

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: AG PARTNERS, L.L.C.	ADMINISTRATIVE CONSENT ORDER NO. 2020-AQ- 13
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To: Ag Partners, L.L.C.
Paul A. Drey, Registered Agent
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266

Ag Partners, L.L.C.
Dan DeJong, Vice President of Operations
30 Main Street
Albert City, Iowa 50510

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ag Partners, L.L.C. (Ag Partners) for the purpose of resolving air quality violations. 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:

Amber Wolf
Iowa Department of Natural Resources
Field Office 3
1900 N. Grand Ave., Suite E17
Spencer, Iowa 51301
Phone: 712-262-4177

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-9551

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 administrative consent 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 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.

III. STATEMENT OF FACTS

Ag Partners , L.L.C., neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Ag Partners has a facility located at 13 N. Main Street in Alta, Iowa. Operations include grain handling and storage. Permanent storage capacity at the facility is 1.77 million bushels. Ag Partners in Alta obtained a DNR Group 1 Grain Elevator Registration in March 2008. The March 2008 Group 1 Grain Elevator Registration requires, among other things, that Ag Partners “implement Best Management Practices for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the lot line.” DNR has documentation of multiple instances of corn dust and chaff being emitted from the facility and crossing Ag Partner’s Alta facility property lines since 2016. These incidents also constitute undocumented instances of excess emissions.

2. On October 20, 2016, DNR Field Office 3 received a complaint that fugitive dust was emitting from the far east loadout at the facility. DNR Field Office 3 environmental specialist Michelle Sabatini requested the facility install or extend the sock on this loadout.

3. On January 5, 2017, DNR Field Office 3 received a complaint that Ag Partners is “billowing out dust” while loading. On January 20, 2017, DNR Field Office 3 environmental specialist Amber Wolf visited the facility in response to the January complaint. Ms. Wolf did not witness any excess emissions or fugitive dust during her visit, and location manager Brian Nepple informed Ms. Wolf that a 30,000 bushel drying project was completed. He stated that the facility would base future decisions to dry on wind direction and quality of grain.

4. On May 31, 2017, Ms. Wolf received a complaint that a lot of dust was being created at the facility when loading trucks. Ms. Wolf e-mailed Mr. Nepple, who responded that the sock on the loadout was showing some wear, and that he had ordered a new one. Mr. Nepple also noted that the drive needed to be oiled.

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5. On September 8, 2017, Ms. Wolf received a complaint that Ag Partners was creating a significant amount of dust. Ms. Wolf contacted Mr. Nepple, who stated that the facility was piling corn, and that dust was being created from truck traffic. Mr. Nepple stated that piling would cease at 4 p.m. and would resume on Monday after the drive at the facility had been oiled.

6. On September 14, 2017, Ms. Sabatini received a complaint of fugitive dust emitting from Ag Partners. On the same day, Ms. Wolf received a separate complaint that large amounts of corn dust/chaff were coming out of vents at the top of two concrete silos. Ms. Wolf received a third complaint that dust and corn chaff from Ag Partners was so bad that it was causing headaches. The complainant stated that dust was coming out of the top of the concrete silos and off loadouts. On September 19, 2017, Ms. Wolf sent a DNR Letter of Non-Compliance (LNC) to Ag Partners, requesting that Ag Partners submit to DNR a compliance plan to address fugitive dust issues. The compliance plan was due no later than October 1, 2017.

7. On September 21, 2017, Ms. Wolf received a complaint from the mayor of Alta about a cloud of dust coming from Ag Partners as the facility was loading corn. Ms. Wolf informed the mayor that a LNC had just been issued to the facility, with the requirement to submit a compliance plan. Ms. Wolf emailed the Ag Partners Environmental Health and Safety Manager, Mason Cady, and Mr. Nepple, to inform them of the additional complaints.

8. On October 2, 2017, Mr. Cady submitted a compliance plan to DNR Field Office 3. Ag Partners' compliance plan included installing a dust suppression hopper on the east loadout.

9. On October 16, 2017, Ms. Wolf received a complaint that excess dust and corn chaff was emitting from Ag Partners. The complainant stated that her family suffers from allergies and respiratory issues, and she cannot walk or drive by the facility without being affected. The complainant stated that the issues have been going on for 25 years, and nothing has been done. Ms. Wolf spoke with Mr. Nepple, and he stated that the problem was coming from the east loadout, which is the loadout where the facility planned to install a dust suppression hopper. Mr. Nepple said that he would shut down the loadout that day.

10. On November 1, 2017, Ms. Wolf received a complaint that corn chaff from Ag Partners was blowing across Highway 7 and obstructing the view on the highway. The complainant also stated that the corn chaff was getting inside the Casey's gas station. The complainant said that these conditions had been occurring for years and no action was occurring to improve them. Ms. Wolf again contacted Mr. Nepple and Mr. Cady.

