

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

IN THE MATTER OF: QUAD COUNTY CORN PROCESSORS COOPERATIVE NPDES Permit #4700105	ADMINISTRATIVE CONSENT ORDER NO. 2016-WW-22
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TO: Ryan Wuebker
Environmental, Health, and Safety Manager
Quad County Corn Processors Cooperative
P.O. Box 248
6059 159th Street
Galva, IA 51020

I. SUMMARY

This administrative consent order ("Order") is entered into between Quad County Corn Processors Cooperative ("QCCP") and the Iowa Department of Natural Resources ("DNR") to address noncompliance with permit effluent limits and to establish a binding schedule for QCCP to submit a toxicity reduction evaluation to DNR. Pursuant to this Order, QCCP shall comply with the schedule contained herein and shall pay an administrative penalty of \$4,000.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bryon Whiting
Environmental Specialist Senior, FO3
Iowa Department of Natural Resources
1900 North Grand Ave.
Gateway Mall North
Spencer, IA 51301
Ph. 712-262-4177

Relating to legal requirements:

John Crotty
Attorney, Legal Services Bureau
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph. 515-725-8249

Payment of Penalty to:

Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto and Iowa Code 455B.109 and 567 Iowa Administrative Code (“IAC”) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. DNR amended QCCP’s National Pollutant Discharge Elimination System (“NPDES”) permit on February 2, 2004, to include permit limits for toxicity. DNR renewed the permit on September 1, 2012. The toxicity limits in the renewed permit were unchanged.

2. The renewed permit also reflected the requirements of 567 IAC 63.4(3) “b” by providing that two successive positive toxicity results, or three positive results out of five successive tests, require a toxicity reduction evaluation (“TRE”) to be completed by QCCP to eliminate the toxicity.

3. QCCP violated the toxicity limits in its NPDES permit on the following dates: July 31, 2004; September 30, 2004; June 30, 2005, September 30, 2008; September 30, 2010; March 31, 2011; August 31, 2011; September 30, 2011; August 31, 2012; November 30, 2012; May 31, 2013; August 31, 2013; October 31, 2013; December 31, 2013; January 31, 2014; April 30, 2014; July 31, 2014; October 31, 2014; July 31, 2015; and October 31, 2015.

4. Of the 20 violations referenced above, there are five incidents of two successive positive toxicity results. There are three incidents of three positive results out of five successive tests.

5. DNR Field Office 3 advised QCCP of the need to submit a TRE by letters dated November 30, 2011; November 19, 2013, and February 16, 2016. QCCP has not submitted a TRE to date.

IV. CONCLUSIONS OF LAW

DNR and QCCP agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission (“Commission”).

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2. 567 IAC 64.3(1) prohibits the operation of a waste disposal system contrary to the terms of a permit.

3. 567 IAC 63.4(3) "b" provides that if a discharger has two successive positive toxicity results, or three positive results out of five tests, the discharger is required to conduct a TRE.

4. The facts stated in Section III of this Order constitute violations of Iowa Code 455B.186, 567 IAC 64.3(1), and 567 IAC 63.4(3) "b".

V. ORDER

DNR and QCCP hereby agree, and QCCP is hereby ordered to do the following:

1. By February 1, 2017, QCCP shall submit a written TRE plan to DNR Field Office 3. The plan shall detail the procedures to be employed and a timeline by which the TRE will be implemented.

2. By August 1, 2017, QCCP shall submit a written progress report to DNR Field Office 3.

3. By February 1, 2018, QCCP shall complete the TRE and submit a final written TRE report to DNR Field Office 3.

4. Within 30 days of the date the Director signs this Order, QCCP shall pay an administrative penalty in the amount of \$4,000.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violations of an NPDES permit.

2. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$5,000 for the violations described in Section III of this Order. The following factors were considered in the assessment of this penalty:

a. Economic benefit. QCCP first violated its toxicity permit limits in 2004. Since then, QCCP has delayed costs necessary to conduct a TRE and to achieve compliance with toxicity permit limits. \$1,000 is assessed for this factor.

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b. Gravity of the violation. QCCP has caused unauthorized pollution to enter a water of the state. Unauthorized pollution of this nature prevents the attainment of Iowa's water quality goals. The NPDES program is the backbone of Iowa's wastewater regulatory program. Failure to comply with the requirements of an NPDES permit threatens the integrity of the regulatory program. \$2,000 is assessed for this factor.

c. Culpability. DNR Field Office 3 has issued multiple Notices of Violation to QCCP for violations of its NPDES permit's toxicity limits. Field Office 3 has also advised QCCP on multiple occasions of the need to conduct a TRE. QCCP is currently working in good faith to achieve compliance. \$1,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of QCCP. By signing this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

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 455B.191. 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
CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 29th day of
November, 2016

Andy Johnson, CEO
QUAD COUNTY CORN PROCESSORS
COOPERATIVE

Dated this 28 day of
November, 2016

NPDES #4700105; Field Office #3; John Crotty; EPA, 1.B.2.c