IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **AMERICAN POP CORN COMPANY**	ADMINISTRATIVE CONSENT ORDER NO. 2019-AQ- 12

To: Mr. David Sitzmann, Responsible Official
American Pop Corn Company
One Fun Place
Sioux City, Iowa 51102

Mr. Carlton P. Smith, Registered Agent
American Pop Corn Company
One Fun Place
Sioux City, Iowa 51108

RE: Repeated failure to obtain air quality construction permits prior to initiating construction projects

I. SUMMARY

American Pop Corn Company (APCC) operates a popcorn production plant located in Sioux City, Iowa. This administrative consent order (Order) is issued to APCC for repeated non-compliance with certain air quality permitting requirements enumerated in the Iowa Administrative Code (IAC). APPC has repeatedly violated 567 IAC 22.1 which states in part that no person shall construct, install, reconstruct or alter any air quality emission unit, control equipment, or emission point without first obtaining an air quality construction permit. These repeated violations evidence a lack of appreciation for the gravity of the facility's non-compliance with Iowa's air quality rules and threaten the viability of the regulatory system. As such, the Iowa Department of Natural Resources (DNR) is issuing this Order to address the non-compliance. Failure to enter into this Order with the DNR will result in the issuance of a unilateral order or in the referral of the matter to the Iowa Attorney General or the United States Environmental Protection Agency (EPA) for enforcement.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Julie Duke, Environmental Specialist
Air Quality Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: (515) 725-9535

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Division
1023 W. Madison St.
Washington, Iowa 52353
(319) 653-2135

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 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 facts are relevant to this matter:

1. In June 2003, the EPA issued a Notice of Violation (NOV) to APCC for installing a scrubber at the plant in 1999 without obtaining a construction permit from the DNR. The non-compliance was discovered during an EPA inspection on April 22, 2003. Construction Permit number 03-A-1326 was subsequently issued on December 12, 2003.

2. On July 7, 2009, the DNR issued an NOV to APCC for installing ventilation with a scrubber and a mixing room with high efficiency particulate air (HEPA) filters at the plant without first obtaining a construction permit. Permit numbers 09-A-454 and 09-A-455 were subsequently issued on October 5, 2009.

3. On December 11, 2015, the DNR issued an NOV to APCC for replacing a fanning mill and associated control equipment and for installing four new storage bins at the plant without obtaining construction permits. The unpermitted units were discovered during a December 4, 2015 DNR site inspection. Permit numbers 16-A-277, 16-A-278, 16-A-279, 16-A-280, and 16-A-281 were subsequently issued on August 10, 2016.

4. On May 17, 2017, Mr. David Sitzmann, the responsible official of record for APCC, contacted the DNR by email to discuss a new bin construction project at the Sioux City plant.

5. On May 19, 2017, the DNR provided information over the phone and sent follow up emails to Mr. Sitzmann stating that air quality construction permits were required and outlining the forms APCC must submit prior to commencing the project.

6. In March 2018, APCC installed corn fumigation system #1 without obtaining the required construction permit.

7. On May 1, 2018, the DNR sent an email, as a follow-up from an April 30, 2018 phone conversation, to Mr. Sitzmann providing assistance with emissions calculations.

8. In May 2018, APCC installed two grain bins, a dump pit, a load-out station, and corn fumigation system #2 without obtaining the required construction permits.

9. On June 15, 2018, Mr. Sitzmann stated in an email that he was "focused on getting our 2017 emissions survey completed and submitted . . . but would probably be calling with questions at the end of the month or early July."

10. On December 27, 2018, the DNR received permit applications for two grain bins for corn, dump pit, load out station, corn fumigation system #1 and corn fumigation system #2.

11. On January 01, 2019, DNR issued an NOV to APCC for construction without a permit for the units listed above.

IV. CONCLUSION OF LAW

1. Iowa Code § 455B.134(2) authorizes the Director to issue air quality permits for the operation of certain facilities in the state of Iowa.

2. 567 IAC 22.1 states, in part, that no person shall construct, install, reconstruct or alter any equipment or control equipment without first obtaining a construction permit. The above-stated facts establish multiple, repeated violations of this requirement.

V. ORDER

THEREFORE, the Director of the DNR orders and APCC agrees to the following:

1. APCC is required to obtain new or supplemental permits in accordance with 567 IAC 22 for all relevant projects prior to construction.

2. Due to the repeated and knowing nature of these violations, APCC shall pay an administrative penalty of $10,000.00 within 60 days of this Order being signed by the Director.

3. APCC shall conduct an audit of its facility to determine if there are existing sources that do not have a required air quality permit. The audit must be conducted and a report of findings submitted to the DNR within 60 days of this order being signed by the Director.

VI. PENALTY

1. Iowa Code § 455B.109 authorizes the Environmental Protection 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.

2. Additionally, 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.

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: APCC gained an economic benefit by delaying the expense associated with the required construction permitting modeling that these projects required. This allowed APCC to postpone employee and modeling costs necessary for obtaining construction permits until a later date, and to use these funds for other economic purposes. Therefore, $3,000.00 is being assessed for economic benefit.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety, and whether the violation threatens the integrity of the regulatory program. The federal Clean Air Act requires the EPA to set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health and the environment. Prior to construction of the projects referenced in the facts above, APCC was required to conduct

modeling to establish that changes in emissions resulting from the projects would not violate applicable NAAQS. APCC avoided the requirement to demonstrate compliance with the NAAQS prior to construction and failed to obtain construction permits with emission limits and operational requirements to limit emissions. Failure to submit timely construction permit applications threatens the integrity of the regulatory program and puts public health and the environment at risk. Based on these considerations, $3,000.00 is assessed for this factor.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. APCC has shown negligence by repeatedly failing to apply for construction permits as required per 567 IAC 22.1(1). The responsible official was aware of the requirement to obtain construction permits prior to construction and ignored the requirement. Due to the nature of the violations, $3,000.00 is assessed for this factor.

d) Aggravating factor: Mr. Sitzmann contacted the DNR in May of 2017 prior to the construction of two grain bins, a dump pit, a load out station, and two corn fumigation systems. Mr. Sitzmann was advised that construction permits would be required and was provided a list of all required forms. The DNR received the applications more than seven months after the equipment was installed. Due to the knowing violations of Iowa law and the repeated nature of these violations, $1,000.00 is assessed for this factor.

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 compliance. In this case, an administrative penalty of $10,000.00 is warranted.

VII. APPEAL RIGHTS

As this Order is entered upon agreement of the parties, no appeal rights apply.

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, permit revocation, or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance

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

Bruce Trautman, Acting Director
Iowa Department of Natural Resources

Dated this 14 day of March, 2019

Dave Sitzmann
Signature
David Sitzmann - V.P. of Production
Print Name and Title
For American Pop Corn Company

Dated this 11 day of March, 2019

CC: Julie Duke, AQB; David Scott; VII.A.1