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11. On August 6, 2018, the DNR Air Quality Bureau receive a complaint regarding the facility and forwarded it to Field Office 3. The complainant stated that huge clouds of dust from the facility were blowing in every direction when grain cars are filled. The complainant submitted to DNR four videos taken on August 5, 2018, and submitted them to Ms. Wolf.

12. On August 22, 2018, Ms. Wolf met with Mr. Nepple and Mr. Cady to discuss the August 2018 complaint. Mr. Nepple denied that there were any dust issues on the day grain cars were being loaded.

13. On September 6, 2018, Ms. Wolf received a complaint that dust was blowing off the hopper on the east loadout. The complaint was accompanied by a video of the dust. The complainant also stated there were drifts of corn dust in town the previous week.

14. On September 7, 2018, Ms. Wolf sent a DNR Notice of Violation letter (NOV) to Ag Partners for violating the DNR fugitive dust rule, as shown in the complainant's video. A compliance plan to address grain dust issues from the east loadout was requested in the NOV, to be submitted no later than October 15, 2018.

15. On October 15, 2018, Ms. Wolf received a response to the September 7, 2018, DNR NOV. The facility stated that it had received assistance from the manufacturer to adjust equipment for maximum effectiveness in preventing emissions.

16. On October 18, 2018, Ms. Wolf received a phone call from a concerned citizen about the dust from Ag Partners.

17. On October 30, 2018, Ms. Wolf received a complaint stating that "there is grain dust everywhere and it's unacceptable". Photographs submitted with the complaint showed dust being emitted from the top of a silo. The photographs also showed corn dust and chaff along curbs and sidewalks.

18. On November 13, 2018, Ms. Wolf sent an NOV to Ag Partners for violating the DNR fugitive dust rule. The NOV requested that the facility submit a report no later than December 10, 2018, detailing each source or potential source of dust/chaff emissions from the facility and stating the facility's actions to minimize emissions.

19. On November 14, 2018, Ms. Wolf received a complaint that corn chaff and dust from Ag Partners was blowing all over the place.

20. On November 19, 2018, Ms. Wolf and Cindy Martens, a DNR Field Office 3 environmental specialist senior, met with Ag Partners company officials

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to discuss the complaints. Ms. Wolf and Ms. Martens conducted a walkthrough of the facility and documented where changes could be made. DNR informed the facility that hourly checks of the facility would be required and that DNR would require Ag Partners to submit housekeeping logs to DNR.

21. On December 4, 2018, Ms. Wolf e-mailed Ag Partners facility personnel as a follow up to the November 19, 2018 visit. The facility was complying with the action items required as a result of the November 19, 2018, site visit and meeting.

22. On December 7, 2018, Mr. Nepple emailed Ms. Wolf pictures of a log sheet and other corrections that were made at the facility. On December 18, 2018, Mr. Cady emailed Ms. Wolf a letter responding to the November 13, 2018, NOV. The response letter highlighted the changes the facility had implemented.

23. On July 25, 2019, Ms. Wolf received a complaint with a video of Ag Partners unloading grain and creating large clouds of dust in the process.

24. On July 29, 2019, Ms. Wolf spoke with Doug Brown, Ag Partners Vice President of Operations, who said the excessive grain dust was caused by the unloading of bean screenings. Mr. Brown sent Ms. Wolf an email about a dust suppression hopper Ag Partners intends to install on the alleyway loadout.

25. On August 1, 2019, Ms. Wolf received a complaint that included pictures from the previous day showing clouds of dust coming out of the receiving alleyway/loadout at Ag Partners. Ms. Wolf spoke with Mr. Brown, who said the facility was loading out corn screenings.

26. On September 3, 2019, a DNR NOV was sent to Ag Partners for violating the DNR rules prohibiting fugitive dust emissions.

27. On September 5, 2019, DNR Field Office 3 received a complaint, with photographs, showing dust from Ag Partners.

28. On October 30, 2019, Ms. Wolf received a complaint about a car being covered in grain dust less than one day after a car wash. The complainant requested that Ag Partners and neighboring grain elevator First Coop be shut down.

29. On April 29, 2020, DNR Field Office 3 received a complaint of excessive grain dust coming from the loading of rail cars. Ms. Wolf informed Doug Brown of the complaint.

30. In September 2020, Ag Partners installed pit baffles on Dump Pit No. 2. Ag Partners plans to install pit baffles on Dump Pit No. 3.

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IV. CONCLUSIONS OF LAW

Ag Partners , L.L.C., neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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. Ag Partners in Alta obtained a DNR Group 1 Grain Elevator Registration in March 2008. Ag Partners has a responsibility to be aware of DNR's air quality rules and to abide by the requirements of its Group 1 Grain Elevator Registration; and to abide by the requirements of 567 IAC 22.10(3)"a", "*Requirements for Group 1 Facilities*". Ag Partners has failed to comply with the requirements of its Group 1 Grain Elevator Registration and rule 22.10(3)"a".

