

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

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| <p>IN THE MATTER OF:</p> <p>WRIGHT MATERIALS COMPANY</p> | <p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2021-AQ-13</p> |
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TO: Wright Materials Company
William E. Yohn, President
309 S. 20th Street
Clear Lake, Iowa 50428

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Wright Materials Company 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
Email: Brian.Hutchins@dnr.iowa.gov

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
Email: Anne.Preziosi@dnr.iowa.gov

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

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Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Wright Materials Company is a portable plant operation that offers a variety of aggregate products along with excavation and grading services. Wright Materials Company 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.

2. On January 16, 2020, DNR sent a letter to Wright Materials Company, stating that Wright Materials Company was required to file an MSEI for 2019 by May 15, 2020. On January 24, 2020, DNR sent a list serve notifying Wright Materials Company of the May 15, 2020, MSEI deadline.

3. On April 13, 2020, DNR sent a list serve notifying Wright Materials Company that the 2019 MSEI deadline had been extended to June 15, 2020. On April 14, 2020, a postcard was mailed to Wright Materials Company, reminding Wright Materials Company of the upcoming deadline for 2019 MSEI submittal.

4. On June 2, 2020, DNR sent a list serve reminding Wright Materials Company of the June 15, 2020, MSEI deadline.

5. DNR sent a June 23, 2020, certified letter to Wright Materials Company, stating that the June 15, 2020, MSEI deadline had been missed by Wright Materials Company.

6. On September 15, 2020, DNR called Wright Materials Company and left a message regarding the missed MSEI deadline and explaining the need for the MSEI.

7. On October 12, 2020, DNR called Wright Materials Company and left a message regarding the missed MSEI deadline and explaining the need for the MSEI, and DNR stated that a Notice of Violation (NOV) letter would be issued to Wright Materials Company and that further enforcement action could occur.

8. An October 30, 2020, an NOV letter was issued to Wright Materials Company stating that failure to file the MSEI by November 11, 2020, would result in further enforcement action.

9. On March 23, 2021, a draft administrative consent order was emailed and mailed to Wright Materials Company, requesting submission of its 2019

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MSEI. Following conversation with Wright Materials Company, the 2019 MSEI was filed late, on March 30, 2021.

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. Wright Materials Company failed to submit its 2019 MSEI in a timely manner.

V. ORDER

THEREFORE, DNR orders and Wright Materials Company agrees to the following:

1. Within 30 days of the date this order is signed by the director, Wright Materials Company shall pay a penalty of \$2,500.00.

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

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“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.”

Wright Materials Company 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 Wright Materials Company’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, Wright Materials Company’s failure to timely submit the MSEI further harms DNR’s ability to accurately inventory pollutants.

Wright Materials Company’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. 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 Wright Materials Company repeatedly of the need to submit the 2019 MSEI, and DNR extended the deadline for the Wright Materials Company submission more than once, Wright Materials Company continued to fail to file the MSEI until March 30, 2021. Therefore, \$2,000.00 is assessed for culpability.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Wright Materials Company. For that reason, Wright Materials Company 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 _____ day of _____, 2021.



Wright Materials Company
William Yohn, Owner

Dated this 10 day of October, 2021.

Anne Preziosi; VII.C.1.