

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

IN THE MATTER OF:

**JRB ATTACHMENTS, LLC, dba
JRB CUSTOM WORKS**

Dubuque County, Iowa
Scott County, Iowa

ADMINISTRATIVE CONSENT
ORDER

NO. 2010-AQ-51

TO: JRB Attachments, LLC
Corporation Service Company
505 5th Avenue, Suite 729
Des Moines, Iowa 50309

Ray McCarthy
JRB Custom Works
17876 Peru Road, Suite 1
Dubuque, Iowa 52001

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and JRB Attachments, LLC, dba JRB Custom Works (JRB) for the purpose of resolving the air quality violations which occurred when JRB failed to timely submit Minor Source Emission Inventory Questionnaires (MSEIQ) for its Davenport and Dubuque facilities. 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. JRB is a construction equipment company with facilities in Dubuque, Iowa and Davenport, Iowa.
2. In January 2010, DNR's Air Quality Bureau sent JRB letters for the Dubuque and Davenport facilities informing the company 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 letters included instructions on how to complete and submit the MSEIQs for the two facilities. The letter also included information on additional assistance for completing the MSEIQs. The letter informed the facility the MSEIQs were due May 15, 2010.
3. In February 2010, DNR sent postcards to JRB for both facilities informing the company of free MSEIQ training for submitting the report electronically.
4. In April 2010, DNR sent postcards to JRB for both facilities reminding the company of the May 15, 2010 due date for the MSEIQ submittals. The postcards included information on assistance for completing the MSEIQs.
5. On May 15, 2010, the MSEIQ for facilities in the eastern third of the state were due. JRB failed to submit the MSEIQs for the Davenport and Dubuque facilities by this date.
6. On May 26, 2010, DNR issued noncompliance letters to JRB for failing to submit the MSEIQs for Dubuque and Davenport by May 15, 2010. The letters required the MSEIQs to be submitted by June 15, 2010. The letters stated that failure to submit the MSEIQs by June 15, 2010 could result in further enforcement, including a monetary penalty. To date, JRB has not submitted the MSEIQs.

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 MSEIQs for JRB were due May 15, 2010 and the facility was informed of this requirement on several occasions. To date, JRB has failed to submit the MSEIQs. The above mentioned facts indicate violations of this provision.

V. ORDER

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

1. JRB shall submit the MSEIQs for its Dubuque facility and its Davenport facility within 30 days of the date the Director signs the administrative consent order;
2. JRB shall pay an administrative penalty of \$1,500.00 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, JRB 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 \$8,500.00. 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 \$1,500.00 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 JRB 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 JRB 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." JRB has been able to delay the costs associated with completing the MSEIQs for its facilities. It is estimated that the economic benefit achieved by JRB is at least \$100.00 and \$100.00 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. JRB's failure to timely submit the MSEIQs prevented the DNR and the public from being aware of the facilities' compliance status in regard to the rules and regulations. Failing to timely submit the MSEIQs prevents the DNR from accurately inventorying minor source air pollutants. These violations threaten the integrity of the regulatory program because compliance with the reporting requirements is required of all companies such as JRB. Therefore, \$400.00 is assessed for this factor.

Culpability - JRB 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 company received at least three reminder letters for each of its facilities regarding the submittal of the MSEIQs. The company was also provided information as to where it could obtain assistance in completing the MSEIQ. Based on the above considerations, \$1,000.00 is assessed for this factor.

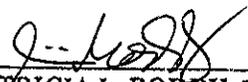
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VII. WAIVER OF APPEAL RIGHTS

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

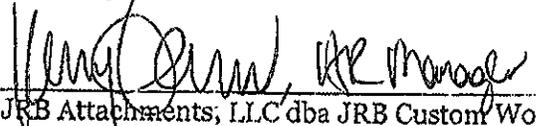
VIII. NONCOMPLIANCE

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 16 day of
November, 2010.



JRB Attachments, LLC dba JRB Custom Works

Dated this 28th day of
October, 2010.

AQB #31-01-142 and # 82-01-093; Kelli Book; Reid Bermel, DNR Field Office 1;
DNR Field Office 6; VII.C.3