

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

<p>IN THE MATTER OF:</p> <p>UNICOVER, Inc.</p>	<p>ADMINISTRATIVE ORDER</p> <p>NO. 2016-AQ- <u>15</u></p>
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To: Brad Bakken, General Manager
Unicover, Inc.
1040 Diagonal Street
Britt, Iowa 50423

Re: Air Quality Construction Permit non-compliance; record-keeping violations

I. SUMMARY

This administrative order (Order) addresses apparent continued violations of the Air Quality Construction Permits (Permits) issued by the Department of Natural Resources (DNR) to Unicover, Inc., (Unicover) for the operation of certain equipment at its facility (Facility) in Britt, Iowa. The Order requires Unicover to obtain necessary permit amendments, cease the use of non-compliant products, comply with record-keeping obligations, and to pay an administrative penalty of \$5,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

David Knoll, Environmental Specialist
DNR Field Office #2
2300 15th Street, SW
Mason City, IA 50401
Phone: 641-424-4073

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Division
Wallace State Office Building
502 E. 9th St.
Des Moines, IA 50319
Phone: 515-725-8239

Payment of penalty to:

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

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II. JURISDICTION

This Order is issued pursuant to Iowa Code §§ 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 division; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following relevant facts are stated in chronological order:

1. Unicover was issued DNR Air Quality Construction Permits 96-A-685-S3 and 96-A-686-S3 on May 5, 2009. The Permits include restrictions on the use of certain products, recordkeeping obligations, and a variety of other ongoing obligations.

2. On September 19, 2012, DNR Field Office (FO) staff performed a routine inspection of the Facility and identified multiple violations of the Facility's Permits. Specifically, two Hazardous Air Pollutant (HAP) non-compliant products were being used and Facility recordkeeping of product usage was insufficient. The non-compliant products were product #809 (fisheye eliminator) and product #UA97 (hardener).

3. On October 10, 2012, a Notice of Non-Compliance (NONC) was sent to Unicover for use of non-compliant materials and recordkeeping violations. A written response was requested.

4. On October 23, 2012, Unicover submitted a letter of response stating the non-compliant materials would no longer be used and recordkeeping would be corrected.

5. On January 28, 2016, DNR FO staff again performed a routine compliance inspection of the Facility and found that the Facility was still using product #809 (fisheye eliminator). Further, two additional products in use at the Facility were found to be non-compliant with the Facility's Permits: product #812 (fisheye eliminator) and product #NP80 (primer). Finally, recordkeeping of filter inspection/maintenance was found to be insufficient.

6. On February 3, 2016, a Notice of Violation (NOV) was sent to Unicover for use of non-compliant materials and recordkeeping violations. A written response was requested.

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7. On April 12, 2016, DNR FO staff contacted Brad Bakken, Unicover General Manager, to determine why the requested written response had not been received. Mr. Bakken stated that he was checking with his supplier to find compliant materials and that he would send a response.
8. On April 28, 2016, Mr. Bakken called to report that he had contacted the DNR Air Quality Bureau about possibly amending the Facility's Permits and that he had also sent a letter of response as required by the NOV.
9. On May 2, 2016, Unicover submitted a written response stating a substitute for the non-compliant materials would be found, or the necessary permit modifications would be made within one month.
10. On June 7, 2016, DNR staff again contacted Mr. Bakken for an update on the non-compliant products. Mr. Bakken explained he had not yet heard back from his supplier. DNR staff emphasized the importance of resolving the matter in a timely manner, and noted the possibility of further enforcement action if the matter was not addressed.
11. On June 29, 2016, DNR staff again contacted Mr. Bakken for an update. Mr. Bakken stated that Unicover would be getting new compliant fisheye eliminator products to test out that week. He stated that the company would try out the products and then decide if it would switch or attempt to amend the Permits. During the conversation, Mr. Bakken was reminded about the non-compliant primer that was identified. DNR staff emphasized the need for a timely resolution of these issues, that these were federally-reportable violations, and that DNR would follow-up with another letter for not meeting the compliance timeline provided in the May 2, 2016 response.
12. On July 07, 2016, a second NOV was sent to Unicover for failing to remedy the non-compliant materials by the deadline agreed upon in the letter of response received on May 2, 2016. The NOV again warned that failure to resolve the matter expeditiously could result in further enforcement action. A written response with an updated compliance date was requested.
13. On August 11, 2016, DNR staff again contacted Mr. Bakken as DNR FO2 had not received a written response to the second NOV. Mr. Bakken stated he had received the letter. He explained the company tried different compliant products, but the products did not work for them. He stated that he contacted the DNR Air Quality Bureau and received information on what forms need to be filled out to update the Permits. DNR again requested that Mr. Bakken submit a response to the previous NOV with a date as to when the permit application would be submitted. DNR recommended he choose a date no later than September 15, 2016 since the facility has been out of compliance for several months already. DNR staff noted that further delays could result in the DNR pursuing further enforcement action and a penalty.

