

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

<p>IN THE MATTER OF:</p> <p>AMAIZING ENERGY DENISON, LLC</p> <p>Denison, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2007-AQ- 26</p>
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TO: Al Jentz, General Manager
Amaizing Energy Denison, LLC
2491 Lincoln Way
Denison, Iowa 51442

Catherine C. Cownie, Registered Agent
Amaizing Energy Denison, LLC
666 Grand Avenue, Suite 2000
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between Amaizing Energy Denison, LLC (Amaizing Energy) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving air quality construction permit and stack test violations at its Denison facility. The parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Kyle Ament
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-4918

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

The administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

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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. Amaizing Energy Denison, LLC is a wholly owned subsidiary of Amaizing Energy Holding Company, LLC. Amaizing Energy processes grain into ethanol, using a dry-mill process, at its facility in Denison, Iowa. Amaizing Energy has approximately 35 employees and operates 24 hours a day, 365 days per year. Amaizing Energy received its initial air quality construction permits on July 20, 2004. The facility started production on September 11, 2005.

Fermentation Scrubber (EP S40):

2. On July 20, 2004, DNR issued Air Quality Construction Permit #04-A-644 to Amaizing Energy for EP S40. Condition 10 of the construction permit included the following emission limits based on the emissions information provided by Amaizing Energy in its construction permit application:

Pollutant	lb/hr (standard express as the average of 3 runs)
VOC	5.93
Individual HAP	1.9
Total HAPs	4.8 (Combined total for EPs S10, S50, & S70)

Additionally, Condition 12 of the construction permit requires that the emissions testing must be conducted at the equipment's maximum continuous output as rated by the equipment manufacturer, or the rate specified by the owner as the maximum production rate at which the equipment will be operated.

3. On March 16, 2006, Amaizing Energy conducted the stack tests for EP S40 as required by the construction permit. The stack test results indicated the tests were not conducted at rated capacity. The stack test results indicated EP S40 was operated at only 35% of the capacity for the test. On June 1, 2006, DNR issued a Notice of Violation letter to Amaizing Energy for failing to test at rated capacity. The letter required Amaizing Energy to retest EP S40 no later than 60 days after the receipt of the letter.

4. On August 31 and September 1, 2006, Amaizing Energy retested EP S40 at full rated capacity. The stack test results were submitted on October 26, 2006. The stack test results indicated Amaizing Energy failed to demonstrate compliance with the permitted emission limits. The following chart indicates the results of the 3 failed tests along with the pollutant and the permitted emission limit:

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Pollutant	Stack Test Result (lbs/hr)	Permitted Emission Limit (lbs/hr)
Volatile Organic Compounds (VOC)	9.05	5.93
Individual Hazardous Air Pollutant (HAP)	6.75	1.9
Total HAPs	6.75	4.8 (Combined total for EPs S10, S50, & S70)

5. On November 4, 2006, Amaizing Energy submitted a letter to DNR acknowledging a problem with the acetaldehyde emissions from EP S40. The letter explained that Amaizing Energy recently installed a system to add sodium bisulfate to the scrubber circulation water. Amaizing Energy explained that when mixed with water, sodium bisulfate binds to and removes acetaldehyde at higher rates than just water to scrub the fermentation exhaust. Amaizing Energy stated the addition of the sodium bisulfate system would significantly reduce the HAP and VOC emissions. On November 14, 2006, Amaizing Energy retested EP S40. The stack test results indicated Amaizing Energy demonstrated compliance with the permitted emission limits for HAPs and VOCs.

6. On February 20, 2007, DNR issued a Notice of Violation letter to Amaizing Energy for failing to demonstrate compliance with the permitted emission limits during the stack tests conducted on August 31 and September 1, 2007. At the time of the Notice of Violation letter, EP S40 had returned to compliance with the permitted emission limits.

Truck Loadout (EP SEP22) and Rail Loadout (EP F50):

7. On July 20, 2004, DNR issued Air Quality Construction Permit #04-A-648 to Amaizing Energy for EP SEP22. Condition 14 of the construction permit included the following operating limit "a maximum of 48 million gallons of denatured ethanol per twelve month rolling period may be loaded plantwide."

8. On May 22, 2006, DNR issued Air Quality Construction Permit #06-A-323 to Amaizing Energy for EP F50. Condition 14 of the construction permit included the following operating limit "the plantwide (truck and railcar) total denatured ethanol loadout shall not exceed 48,000,000 gallons per twelve-month rolling period."

9. In July 2006, Amaizing Energy submitted air quality construction permit modification requests for EP SEP22 and EP F50, as well as for other equipment at the facility. The modification requests were submitted in anticipation that the twelve-month rolling total of ethanol loadout would soon reach the 48,000,000 gallons threshold. The modifications requested the operating limit be raised to 65,000,000 gallons. Amaizing Energy had expected the permit modifications to be issued prior to the 48,000,000 gallon threshold being reached. However, due to ongoing compliance issues with EP S40 (noted

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above), the DNR was unable to issue the construction permit modifications for EP SEP22 and EP F50¹ prior to the threshold being met.