3. 567 IAC 23.3(2)"c" addresses emissions of fugitive dust and states that:

A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance... when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used. ...All persons... shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate.

Multiple instances of corn dust and chaff being emitted from Ag Partners and crossing the Ag Partners property lines have been documented since 2016, in violation of this rule and of the Ag Partners Alta facility Group 1 Grain Elevator Registration.

4. 567 IAC 24.1(1)"a", in addition to the Ag Partners Alta facility Group 1 Grain Elevator Registration, requires that sources be operated and maintained in a manner designed to minimize emissions. Ag Partners has operated its property for a period of years in a manner that is not designed to minimize emissions. Ag Partners has stated repeatedly its intentions to improve the operation of the facility to reduce emissions, but DNR continues to receive complaints.

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V. ORDER

THEREFORE, DNR orders and Ag Partners agrees to the following:

1. The Ag Partners Alta facility in shall implement the Best Management Practices required by Group 1 Grain Elevator Registration to limit fugitive dust from crossing property lines; and
2. Within 30 days of the date this order is signed by the director, the Ag Partners Alta facility shall submit to DNR, for DNR approval, a written compliance plan detailing how the facility will resolve excess emissions from all potential dust sources, including dump pits and loadouts; and provide to DNR in writing the best management practices being conducted to ensure that the grain dryer is in compliance with applicable law.
3. Ag Partners shall install at least one of the following on Dump Pit No. 3: (1) baffles along the sides of the dump pits, or (2) a dust control system, or (3) extending the enclosure. Installation and operation of the equipment and control equipment shall occur as soon as practicable during harvest or after harvest is completed, but by no later than December 1, 2020.
4. Within 45 days of the date this order is signed by the director, Ag Partners shall train employees in additional management practices to minimize dust in all areas of the facility including drives, dump pits, grain dryer, and loadouts. Within 60 days of the date this order is signed by the director, Ag Partners shall provide DNR with the training materials, the dates when training has occurred, and the names and positions of the employees trained.
5. Within 30 days of the date this order is signed by the director, Ag Partners shall pay a penalty of \$6,500.00.

VI. PENALTY

Ag Partners neither admits nor denies the provisions and statement in this Penalty section and enters into this administrative consent order for settlement purposes only.

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 \$6,500.00 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:

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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 – 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.”

Ag Partners in Alta has benefitted financially over the years by:

- Avoiding the cost of installing dust control equipment and/or building a structure over its dump pit/loadout areas, or otherwise not taking reasonable precautions to prevent fugitive dust from becoming airborne and crossing lot lines, and
- Avoiding operation and maintenance costs of fugitive dust controls, and
- Delaying the cost of purchasing a dust control hopper for the east loadout and the alleyway loadout, and
- Delaying the cost of properly training employees to recognize air quality violations.

For these reasons, \$3,000.00 is assessed for economic benefit.

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 violations administratively at this time, as the most equitable and efficient means of resolving the matter.

Fugitive dust particulate emissions can trigger asthma attacks as well as other respiratory health problems in humans. Particulate emissions, such as corn dust and chaff, can affect the quality of life for residents and businesses nearby. Local

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property values also can be adversely affected. Ag Partners in Alta obtained a DNR Group 1 Grain Elevator Registration in March 2008. Ag Partners has a responsibility to be aware of DNR's air quality rules and to abide by the requirements of 567 IAC 22.10(3)"a", "*Requirements for Group 1 Facilities*". Operating its Alta facility contrary to the DNR rules and its Group 1 Grain Elevator Registration threatens the integrity of the DNR regulatory program. DNR personnel have spent numerous hours responding to complaints.

For these reasons \$1,250.00 is assessed for this factor.

Culpability – DNR has responded to numerous complaints regarding this facility. Although compliance plans have been submitted to the DNR, continued complaints, along with video and photographic evidence, demonstrate that violations are still occurring. Ag Partners has a duty to properly train its employees to recognize and act to prevent excess emissions and fugitive dust violations. As a result of management and employee's lack of attention, excess emissions have occurred and corn dust/chaff have left Ag Partners property on numerous occasions since 2016.

For these reasons, \$1,250.00 is assessed for culpability.

Mitigating or Aggravating Factors - The facility has failed to report excess emissions to the DNR for any of the above events, as required by 567 IAC 24.1. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

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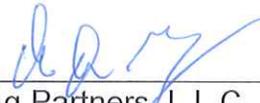
VIII. NONCOMPLIANCE

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.



Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 27th day of
October, 2020.



Ag Partners, L.L.C

Dated this 22nd day of
October, 2020.

DNR Field Office 3; Anne Preziosi; VII.C.2