

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  CONCRETE TECHNOLOGIES, INC.	ADMINISTRATIVE CONSENT ORDER  NO. 2022-AQ- 16
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To: Concrete Technologies, Inc.  
Brad Baumler, President  
1001 SE 37<sup>th</sup> Street  
Grimes, Iowa 50111

Concrete Technologies, Inc.  
Laura R. Luetje, Registered Agent  
210 NE Delaware Ave., Suite 200  
Ankeny, Iowa 50021

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Concrete Technologies, Inc. (CTI) 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:**

Bryan Bunton  
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. CTI is a full-service paving company located in Grimes, Iowa. CTI does projects for both commercial and residential properties, including new paving construction, repair, recycling, and replacement. CTI also owns and operates two portable concrete batch plants that have air quality permits, and therefore CTI is aware air quality rules and regulations.

2. CTI contracted with the City of Urbandale, Iowa, to assist with paving Waterford Road, located in Urbandale, Iowa, in Dallas County. The project involved tearing out the existing two-lane road and installing a four-lane road along a two-mile section from 142<sup>nd</sup> Street to the east to 170<sup>th</sup> Street to the west. During the construction period from July through November of 2021, DNR received five complaints claiming that the project was causing excessive fugitive dust emissions. CTI met and worked with the DNR and the City of Urbandale to mitigate as much dust as possible, given the scope of the project. The resulting complaint investigations showed that CTI failed to prevent the discharge of visible emissions of fugitive dusts beyond the property line on at least two of these occasions, in violation of the fugitive dust rule located at 567 Iowa Administrative Code section 23.3(2)(c).

3. On July 21, 2021, DNR Field Office 5 (FO5) received a complaint about fugitive dust from the nearby construction site. Bryan Bunton from FO5 visited the same day and observed significant amounts of fugitive dust leaving the construction site. Wind was blowing from the south and carrying dust generated by heavy construction equipment into neighboring properties located just north of Waterford Road. An unpaved haul road running parallel to Waterford Road had been constructed and left untreated. The necessary equipment (water truck containing water or chemical applications necessary to treat the road) was not on site. CTI was one of the contractors on site that day and was emailed by Mr. Bunton, who stated that controls needed to be put in place.

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4. On July 23, 2021, Mr. Bunton visited the site again and noted that the haul road running parallel to Waterford Road had been watered down and the dust situation had vastly improved. Mr. Bunton sent an email to CTI and asked that controls be maintained for the duration of the project.

5. On July 29, 2021, a Notice of Violation letter was issued by DNR to CTI for fugitive dust violations. The letter outlined DNR expectations that similar situations regarding dust from this project in the future would be handled in a more proactive manner.

6. On September 11, 2021, FO5 received a complaint via text at 9:20 am, which stated "We have CTI concrete trucks traveling on the new pavement that was sawed and concrete dust was not vacuumed. This dust is a known carcinogen. I am unable to work in my yard with this silica dust blowing when concrete trucks are driving through the dust that was never vacuumed. Driving fast." Photos were included with the text. A second complaint was received via text at 9:31 am, stating "CTI cutting fresh concrete with a quicky saw and cleaning with a leaf blower on Waterford Road".

7. On September 13, 2021, FO5 received a complaint via text, including photos, stating "Blowing concrete dust. They continue on Waterford blowing silica. I am hoping you get to witness this". Mr. Bunton emailed CTI and asked that corrective action be taken as soon as possible. Mr. Bunton visited the site and investigated the area later that day. There was little construction activity occurring on site at the time of Mr. Bunton's visit. He met with Fred Sawdy, Senior Engineering Technician with the City of Urbandale Public Works Department, and discussed the project and the city's plans for dust mitigation. Joints needed to be cut in the new road using a concrete saw, which would generate dust. The city planned for CTI to perform the cutting and to follow the cutting with a vacuum truck. CTI was directed by the city to power wash in front of the complainant's home prior to blowing out the joints so they could be sealed. Mr. Bunton recommended that the cutting be done under favorable weather conditions if possible, and that all mitigating actions be documented.

8. On September 15, 2021, Mr. Bunton received a text from Mr. Sawdy stating "On Waterford, CTI power washed joints this morning and they are blowing joints. There is still some dust. Just wanted to let you know before the complainant calls. We will be done with sealing joints today so hopefully complaints stop until next phase."

9. On September 16, 2021, at 7:22 am, Mr. Bunton received a complaint via text stating "No water down for dust control today. Increased wind speeds from the south already creating a problem."

