

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

<p>IN THE MATTER OF:</p> <p>DES MOINES AREA COMMUNITY COLLEGE</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2021-AQ- 05</p>
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TO: Des Moines Area Community College
c/o Jay Tiefenthaler
2006 S. Ankeny Blvd.
Ankeny, Iowa 50021

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Des Moines Area Community College (DMACC) 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:

Brian Hutchins
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-9551

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: 515-238-3429

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 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.

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III. STATEMENT OF FACTS

1. Des Moines Area Community College (DMACC) is an Iowa community college with its main offices located in Ankeny, Iowa. DMACC was required by the provisions of 567 Iowa Administrative Code 21.1(3) to file a 2019 Minor Source Emission Inventory (MSEI) by no later than May 15, 2020. To date, DMACC has not filed its 2019 MSEI.

2. On January 16, 2020, DNR sent a letter to DMACC, stating that DMACC was required to file an MSEI for 2019 by May 15, 2020. On January 24, 2020, DNR sent a list serve notifying DMACC of the May 15, 2020, MSEI deadline. On April 13, 2020, DNR sent a list serve notifying DMACC that the 2019 MSEI deadline had been extended to June 15, 2020. On April 14, 2020, a postcard was mailed to DMACC, reminding DMACC of the upcoming deadline for 2019 MSEI submittal. On June 2, 2020, DNR sent a list serve reminding DMACC of the June 15, 2020, MSEI deadline. DNR sent a June 23, 2020, certified letter to DMACC, stating that the June 15, 2020, MSEI deadline had been missed by DMACC. On September 15, 2020, DNR called DMACC and left a message regarding the missed MSEI deadline and explaining the need for the MSEI. On October 8, 2020, DNR called DMACC and left a message regarding the missed MSEI deadline and explaining the need for the MSEI, and DNR stated that a Notice of Violation letter (NOV) would be issued to DMACC and that further enforcement action could occur. An October 30, 2020, NOV was issued to DMACC stating that failure to file the MSEI by November 11, 2020, would result in further enforcement action.

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 Iowa Administrative Code 21.1(3) requires that the person responsible for equipment, as defined in the rules, 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. DMACC failed to submit its 2019 MSEI in a timely manner.

V. ORDER

THEREFORE, DNR orders and DMACC agrees to the following:

1. Within 14 days of the date this order is signed by the director, DMACC shall submit its 2019 MSEI.

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2. Within 30 days of the date this order is signed by the director, DMACC shall pay a penalty of \$2,500.00. Additionally, DMACC shall pay a stipulated penalty of \$500.00 for each 30-day period that DMACC fails to comply with paragraph 1, above.

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, 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 \$2,500.00 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.”

DMACC received little or no economic benefit from its failure to file the required 2019 MSEI. Therefore, no penalty 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.

No actual or threatened harm to the environment resulted from DMACC’s late submittal of the MSEI. However, failing to submit the MSEI in a timely manner does prevent the DNR, as well as the public, from being informed promptly of the facility’s compliance status with regard to Iowa’s air quality rules. In addition, DMACC’s failure to submit the MSEI further harms DNR’s ability to accurately inventory pollutants.

DMACC’s failure to submit the MSEI in a timely manner has forced the DNR to spend additional time and resources in an effort to obtain the required report.

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Thus, this violation threatens the integrity of the DNR's air quality program. Therefore, \$500.00 is assessed for the gravity of the violation.

Culpability – Factors to be considered in determining the amount to be assessed for culpability include the degree of intent or negligence; the standard of care required by the laws of the state; and whether the violator has taken remedial measures or mitigated the harm caused by the violations.

Although DNR notified DMACC repeatedly of the need to submit the 2019 MSEI, and DNR extended the deadline for the DMACC submission more than once, DMACC has failed to file the MSEI. Therefore, \$2,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

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

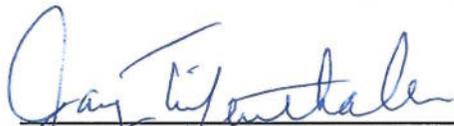
VIII. NONCOMPLIANCE

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 sections 455B.146 and 455B.307. 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 3rd day of
March, 2021.



Des Moines Area Community College
Anne Preziosi; VII.C.1.

Dated this 2nd day of
March, 2021.