Discharge Elimination System (NPDES) permit. Century 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:**

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

**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  
Wallace State Office Building  
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 July 1, 2020, Century Heights 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 Century Heights twenty third addition-construction Hess Court and Criswell Street (site). This site is located at Section 12, Township 78 Range 4E. Storm water from this property flows to an unnamed tributary of Pidgeon Creek (creek), which ultimately flows to the Mississippi River.

2. On October 27, 2021, the City of Bettendorf (City) received a complaint alleging that storm water from the site was discharging to the creek.

3. On December 7, 2021, the Department visited the site with the staff from the City. While on site the Department observed the following:

(1) A sediment basin located on the south west portion of the site (SW basin) had a portion of the berm removed so that the storm water in the basin could drain out of the basin and towards the creek;

(2) Silt fence located along the flow path from the SW basin to the creek was covered in sediment and could no longer retain sediment;

(3) Approximately 100 feet south of the SW basin silt fence had been flattened by construction equipment and this equipment had been driven through the creek bed; and

(4) The creek bed was disturbed where the construction equipment had been driven through it and sediment from the site was observed deposited in the creek.

4. On December 15, 2021, the Department conducted a NPDES permit inspection at the site. Once on site, the Department met with City staff and Kyle Fentress, an employee of Stormwater and Management Services, Inc. who was hired by Century Height's to provide storm water management services. Mr. Fentress provided a copy of the Storm Water Pollution Prevention Plan (SWPPP). While on site the Department observed and/or documented the following:

(1) On the western perimeter of the site two sediment basins were in place;

(2) A basin located in the northern most portion of the site was in good condition and rip rap protected the outlet;

(3) The SW basin had a portion of the berm removed and a flow path of sediment was observed from this area down slope over land to the creek;

(4) Silt fence downslope of the southern sediment basin had been overwhelmed by the flow of sediment laden storm water from the SW basin;

(5) Some portions of silt fence located along the flow path to the creek had been driven over by construction equipment;

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(6) The western portion of the creek bed was disturbed from work on utilities; and

(7) The berm of the sediment basin located on the central southern perimeter of the site had been cut and drained offsite onto an adjacent property. Sediment laden storm water was observed on the adjacent property.

The above observations were discussed with Mr. Fentress and he stated he would work to remedy them.

5. On December 22, 2021, the Department returned to the site and observed that the conditions had not changed since the prior inspection was conducted.

6. On December 28, 2021, a Notice of Violation (NOV) was sent to Century Heights for the above discussed violations. Included with this NOV was a copy of the inspection report and photographs which document the violations.

7. On March 17, 2022, the Department returned to the site and observed and/or documented the following:

(1) The SW sediment basin berm had been repaired and a concrete discharge structure was installed to drain the basin;

(2) The water discharging from the concrete discharge structure was clear however the flow path to the creek had not been stabilized thus the water was picking up sediment before discharging to the creek;

(3) Below the outlet of the concrete discharge structure rip rap had been placed however, additional sediment and erosion controls were necessary along the flow path to the creek;

(4) The creek was still disturbed and a plume of sediment in the creek was observed at the area that was disturbed and downstream this area; and

(5) The water in the creek upstream of the utilities work was clear.

8. On June 20, 2022, the Department returned to the site and observed and or documented the following:

(1) Along the northern border of the property there were numerous areas where the silt fence had been knocked down, and/or driven over; and

(2) Matting installed along the slopes of the sediment basin needed to be maintained.

9. On June 23, 2022, a NOV was sent to Century Heights for the above discussed violations. Included with this NOV was a copy of the inspection report and photographs which document the violations.

**IV. CONCLUSIONS OF LAW**

The parties hereby agree to the following conclusions of law:

1. 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

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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.

2. 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.

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. NPDES General Permit No. 2 Part IV D 4 (B) requires that deficiencies noted in inspection shall be corrected within 72 hours of inspection. The above stated facts demonstrate noncompliance with this provision of law.

**V. ORDER**

THEREFORE, the Department orders and Century Height's consents to do the following:

1. Comply with all conditions of Century Height's NPDES permit, which includes the SWPPP; 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

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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 \$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 Century Height’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.** Century Height is engaged in the business of development and construction. This is a highly regulated activity and therefore Century Height has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$1,000.00 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 Century Height. By signature to this order, all rights to appeal this order are waived by Century Height.

**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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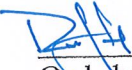
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 UP OF MA ESTER PROPERTIES OF IOWA, LLC ITS MANAGER Dated this 16<sup>th</sup> day of  
On behalf of, Century Height Phase III, L.C. MANAGER

NOVEMBER, 2023

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Kayla Lyon, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Century Height Phase III, L.C. (Copy of Order to Central Office Records File), FO 6, Carrie Schoenebaum- Legal Services  
Bureau, U.S. E.P.A, I.C.7.b.