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10. On September 17, 2021, Mr. Bunton arrived at the site unannounced. There was some construction activity at the time of the DNR FO5 investigation, but no fugitive dust was observed. A temporary driveway had been placed in front of the complainant's residence. Mr. Sawdy, who was on site at the time, indicated that the temporary driveway had been packed down tightly, and Mr. Bunton observed no dust emanating from the driveway. Mr. Sawdy stated that the next step for dust mitigation was to bring a street sweeper on site within the next couple of days. Mr. Bunton was granted permission to drive through the work area, and he observed some dust present on the new road. Mr. Bunton also noticed a dirt pile on the north side of the road that was being watered down. Mr. Bunton asked Mr. Sawdy to keep Mr. Bunton posted on progress and to let Mr. Bunton know when the next phase of the project would begin.

11. On October 8, 2021, at 1:26 pm, Mr. Bunton received a complaint via text stating "Typical picture. They took the water truck to another job!" Photos were included in the text. Rain moved into the area on October 11, 2021, which improved dust conditions, so the complaint received on October 8, 2021, was not investigated.

12. On October 12, 2021, Mr. Bunton received a text from Mr. Sawdy stating "Just wanted to let you know we will be paving the last phase on Monday and Tuesday if it doesn't rain. We will be starting next to the complainant on Monday and finishing in front of [the complainant's] house on Tuesday. CTI has been told to use vacuum when saw-cutting. Hopefully you won't hear much from them this time."

13. On November 19, 2021, at 12:45 pm, Mr. Bunton received a complaint via text stating "Blowing concrete dust this morning on Waterford!" Photos were included in the text. Mr. Bunton visited the site the same day and observed significant amounts of fugitive dust leaving the construction site. A street broom sweeper or kick broom was being used to clean the roadway with no vacuum attached, sending dust into the nearby neighborhood. Mr. Bunton contacted Mr. Sawdy to inform him of these observations so that corrective action could be taken immediately. Mr. Sawdy indicated the sweeper was being operated by CTI.

14. On December 7, 2021, a DNR Notice of Violation letter was issued to CTI for fugitive dust violations.

#### **IV. CONCLUSIONS OF LAW**

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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 section 23.3(2)"c" [*Fugitive Dust*] states that:

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 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, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, 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.

CTI violated this rule by allowing fugitive dust to cross lot lines, as described above.

**V. ORDER**

THEREFORE, DNR orders and CTI agrees to the following:

1. CTI shall immediately and in the future comply with all air quality requirements, particularly the provisions of 567 Iowa Administrative Code section 23.3(2)"c"; and

2. Within 60 days of the date this order is signed by the director, CTI shall pay a penalty of \$2,500.00.

**VI. PENALTY**

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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 \$2,500.00 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:

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.”

On at least two occasions from July 2021 through November 2021, CTI failed to take reasonable precautions to prevent fugitive dust emissions from crossing the project boundary line.

During the first occasion, an unpaved haul road running parallel to Waterford Road was left untreated. CTI likely realized an economic benefit by saving the costs of water or chemical applications needed to minimize dust emissions from the road. By not having the necessary equipment on site, costs were also saved on transporting that equipment to the project location, running the equipment (fuel plus wear and tear costs), and paying labor costs to operate the equipment and fill the water truck.

On the second occasion, a street broom sweeper or kick broom was being used to clean the roadway with no vacuum attached, sending dust into the nearby neighborhood. CTI again likely realized an economic benefit by not having the necessary equipment on site, which in this case was either a street sweeper with

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a vacuum or a vacuum truck. Costs were saved on transporting the proper equipment to the project location, running the equipment (fuel plus wear and tear costs), and paying labor costs to operate the equipment.

An estimated cost savings through avoidance or delaying of costs and illegal competitive advantage of at least \$500.00 was realized.

For these reasons, \$500.00 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.

Fugitive dust generation can degrade air quality in the immediate area and emit potentially harmful pollutants into the atmosphere. Dust is also aesthetically displeasing and potentially creates a nuisance condition. In addition, state and federal air quality regulatory programs that protect public health and the environment are undermined when reasonable precautions are not taken to prevent fugitive dust.

For the reasons stated above, \$1,000.00 should be assessed for this factor.

Culpability – CTI was made aware of fugitive dust regulations on several occasions. The company was issued and emailed an NOV in July 2021, for fugitive dust violations, and CTI was provided copies of Iowa's fugitive dust regulations at that time. After a complaint was received in September 2021, CTI was emailed again and asked to take actions to ensure no dust was crossing the project boundary. In December 2021, CTI was issued a second NOV after a street broom sweeper was used to clean the roadway with no vacuum attached, sending dust into the nearby neighborhood.

CTI has a responsibility to remain knowledgeable of DNR's requirements and to be alert that its conduct is subject to DNR's rules. CTI also owns and operates three concrete batch plants that have air quality permits, and therefore CTI is aware air quality rules and regulations.

For this reason, \$1,000.00 should be assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

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

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Kayla Lyon, Director  
Iowa Department of Natural Resources

  
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Concrete Technologies, Inc.

Dated this 15<sup>th</sup> day of  
July, 2022.

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