10. On October 20, 2006, Amaizing Energy submitted air quality construction permit modification requests for EP SEP22 and the thermal oxidizer requesting modifications that would allow the facility to stay under 100 tons of Volatile Organic Compounds (VOC) for the year.

11. On November 4, 2006, Amaizing Energy submitted a letter to the Air Quality Bureau's Compliance Section stating it had exceeded the 48,000,000 gallon threshold starting in September 2006. The letter included the following rolling total chart for ethanol loadout at the facility:

Month	Monthly Total (Gallons)	12-Month Rolling Total (Gallons)
September 2005	857,743	857,743
October 2005	3,646,692	4,504,435
November 2005	4,169,459	8,673,894
December 2005	4,161,775	12,835,669
January 2006	4,083,835	16,919,504
February 2006	4,100,489	21,019,993
March 2006	3,527,130	24,547,123
April 2006	4,308,624	28,855,747
May 2006	4,077,993	32,933,740
June 2006	4,481,804	37,415,544
July 2006	4,280,644	41,696,188
August 2006	4,170,736	45,866,924
September 2006	4,084,174	49,093,355
October 2006	4,564,220	50,010,883

The letter stated the facility was working to demonstrate compliance with the emissions limits for EP S40 so that the construction permit modifications for EP SEP22 and EP F50 could be issued. The facility was aware that it could not be issued the modifications until it demonstrated compliance for EP S40.

12. On November 20, 2006, DNR issued a Notice of Violation letter to Amaizing Energy for exceeding the 48 million gallon per twelve month rolling period for EP SEP 22 and EP F50. On February 28, 2007, DNR sent a letter to Amaizing Energy requesting updated monthly loadout totals in gallons for the months of November 2006 through

¹ 567 IAC 22.3(1) provides that in no case shall a construction permit or conditional permit which results in an increase in emissions be issued to a facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan.

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February 2007. On August 27, 2007, Amaizing submitted following rolling total chart for ethanol loadout at the facility from November 2006 through July 2007:

Month	Monthly Total (Gallons)	12-Month Rolling Total (Gallons)
November 2006	3,863,303	49,594,833
Dccember 2006	4,830,710	50,263,768
January 2007	4,254,793	50,434,726
February 2007	3,947,400	50,281,637
March 2007	4,683,812	51,438,319
April 2007	5,520,107	52,649,802
May 2007	5,181,434	53,753,243
June 2007	4,717,572	53,989,011
July 2007	4,427,608	54,135,975

Amaizing is in the process of having the construction permit amended to establish a 65 million gallon limit.

Dust Emissions from Traffic (EP F100):

13. On September 15, 2006, DNR issued Air Quality Construction Permit #06-A-325-S1 to Amaizing Energy for EP F100. Condition 14 of the construction permit included the following operating limit: the haul road surface silt loading could not exceed 3.0 g/m².

14. On November 8, 2006, Amaizing Energy submitted a letter to DNR with its 4th quarter silt loading test results. The test results indicated the haul road surface silt loading was 3.2 g/m².

15. On November 20, 2006, DNR issued a Notice of Violation letter to Amaizing Energy for violating the silt loading operating condition of its permit. The letter required Amaizing Energy to submit a compliance plan by December 21, 2006 indicating how it would return to compliance. On December 22, 2006, DNR received a compliance plan from Amaizing Energy stating it would increase the number of times per week that the haul roads are cleaned. Amaizing Energy indicated the extra cleaning should result in significantly lower silt loading results.

Grain Tanks (EP 20a, b, c, f and g):

16. On March 16, 2006, Amaizing Energy submitted a construction permit application for grain tanks (EP 20a, b, c, f and g). The startup notifications submitted by Amaizing Energy indicated the construction of the grain tanks began on February 21, 2006.

17. On June 22, 2006, DNR issued Amazing Energy a Notice of Violation letter for failing to obtain construction permits for the grain tanks prior to beginning construction. The construction permits have since been issued.

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Storage Bins:

18. On June 22, 2006, DNR issued Air Quality Construction Permit Numbers 04-A-640-S1 and 06-A-318 through 06-A-322 for storage bins to Amaizing Energy. Condition 3 of the construction permits stated the following:

It shall be the responsibility of the owner to ensure that construction conforms to the final plans and specifications as submitted and that adequate operations and maintenance is provided to ensure that no condition of air pollution is created. A supplement to this permit shall be obtained if the owner proposes changes to the final submitted plans and specifications.

19. The permits for the storage bins allowed for one 48" x 48" vent with a vertical, unobstructed discharge for each storage bin. Amaizing Energy submitted photographs of the storage bins on March 13, 2007, to determine the correct stack testing procedures. The photographs showed that each storage bin had multiple vents with horizontal discharges.

20. On March 14, 2007, the DNR issued a Notice of Violation Letter to Amaizing Energy for violating Condition 3 of the air quality construction permits for failing to construct the storage bins as they were permitted. The letter required Amaizing Energy to submit construction permit modifications by May 18, 2007.

