

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

<p>IN THE MATTER OF:</p> <p>CITY OF GREENE Butler County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ-17 2010</p>
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TO: William Christensen, Mayor
City of Greene
P.O. Box 471
Greene, IA 50636

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Greene (City) for the purpose of resolving fugitive dust issues. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Eric Wiklund, Field Office 2
Iowa Department of Natural Resources
2300 15th Street
Mason City, Iowa 50401
Phone: 515/281-4899

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

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

II. JURISDICTION

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 adopted pursuant to that part; and Iowa Code section

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455B 109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this order.

III. STATEMENT OF FACTS

PAST ENFORCEMENT HISTORY

1. The City owns approximately 300 feet of unpaved road located at South Second Street in Greene, Iowa 50636. This street is locally known as Second Street/Sandhill Road. The section of road at issue is Second Street from its intersection with South Street and continuing south for approximately 770 feet to the Corporation Limits (hereinafter referred to as "South Second Street")

2. Croell Redi-Mix, Inc. manufactures concrete and has a facility that is located at 510 South Second Street in the City.

3. On October 14, 1998, the City was notified of fugitive dust violations on South Second Street via certified letter.

4. On April 27, 1999 and June 17, 1999, DNR Field Office 2 received complaints that the dust along South Second Street was causing a nuisance situation.

5. On July 6, 1999, the City was notified of its fugitive dust violations via certified letter.

6. On July 9, 1999, DNR Field Office 2 contacted the mayor of the City via phone. During the conversation, the mayor confirmed his intent to control the fugitive dust.

7. On July 13, 1999, DNR Field Office 2 received a letter from the City stating that dust control would be applied to South Second Street.

8. On November 9, 1999, DNR Field Office 2 contacted the City's mayor to discuss dust control on the Croell Redi-Mix, Inc. driveway located on South Second Street.

9. On May 16, 2000, the mayor called DNR Field Office 2 to confirm the application of dust control.

10. On August 25, 2000, DNR Field Office 2 received a complaint stating that dust along South Second Street was once again causing a nuisance.

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11. On May 30, 2001, Eric Wiklund, environmental specialist for DNR Field Office 2, responded to a complaint that dust from the City road near the Croell Redi-Mix, Inc. plant was causing a nuisance situation for two residences near the facility. Mr. Wiklund determined that fugitive dust from the Croell Redi-Mix, Inc. lot was consistently crossing the property line of one of the houses and creating a nuisance situation. The dust was being generated primarily by heavy truck traffic originating at the Croell Redi-Mix, Inc. plant.

12. On May 31, 2001, Mr. Wiklund contacted Harlan Taylor, a representative of Croell Redi-Mix, Inc., in order to discuss observations made at the May 30, 2001 investigation. Mr. Wiklund informed Mr. Taylor that Croell Redi-Mix, Inc. would be referred for further legal enforcement and penalties. Mr. Taylor agreed to pave the Croell Redi-Mix, Inc. driveway if the referral was dropped.

13. On June 1, 2001, DNR Field Office 2 received a phone call from Ray DeVries, Mayor of the City, regarding the violations. Mr. Wiklund informed Mayor DeVries that the matter would be referred for legal enforcement action and possible penalties. Mayor DeVries indicated that he wished to avoid legal action and agreed to take immediate action to stop the generation of fugitive dust from the road.

14. On June 6, 2001, DNR Field Office 2 issued a Notice of Violation letter to the City for fugitive dust. A Notice of Violation letter was also issued to Croell Redi-Mix, Inc. for fugitive dust. Mr. Wiklund received a phone call from the Mayor stating his intention to apply dust control.

15. On June 11, 2001, DNR Field Office 2 received a letter from Croell Redi-Mix, Inc. stating its intention to pave the parking lot.