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14. As of September 28, 2016, no written response had been received by DNR FO2 and no permit applications had been received by the DNR Air Quality Bureau. It is assumed the non-compliant materials are still in use.

IV. CONCLUSIONS OF LAW

1. Unicover was issued DNR Air Quality Construction Permits 96-A-685-S3 and 96-A-686-S3 for operation of certain equipment at its Facility in Britt, Iowa, pursuant to the authority granted to the DNR in Iowa Code § 455B.134 and the Administrative Rules adopted by the Environmental Protection Commission (Commission) at 567 IAC 22.1.

2. Section 14 of the Permits include specific operating limits applicable to Unicover.

3. Unicover violated permit conditions by using materials that did not meet the operating limits established in the Permits. Specifically, it used products that exceeded the HAP content limit and the solids content limit.

4. Unicover also did not perform the recordkeeping required by the Permits. It was not properly tracking the inspection and maintenance of the paint booth filters.

V. ORDER

THEREFORE, the Director of the DNR orders Unicover to:

1. Apply for construction permit amendments that will allow the use of currently non-compliant products within 60 days of this Order being signed by the Director of the DNR. If the permit amendments are not approved, the Facility must immediately cease the use of any products that are non-compliant with the Facility's Permit.

2. Immediately comply with all product tracking and record-keeping obligations included in its Permits.

3. Pay an administrative penalty of \$5,000.00 within 60 days of this Order being signed by the Director of the DNR.

VI. CIVIL PENALTY

1. Iowa Code § 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 authorizing the Director to assess administrative penalties at 567 IAC 10.

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2. Iowa Code § 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 § 455B.146A. The DNR reserves its right to pursue additional penalties pursuant to this section if Uncover fails to comply with the terms of this Order, or to refer the matter to the Iowa Attorney General for civil judicial enforcement.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories of consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. These categories are addressed below and the administrative penalty is determined as follows:

a) Economic Benefit: The economic benefit enjoyed by the company is considered negligible.

b) Gravity of the Violations: Uncover continued to use one of the non-compliant materials for over four years after stating in writing that it would no longer use the material. The company has also continued to delay addressing the non-compliant materials after the most recent (2016) inspection despite repeated reminders from the DNR. A penalty of \$2,500.00 is assessed for the gravity of Uncover's ongoing and knowing permit non-compliance.

c) Culpability: Uncover was made aware of non-compliant materials and recordkeeping requirements during a 2012 inspection. It should have been aware of the necessity of only using products that meet permit requirements. A penalty of \$2,500.00 is assessed for this factor due to Uncover's actions.

4. Failure to assess an administrative penalty for the violations listed above would threaten the integrity of DNR regulatory programs by not providing a financial incentive for citizens to comply.

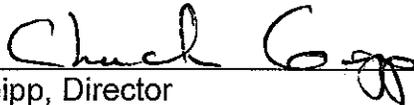
VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order.

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VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 20th day of
October, 2016

CC: DNR Field Office 2; David Scott; B.2(c), B.2(d)