DDGS Cooler (EP 70)

21. Condition 15 of Air Quality Construction Permit #04-A-645-S1 for EP 70 requires the facility to determine and keep records of the plantwide and individual and total HAP emissions, in tons, per month and on a twelve month rolling basis for each month of operations.

22. On June 26, 2007, Paul Schwaab, an inspector for the Environmental Protection Agency (EPA), conducted an air quality inspection at Amaizing Energy. During the inspection, Mr. Schwaab was informed by Brett Schulte, Amaizing Energy's Environmental Compliance Coordinator, that the facility did not maintain the HAP records for EP 70.

IV. CONCLUSIONS OF LAW

1. 567 IAC 22.3(3) provides that a construction permit may be issued subject to conditions which shall be specified in writing, and that such conditions may include compliance testing requirements. Amaizing Energy failed to demonstrate compliance with conditions listed in several of the facility's construction permits.

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a. Condition 10 of the construction permit for EP S40 included emission limits for VOC and HAPS. On August 31, 2006 and September 1, 2006, Amaizing Energy failed to demonstrate compliance with the permitted emission limits for VOC and HAPs stated in Condition 10. EP S40 was stack tested and the results exceeded the VOC and HAP limits.

b. Condition 12 of the construction permit for EP S40 included a requirement that the emission unit be tested at full rated capacity. On March 16, 2006, Amaizing Energy tested EP S40 at only 35% of its rated capacity in violation of Condition 12.

c. Condition 14 of the construction permit for EP SEP22 included an operating limit for the amount of ethanol that could be loaded per 12 month rolling total. Since September 2006, Amaizing Energy has exceeded the operating limit of 48 million gallons per 12 month rolling total.

d. Condition 14 of the construction permit for EP F50 included an operating limit for the amount of ethanol that could be loaded per 12 month rolling total. Since September 2006, Amaizing Energy has exceeded the operating limit of 48 million gallons per 12 month rolling total.

e. Condition 14 of the construction permit for EP F100 included an operating limit for the silt loading on the haul road. Amaizing Energy's 4th quarter report for 2006 indicated Amaizing Energy exceeded the permitted silt loading limit.

f. Condition 3 of the construction permits for six storage bins included a requirement that each of the bins have one vertical discharge vent. The storage bins were constructed with three horizontal discharge vents on each of the bins.

g. Condition 15 of the construction permit for EP 70 required the facility to maintain individual and total IIAP emissions. During an EPA inspection on June 26, 2007, it was determined the records were not being maintained.

The above-facts indicate at least seven violation of this provision.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.1(1) was established, which requires that a person who constructs, installs, reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from the DNR. Amaizing Energy began construction on the grain tanks prior to obtaining air quality construction permits. The above-stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Amaizing Energy agrees to the following:

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1. Amaizing Energy shall pay a penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection 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 these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – The failure of Amaizing Energy to comply with the plantwide emission limits allowed Amaizing Energy to gain an economic advantage over its competitors. The facility was able to continue production and did not have to reduce or halt production while obtaining a construction permit amendment. Additionally, the failure of Amaizing Energy to obtain permits or modifications prior to construction or operation allowed Amaizing Energy to operate sooner and without operating restrictions and record keeping requirements, and therefore gained a cost savings. The economic benefit to the facility for the above-mentioned violations likely exceeds \$10,000.00. However in light of the penalty limit for this administrative consent order, \$3,000.00 is being assessed for this factor.

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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. An air quality construction permit or modification is required to be obtained prior to the construction or modification in order to allow for the prior review of plans and specifications pertaining to a proposed contaminant source. The purpose of this review is to determine if the source will meet all applicable emission limits and operating requirements. This review ensures that the interests of the citizens of Iowa in clean air are protected. Amaizing Energy knowingly exceeded its construction permit limits prior to obtaining construction permit modifications. Numerous permit condition violations and construction permit violations threaten the integrity of the air quality program. For these reasons, \$3,000.00 is being assessed for the permit condition violations and \$1,000.00 is being assessed for the failure to obtain construction permit violations for a total of \$4,000.00 being assessed for this factor.

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Culpability – Amaizing Energy has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Amaizing Energy knowingly exceeded the plantwide loadout limits as well as numerous other construction permit conditions. Amaizing Energy continued to operate its facility after the failed stack tests and after exceeding the plantwide limits. For these reasons, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Amaizing Energy. For that reason, Amaizing Energy waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent 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.146. Compliance with section “V. Order” of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section “IV. Conclusions of Law” of this administrative consent order. The DNR reserves the right to bring an enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section “IV Conclusions of Law” of the administrative consent order but which may arise from the facts summarized in Section “III. Statement of Facts” of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 27 day of
Nov., 2007



AMAIZING ENERGY DENISON, LLC.

Dated this 16th day of
November, 2007

Barb Stock (#24-01-007); Kelli Book; Kyle Ament; DNR Field Office 3; EPA; VII.A.1 and VII.B.2.a