16. On January 12, 2002, Mr. Wiklund discussed dust control with City employee, Jim O'Brien.

CURRENT ENFORCEMENT HISTORY

17. On September 12, 2007, Mr. Wiklund responded to a complaint that dust from the City road near the Croell Redi-Mix, Inc. plant was causing a nuisance for a residence near the facility. Mr. Wiklund determined that fugitive dust from the Croell Redi-Mix, Inc. lot was consistently crossing the property line of the house and creating a nuisance situation. Mr. Wiklund recorded video of the violation. The dust was being generated primarily by heavy truck traffic originating at the Croell Redi-Mix, Inc. plant.

18. On September 25, 2007, DNR issued the City a Notice of Violation letter in regards to the September 12, 2007, investigation. The letter cited the City for fugitive dust along South Second Street. The letter informed Mayor William Christensen that the matter was being referred for review and enforcement action.

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19. On October 3, 2008, Mr. Wiklund visited the site in response to a complaint and observed and documented fugitive dust emissions. Mr. Wiklund recorded video of the violation.

20. An order was issued on December 15, 2008, requiring the City to control the dust from South Second Street, pay a penalty of \$6,000.00, and by February 15, 2009, submit to DNR a plan to permanently control fugitive dusts on South Second Street. The City timely appealed the order.

21. The City did not timely submit a plan of action detailing the City's plans to permanently control fugitive dusts, as required by the order issued December 15, 2008. However, the City has stated that it will pave the road in question by August 1, 2010. The planned street surfacing is a 24-foot wide, 8-inch thick Portland Cement Concrete with doweled joints. This project is estimated to cost approximately \$124,500.00. The City also has stated that dust control will occur on a regular basis until the blacktop project is completed.

22. DNR has continued to receive complaints regarding dust from South Second Street.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.3(2)(c)(1) requires that reasonable precautions be taken to prevent nuisance amounts of particulate matter from becoming airborne. Reasonable precautions must be taken to prevent visible amounts of fugitive dust from crossing the lot line of the property on which the emissions originate. DNR determined that fugitive dust from the Croell Redi-Mix, Inc. lot was consistently crossing the road onto residential property thereby causing a nuisance situation. By not consistently applying dust control, the City did not take reasonable precautions to prevent the dust from becoming a nuisance. The above-facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and the City agrees do the following:

1. By no later than August 1, 2010, the City shall pave the portion of road described herein as "South Second Street" by using street surfacing that is a 24 foot wide, 8 inch thick Portland Cement Concrete, as described in the facts above.

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2. Beginning immediately and until the paving project described above is completed, the City shall control dust on South Second Street to a 95% control efficiency according to manufacturer's specifications, using one of the following methods: (a) by October 15, 2009, the City shall apply emulsified asphalt to South Second Street, or (b) beginning no later than October 15, 2009, and continuing monthly thereafter through the commencement of the paving project, the City shall apply a selected chemical dust suppressant.¹ If choosing option (b), the City shall keep records of the applications of dust suppressant, which shall include the following information: the dates of each application; the chemical dust suppressant used; the application intensity (gal/yd²); the dilution ratio; the operator's initials; and documentation of road and weather conditions, if necessary. Also if choosing option (b), if the selected chemical dust suppressant cannot be applied because the ambient air temperature will be less than 35 degrees Fahrenheit or due to weather conditions such as rain which, in combination with the chemical dust suppressant could create hazardous driving conditions, then the chemical dust suppressant application shall be postponed and applied as soon after the scheduled application date as conditions allow. If the selected chemical dust suppressant is not applied as planned, then the records should so indicate and provide an explanation. Within 30 days after the date this order is signed by the Director, the City shall inform DNR in writing of the option chosen and shall provide the name and manufacturer of the chemical dust suppressant chosen and copies of the manufacturer's specifications for use and control efficiency.

3. If the City does not timely complete the project described in paragraph number 1 above, then the City shall pay to DNR a stipulated penalty in the amount of \$10,000.00 by October 1, 2010. However, if the City completes the project satisfactorily and within the time frame set out in this order, then no penalty shall be assessed pursuant to this order. DNR's determination whether a penalty shall be assessed shall be based on an inspection conducted by DNR following completion of the project.

