

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

IN THE MATTER OF: TRINITY REGIONAL MEDICAL CENTER	ADMINISTRATIVE CONSENT ORDER NO. 2011-AQ-24
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TO: Trinity Regional Medical Center
Mark Washuer, Buildings & Grounds Director
802 Kenyon Road
Fort Dodge, Iowa 50501

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Trinity Regional Medical Center (Trinity) for the purpose of resolving violations pertaining to Trinity's failure to timely obtain air quality construction permits. In the interest of avoiding litigation, the parties have agreed to the provisions below.

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

Relating to technical requirements:

Glenn Carper
Environmental Specialist
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
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

This administrative 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

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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 division; 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. Trinity Regional Medical Center in Fort Dodge, Iowa is a 200 bed non-profit hospital that serves Fort Dodge and the surrounding communities. Trinity contains four boilers to heat the facility along with three generators to provide emergency power in the event of a power outage.

2. Trinity failed to obtain air quality construction permits for two new 1250 horsepower generators, Generators 4 and 5, installed at the hospital in 2007 or 2008 as replacements for two older generators, Generators 1 and 2.

3. On April 12, 2011, Glenn Carper of DNR Field Office No. 2 inspected Trinity and found that Generators 1 and 2 had been removed and replaced with installed Generators 4 and 5. No applications for air quality construction permits were submitted for Generators 4 and 5 prior to installation and use of those emission units. The Buildings & Grounds representative, Jim Berg, indicated that the old Generators 1 and 2 were replaced with new Generators 4 and 5 in an emergency situation as one of the old generators had failed and needed to be replaced immediately. Mr. Berg was surprised when permits could not be found and indicated that this appeared to be an oversight.

4. Trinity has previously obtained permits for generators and sterilizers and should have known that air quality construction permits would be needed for new emergency Generators 4 and 5. On January 5, 1999, air quality construction permits were issued to Trinity for Generators 2 and 3. On February 22, 2000, a permit was issued to Trinity for a gas sterilizer. On March 1, 2001, an inspection was conducted at Trinity by Trent Lambert of DNR Field Office No. 2 and he observed the original three generators and the gas sterilizer. In Paragraph 3 of his letter to Trinity, Mr. Lambert reminded the facility of the need for construction permits for installation of new, altered, or modified equipment or control equipment. Additionally, on August 6, 2001, a permit was issued to Trinity for a replacement ethylene oxide sterilizer.

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.

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2. 567 IAC 22 1(1) requires that unless exempt, no person shall construct, install, reconstruct, or alter any equipment, control equipment, or anaerobic lagoon without first obtaining a construction permit from DNR. Trinity failed to obtain air quality construction permits prior to installation and operation of equipment located at its facility.

V. ORDER

THEREFORE, DNR orders and Trinity Regional Medical Center agrees to the following:

1. By September 1, 2011, submit to DNR air quality construction permit applications for Generators 4 and 5;
2. Obtain air quality construction permits in the future for installation of new equipment or control equipment, or reconstruction, alteration, or modification of any existing equipment or control equipment; and
3. Pay a penalty of \$1,000 within 30 days of the date this order is signed by the Director

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B 109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

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, 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 a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Trinity has achieved an economic benefit by saving time, money, and effort through its failure to comply with DNR's air quality regulations

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requiring air quality construction permits. It is estimated that the facility has saved engineering costs by its failure to obtain these permits which, adjusted for inflation, amount to \$250.00. Therefore, \$250.00 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. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined at this time that the most equitable and efficient means of resolving this matter is through the issuance of an administrative order. Failure to obtain air quality construction permits undermines the construction permitting and air quality compliance program for the State of Iowa. However, DNR likely would have issued permits at the time the generators were installed with minimal requirements, and new permits the facility will have to obtain will likely have more stringent requirements. Therefore, no monetary amount is assessed for this factor.

Culpability – Trinity 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 requirements. Trinity does not have a history of non-compliance with air quality requirements. However, Trinity should have known that permits needed to be obtained prior to installation of emergency Generators 4 and 5 due to Trinity obtaining prior air quality construction permits. Therefore, \$750.00 is assessed for this factor.

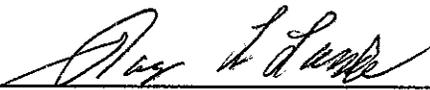
VII. WAIVER OF APPEAL RIGHTS

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

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent 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 Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

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Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 31st day of
September, 2011



AUTHORIZED AGENT
Trinity Regional Medical Center

Dated this 27 day of
July, 2011

Webster County Air Quality File; Anne Preziosi; DNR Field Office 2; VII.A.1