

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: WIESE INDUSTRIES, INC.	ADMINISTRATIVE CONSENT ORDER NO. 2022-AQ- 15
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To: Wiese Industries, Inc.
Ian L. Giles, Registered Agent
1501 5th Street
Perry, Iowa 50220

Wiese Industries, Inc.
Rich Pearson, Maintenance Supervisor
1501 5th Street
P.O. Box 39
Perry, Iowa 50220

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Wiese Industries, Inc. (Wiese) 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:

Jeff Theobald
Iowa Department of Natural Resources
Field Office 5
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. Wiese manufactures and distributes farm tillage tools at its facility in Perry, Iowa. The facility consists of three buildings. The facility has failed to maintain records required to show compliance with its air quality construction permits. The facility also has failed to obtain construction permits, as required.

2. Wiese received an August 17, 2016, Notice of Violation letter from DNR Field Office 5 following an August 2, 2016, inspection and an August 8, 2016, follow-up inspection. During the inspections, Field Office 5 observed failure to comply with air quality construction permit requirements, failure to timely obtain air quality construction permits; and Field Office 5 also observed visible emissions exceedances.

3. Wiese received a September 25, 2017, Notice of Violation letter from DNR Field Office 5 following September 11, 2017, inspection. During the inspection, Field Office 5 observed failure to timely obtain required air quality construction permits.

4. Wiese received an April 30, 2019, Notice of Violation letter from DNR Field Office 5 for failure to keep required records, The Notice of Violation letter required that a Plan of Action be submitted to DNR. On June 4, 2019, Wiese emailed a Plan of Action to DNR, as required.

5. Wiese received a July 15, 2021, Notice of Violation letter from DNR Field Office 5 following a June 17, 2021, inspection. During the inspection, Field Office 5 observed failure to timely obtain air quality construction permits. The Notice of Violation letter required that a Plan of Action be submitted to DNR by August 12, 2021.

6. On August 11, 2021, Wiese submitted the required Plan of Action to DNR.

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7. On January 25, 2022, four air quality construction permits were issued to Wiese as part of its Plan of Action that was submitted on August 11, 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. 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 22.1(1) states unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph "c" of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit. As stated above, Wiese consistently has installed or made changes to equipment without first obtaining the required construction permits.

4. 567 IAC 22.3(3) states that a permit may be issued subject to conditions which 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. Wiese has failed to comply with recordkeeping requirements.

V. ORDER

THEREFORE, DNR orders and Wiese agrees to the following:

1. In the future, Wiese shall obtain construction permits timely, in accordance with the provisions of 567 IAC 22.1(1), which states no person shall construct, install, reconstruct or alter any equipment, control equipment without first obtaining a construction permit;

2. In the future, Wiese shall comply with all air quality construction permit requirements, especially the maintenance of required records; and

3. Within 60 days of the date this order is signed by the director, Wiese shall pay a penalty of \$3,000.00.

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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 \$3,000.00 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:

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 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.”

Wiese has gained an economic benefit by failing to timely obtain the required construction permits for both new and modified equipment; and for failure to maintain the required records.

For these reasons, \$2,000.00 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, DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter.

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Wiese chose not to follow the DNR instructions and rule requirements to obtain construction permits prior to construction, which allowed Wiese to avoid potential permit restrictions and requirements. Further, Wiese failed to maintain required records, and records are a fundamental means to confirm compliance with air quality requirements at the facility. The facility's actions threaten the integrity of the DNR's air quality program.

For these reasons, \$500.00 is assessed for gravity.

Culpability – Wiese was repeatedly made aware of the requirements to timely obtain construction permits, yet Wiese has failed to comply with these requirements. Further, Wiese has consistently failed to maintain records as required.

For these reasons, \$500.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

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

Dorina James
Wiese Industries, Inc.

Dated this 10 day of
June, 2022.

DNR Air Quality Bureau; Field Office 5; Anne Preziosi; VII.A.1, VII.A.2.