IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:	ADMINISTRATIVE ORDER
GATR OF DES MOINES INC.	NO. 2018-AQ- 06
Polk County, Iowa	

TO: Craig Thomsen, Registered Agent
GATR of Des Moines Inc.
5325 NE 14th Street
Des Moines, Iowa 50313

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Reid Bermel, DNR Air Quality
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-9535

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-9572

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace 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 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 Order.

III. STATEMENT OF FACTS

1. GATR of Des Moines Inc. (GATR) is a full service heavy and medium truck dealer located in Des Moines, Iowa.

2. On January 11, 2017, DNR's Air Quality Bureau sent GATR a letter informing the facility that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the central portion of the state of Iowa. The letter included instructions on how to complete and submit the 2016 MSEI for the facility. The letter also included information on additional assistance for completing the MSEI. The letter informed the facility the MSEI was due May 15, 2017 and stated a failure to meet the deadline could result in further enforcement.

3. On March 31, 2017, DNR sent a postcard to GATR reminding the facility the MSEI was due May 15, 2017. The postcard also included information on assistance for completing the MSEI.

4. On May 15, 2017, the MSEI for facilities in the central portion of the state were due. GATR failed to submit its MSEI by this date.

5. On May 31, 2017, DNR issued a letter to GATR for failing to submit its MSEI by May 15, 2017. The letter stated the facility remained out of compliance until the MSEI was submitted and failure to submit the MSEI could result in further enforcement. The letter required that the MSEI be submitted no later than July 31, 2017. GATR failed to submit the MSEI by July 31, 2017.

6. On August 17, 2017, Reid Bermel, DNR Air Quality environmental specialist, contacted GATR and explained the MSEI requirements. Mr. Bermel provided the facility an extension until September 8, 2017 to submit the MSEI. He informed the facility that a Notice of Violation letter was being issued and the deadline would be September 8, 2017. Mr. Bermel stated if the MSEI was not submitted by September 8, 2017, further enforcement would be pursued.

7. On August 18, 2017, DNR issued a Notice of Violation letter to GATR for failing to submit the MSEI. The letter stated the MSEI must be submitted by September 8, 2017 in order to avoid further enforcement, including a monetary penalty. GATR submitted the MSEI on September 19, 2017.

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 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 MSEI for GATR was due May 15, 2017 and the facility was informed of this requirement on several occasions. The MSEI was not submitted until September 19, 2017, which was over 100 days past the original due date. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR hereby orders GATR to do the following:

1. Pay an administrative penalty of $1,500.00 within 60 days of receipt this Order, subject to the appeal rights stated in Section VII.

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 violation is the issuance of an Order with an administrative penalty of $1,500.00. The administrative penalty is determined 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." GATR was able to delay the costs associated with completing the MSEI for its facility for over 18 weeks. It is estimated that the economic benefit achieved by GATR 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 violation administratively at this time, as the most equitable and efficient method to resolve this matter. GATR's failure to timely submit the MSEI prevented the DNR and the public from being aware of the facility compliance status in regard to the rules and regulations. Failing to timely submit the MSEI 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 GATR. Additionally, the DNR has expended time in notifying the facility of the requirements. Therefore, $500.00 is assessed for this factor.

Culpability – GATR 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 DNR sent several reminder letters to the facility and provided GATR with several extended deadlines before GATR submitted the MSEI. The facility was also provided information as to where it could obtain assistance in completing the MSEI. Based on the above considerations, $950.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this 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.

Chuck Gipp

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 6th day of February, 2018.

AQB #77-01-334; Kelli Book; Reid Bermel, DNR Field Office 5; VII.C.3