

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
HILL PHOENIX, INC., dba HILL PHOENIX SPECIALTY PRODUCTS	NO. 2022-AQ- 01

To: Hill Phoenix, Inc., dba HillPhoenix Specialty Products
c/o Kevin Gough, EHS Manager
22450 Dewey Road
Centerville, Iowa 52544

Hill Phoenix, Inc., dba HillPhoenix Specialty Products
c/o Corporation Service Company, Registered Agent
505 5th Avenue
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Hill Phoenix, Inc., dba HillPhoenix Specialty Products, 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:

Bill Gross, Field Office 5
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-0268

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

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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

1. Hillphoenix Specialty Products is a subsidiary of Dover Corporation. It was formerly known as Barker Company and operated out of a plant located at 1605 O'Briant Street in Centerville, Iowa. That location is now used for storage. Air quality-related equipment is now located and operating at 22450 Dewey Road in Centerville, Iowa (the facility). The facility manufactures refrigerated, non-refrigerated, and hot display cases for the supermarket, convenience store, and food service industries. In addition to its Centerville location, Hillphoenix Specialty Products also has a facility located in Keosauqua, Iowa.

2. On August 12, 2021, Bill Gross of DNR Field Office 5 (FO5) conducted an inspection at the facility and found record-keeping deficiencies. Records were not being kept as required by Air Quality Construction Permit No. 20-A-242 (EP 15, Wet Paint Spray Booth). Mr. Gross emailed with the facility staff following the inspection, but the required records were not submitted. An August 31, 2021, Notice of Violation letter was sent to the facility, along with the inspection report.

3. The facility has a history of failure to maintain appropriate and required records. On May 24, 2018, Mr. Gross conducted an air quality inspection at the facility and found that all records were insufficiently compiled. Also, equipment associated with an air quality construction permit rescinded in 2017 continued to be operated. A letter of noncompliance dated June 14, 2018, was sent to the facility. The NOV required an audit of environmental records, permits, and equipment. A response dated August 1, 2018, was submitted by the facility, but the facility did not act based on the response until June 2020, when DNR brought it to their attention.

4. On August 25, 2014, the facility consulted Mr. Gross about moving emission points and permitting issues.

5. On February 18, 2014, Mr. Gross conducted an air quality inspection at the facility and found that no records were readily available and up-to-date. A letter of noncompliance dated February 26, 2014, was sent, requiring the facility to submit monthly spreadsheets through the remainder of 2014. The facility complied with this requirement.

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6. Administrative Consent Order No. 2009-AQ-21 was issued to Barker Company, a name previously used by Hillphoenix Specialty Products, on July 22, 2009, for persistent failure to properly maintain air quality records.

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. Iowa Code section 455B.134(3) provides that the director of DNR shall grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment.

3. 567 IAC 22.3(3) states that a construction permit may be issued subject to conditions that shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. Hillphoenix Specialty Products has failed to keep records, as required.

V. ORDER

THEREFORE, DNR orders and Hillphoenix Specialty Products agrees to the following:

1. Hillphoenix Specialty Products shall immediately and hereafter properly maintain records and comply with all air quality construction permit requirements at all times; and

2. Hillphoenix Specialty Products shall submit to DNR Field Office 5, within 30 days of the date this order is signed by the Director, all 2020 and 2021 records required by permits and permit exemptions, including but not limited to:

- Wet Paint Spray Booth (Air Quality Construction Permit No. 20-A-242, EP 15); and
- Records of Powder Coat usage, as required to qualify for the exemption contained in 567 IAC 22.1(2)"cc" for EP 13 and EP 14.

3. Within 60 days of the date this order is signed by the Director, Hillphoenix Specialty Products shall pay a penalty of \$6,500.00.

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VI. PENALTY

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.

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, DNR 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.”

It is estimated that Hillphoenix Specialty Products has saved at least \$1,000.00 in staff time over a period of years. For these reasons, \$1,000.00 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.

Recordkeeping is a fundamental means to confirm compliance with air quality standards at this facility.

For this reason, \$3,000.00 should be assessed for this factor.

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Culpability – Hillphoenix Specialty Products has a history of exceeding permitted limits. DNR facility inspections conducted in 2018, 2014, and 2009, found that Hillphoenix Specialty Products failed to maintain records, as required. Hillphoenix Specialty Products' failure to maintain records, as required, timely threatens the integrity of the DNR Air Quality Program. Administrative Consent Order No. 2009-AQ-21 was issued to Barker Company, a name previously used by Hillphoenix Specialty Products, on July 22, 2009, for persistent failure to properly maintain air quality records.

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

Mitigating Factor - Low material usage amounts make it obvious that the facility is not exceeding permit limits even though it is not maintaining proper records. For this reason, the penalty assessed is reduced by \$500.00.

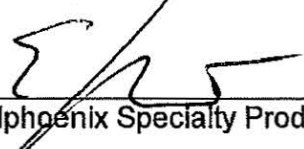
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Hillphoenix Specialty Products. For that reason, Hillphoenix Specialty Products 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 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



Hillphoenix Specialty Products

Dated this 26 day of
Jan, 2022.

DNR Field Office 5; Anne Preziosi; VII.B.2.