4. This order supersedes the administrative order issued to the City on December 15, 2008.

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. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

¹ The City shall not use used oil or other petroleum-based dust suppressants or lignosulfonates, due to the environmental risks associated with run-off. Chemicals available that may be applied include, but are not limited to, calcium chloride, magnesium chloride, vegetable oils, polymers, enzyme slurry, cementitious binders, and electrochemical stabilizers.

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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 these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a stipulated penalty of \$10,000.00. The stipulated penalty is determined as follows:

Economic Benefit – It could be expected that the City would need to apply dust control at least 4 times a year at a cost of \$250.00 per application. This would cost the City approximately \$1,000.00 per year. DNR has been working with the City since October 14, 1998. Based on the above considerations, a stipulated penalty of \$9,000.00 is calculated.

Gravity of the Violation – The allowance of fugitive dust escaping across the property line is a nuisance to neighbors who live along the road in that it has prevented the comfortable enjoyment of their property. The amount of dust coming from the road was significant. On days when the cement plant is busy, the dust would significantly impact outdoor activities. Furthermore, fugitive dust can settle on vehicles and property resulting in the need to clean the vehicles and property. Fugitive dust can also cause adverse health effects to people with respiratory problems. One of the factors 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 and criminal sanctions are authorized by statute. Despite the high penalties authorized, DNR has decided to handle the violations administratively at this time, in the interest of equitably and efficiently resolving this matter. Based on these considerations, a stipulated penalty of \$500.00 is calculated.

Culpability – The City has occasionally applied dust control, but never aggressively or consistently. Moreover, the City has ignored repeated requests to adequately maintain dust control. DNR has worked with the City for eleven years regarding complaints over fugitive dust and DNR has had numerous contacts with the City regarding its obligation to control the fugitive dust from the road. Based on the above considerations, \$500.00 is calculated as a stipulated penalty for this factor.

Given the cost to the City for paving the road, the parties have agreed to stipulated penalties if the City does not meet the schedule contained in this order for completion of the paving project. The penalties stipulated to by the parties in this order shall become due if the City fails to timely complete the paving project. The stipulated penalties are designed to reflect, to the extent possible with an administrative order, the potential economic benefit to the City for failure to make the expenditures needed to resolve the long-term issues that have occurred with South

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Second Street. In addition, failing to meet the schedule set forth in this order for project completion is a serious matter in view of past violations. The stipulated penalties also would relate to future culpability in that the City has been put on notice by this order that stipulated penalties will result if the compliance schedule is not met.

Failure of the City to follow the conditions described in this order to control dust on South Second Street prior to completion of the paving project is not included in the stipulated penalties. DNR reserves the right to pursue enforcement action if the City fails to control dust prior to completion of the paving project.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City. For this reason, the City waives its rights to appeal this order or any part thereof. In addition, the City agrees that upon issuance of this order, it will dismiss its appeal of the December 15, 2008 administrative order.

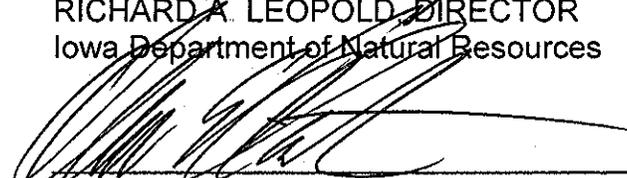
VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, 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 Sections V.1 and V.2 of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order. The DNR reserves its right to issue an administrative order or to refer to the attorney general's office in lieu of collecting stipulated penalties pursuant to this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 23 day of
March, 2010



For City of Greene

Dated this 9 day of
MARCH, 2010

Butler County Air Quality File; Anne Preziosi; DNR Field Office 2; Eric Wiklund;
VII.C.2