

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

IN THE MATTER OF:

MPC ENTERPRISES, INC.

Henry County, Iowa

ADMINISTRATIVE CONSENT
ORDER

NO. 2010-AQ- 46

TO: Christopher A. Wallace, Registered Agent
524 N. Main Street
Burlington, Iowa 52601

Jeff Moehle, President
MPC Enterprises, Inc.
2001 W Washington Street
Mount Pleasant, Iowa 52641

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and MPC Enterprises, Inc. (MPC) for the purpose of resolving the air quality violations which occurred when MPC failed to timely submit a Minor Source Emission Inventory Questionnaire (MSEIQ). In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Reid Bermel
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-4918

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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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 promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. MPC is a precast concrete company located in Mount Pleasant, Iowa.
2. In January 2010, DNR's Air Quality Bureau sent MPC a letter informing the facility that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the eastern third of the state of Iowa. The letter included instructions on how to complete and submit the MSEIQ for the facility. The letter also included information on additional assistance for completing the MSEIQ. The letter informed the facility the MSEIQ was due May 15, 2010.
3. In February 2010, DNR sent a postcard to MPC informing the facility of free MSEIQ training for submitting the report electronically.
4. In April 2010, DNR sent a postcard to MPC reminding the facility of the May 15, 2010 due date for the MSEIQ submittal. The postcard included information on assistance for completing the MSEIQ.
5. On May 15, 2010, the MSEIQ for facilities in the eastern third of the state were due. MPC failed to submit its MSEIQ by this date.
6. On May 26, 2010, DNR issued a noncompliance letter to MPC for failing to submit its MSEIQ by May 15, 2010. The letter required the MSEIQ to be submitted by June 15, 2010. The letter stated that failure to submit the MSEIQ by June 15, 2010 could result in further enforcement, including a monetary penalty. To date, MPC has not submitted a MSEIQ.
7. MPC has been issued a previous noncompliance letter from DNR for air quality violations. In July 2009, MPC was issued a letter from the DNR for failing to obtain a construction permit prior to installation of a concrete batch plant.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

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air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 21.1(3) states that the person responsible for equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the Director upon the Director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEIQ for MPC was due May 15, 2010 and the facility was informed of this requirement on several occasions. To date, MPC has failed to submit the MSEIQ. The above mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and MPC agrees to do the following:

1. MPC shall submit the MSEIQ for its facility within 30 days of the date the Director signs the administrative consent order;
2. MPC shall pay an administrative penalty of \$750.00 within 30 days of the date the Director signs the administrative consent order; and
3. If the requirement referenced in Paragraph 1 of this section is not completed within 30 days of the date the Director signs this administrative consent order, MPC shall pay a stipulated penalty in the amount of \$500.00 per month for each month the requirement in Paragraph 1 is not completed up to \$9,250.00. The stipulated penalty will be in addition to the administrative penalty assessed in Paragraph 2 of this section.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, 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 of \$750.00 and stipulated penalties for violations of the compliance schedule of this administrative consent order.

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The stipulated penalties in this administrative consent order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to MPC for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violation in that not meeting the compliance schedule in this administrative consent order is a fairly serious matter. The penalties would also be related to future culpability in that MPC has been put on notice by this administrative consent order that stipulated penalties will result if the compliance schedule is not met. The administrative penalty is as follows.

Economic Benefit - 567 IAC chapter 10 requires that the DNR 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." MPC has been able to delay the costs associated with completing the MSEIQ for its facility. It is estimated that the economic benefit achieved by MPC is at least \$50.00 and \$50.00 is 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 method to resolve this matter. MPC's failure to timely submit the MSEIQ prevented the DNR and the public from being aware of the facility's compliance status in regard to the rules and regulations. Failing to timely submit the MSEIQ prevents the DNR from accurately inventorying minor source air pollutants. This violation threatens the integrity of the regulatory program because compliance with the reporting requirements is required of all companies such as MPC. Therefore, \$200.00 is assessed for this factor.

Culpability - MPC 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. The facility received at least three reminder letters regarding the submittal of the MSEIQ. The facility was also provided information as to where it could obtain assistance in completing the MSEIQ. Based on the above considerations, \$500.00 is assessed for this factor.

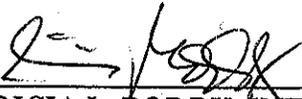
VII. WAIVER OF APPEAL RIGHTS

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

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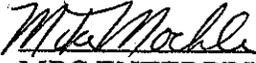
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this administrative consent order.



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 28 day of
Oct, 2010.



MPC ENTERPRISES, INC.

Dated this 18 day of
October, 2010.

AQB #44-01-044; Kelli Book; Reid Bermel, DNR Field Office 6; VII.C.3