

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: NOTHERN FILTER MEDIA, INC.	ADMINISTRATIVE CONSENT ORDER NO. 2022-AQ-20
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To: Northern Filter Media, Inc.
David F. Reusswig
President and Registered Agent
2509 Pettibone Avenue
Muscatine, Iowa 52761

Northern Filter Media, Inc.
Vince Brown, Plant Manager
2509 Pettibone Avenue
Muscatine, Iowa 52761

I. SUMMARY

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

Lucas Tenborg
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-443-9508

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. Northern Filter Media is located on nearly 500 acres of land adjacent to the Mississippi River in Muscatine, Iowa. Northern Filter Media provides sand and gravel as filtration media for the potable, wastewater, well pack, and swimming pool industries in the United States.

Northern Filter Media has failed to timely obtain air quality construction permits, as required.

2. Northern Filter Media installed a Sand Dryer without first obtaining an air quality construction permit, as required. According to Northern Filter Media, the burner on the sand dryer was installed in 1985. Three major renovations of the sand dryer have occurred since its installation, also without obtaining construction permits. The renovations occurred in 2002, 2017, and 2020. Northern Filter Media has operated the sand dryer unpermitted since its installation and the renovations.

3. DNR sent a March 1, 2022, Notice of Violation letter to Northern Filter Media, requiring that an air quality construction permit application for the sand dryer be submitted to DNR no later than April 8, 2022. Northern Filter Media has failed to submit a permit application for the sand dryer.

4. In addition to the sand dryer, Northern Filter Media has other equipment at the site for which Northern Filter Media has failed to obtain air quality construction permits, including, but not limited to, a dryer, conveyors, and a load out elevator. According to minor source emission inventory information submitted to DNR by Northern Filter Media in 2014 for the year 2012, the dryer, conveyors, and a load out elevator have an installation date of 1995. Northern Filter Media has never submitted air quality construction permit applications for this equipment at the facility.

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Northern Filter Media has failed to limit its Potential to Emit (PTE) due to its failure to obtain air quality construction permits and Northern Filter Media should, therefore, have applied for and obtained a Title V operating permit.

5. Northern Filter Media emits or has the potential to emit (PTE) to the outside atmosphere 100 tons/year or more of a criteria air pollutant. According to the provisions of Iowa Code section 455B.133, "emission" means a release of one or more air contaminants into the outside atmosphere; and "atmosphere" means all space outside of buildings, stacks, or exterior ducts. Therefore, Northern Filter Media is currently operating as a "major source" of air pollutants as defined in 567 Iowa Administrative Code 22.100. In accordance with the provisions of 567 Iowa Administrative Code chapter 22, Northern Filter Media is subject to Title V Operating Permit requirements, but has never applied for and does not have a Title V Operating Permit. Without permitted operating limits or emissions limits that would be contained in air quality construction permits, the PM10 PTE for the sand dryer alone is estimated to be over 216 tons/year. The PTE calculations are based on stack test results from 2012.

6. On December 21, 2021, DNR sent a Letter of Inquiry to Northern Filter Media. This Letter of Inquiry required Northern Filter Media to perform one of the following actions:

- Submit construction permit applications to DNR by February 21, 2022, for the equipment at the facility, to limit the facility's PTE below the Title V thresholds, or
- Apply for a Title V Operating Permit before March 21, 2022, or
- If possible, conduct a stack test for PM10 by February 21, 2022, to determine the PM10 emission rate and to use those results to determine Title V applicability.

Northern Filter Media has not complied with any of these requirements.

7. On February 3, 2022, Northern Filter Media and DNR met to discuss the December 2021 Letter of Inquiry and the three options contained in the letter. Northern Filter Media and their stack testing consultant indicated that PM10 testing via Method 201A would not likely be possible due to moisture in the air stream. DNR requested that the facility submit a timeline of installation and modifications of the sand dryer at the facility. Northern Filter Media submitted a February 10, 2022, letter to DNR as a result of that meeting. The letter provided information regarding the sand dryer burner installation date after 1985 and major renovations that occurred at the facility in 2002, 2017, and 2020.

8. DNR sent a March 1, 2022, Notice of Violation letter to Northern Filter Media, requesting that an air quality construction permit application for the sand dryer be submitted to DNR by April 8, 2022; and requiring that Northern

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Filter Media evaluate all other equipment at the facility regarding the necessity of air quality construction permits. Although DNR attempted to contact Northern Filter Media by phone or email on April 18, April 19, and April 27, 2022, regarding the status of the sand dryer air quality construction permit application, DNR has not received a permit application for the sand dryer or any other equipment at the facility.

Northern Filter Media has failed to comply with other air quality requirements.

9. Northern Filter Media has a history of failure to timely file Minor Source Emissions Inventories, which are due on May 15 for the prior calendar year. DNR issued written notices for two of these violations on May 24, 2019 (for the year 2018); and May 23, 2022 (for the year 2021). Also, Administrative Consent Order No. 2013-AQ-30 and a July 31, 2012, Notice of Violation letter were issued to Northern Filter Media for failure to file its required 2012 Minor Source Emissions Inventory.

10. DNR issued a July 27, 2015, Notice of Violation letter to Northern Filter Media for illegal open burning, and a July 19, 2012, Notice of Violation letter for opacity violations in connection with the sand dryer.

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 Iowa Administrative Code 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 an air quality construction permit. 567 Iowa Administrative Code 22.3(3) states that an air quality construction permit may be issued subject to conditions which shall be specified in writing, and may include, but are not limited to, emission limits, operating conditions, fuel specifications, compliance testing, continuous

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monitoring, and excess emission reporting. As stated above, Northern Filter Media has installed and modified equipment without first obtaining the required construction permits.

4. According to 567 Iowa Administrative Code 22.101, except as provided in 567 Iowa Administrative Code 22.102, any person who owns or operates any "major source" shall obtain a Title V Operating Permit. Northern Filter Media is currently operating as a "major source" of air pollutants as defined in 567 Iowa Administrative Code 22.100, as stated above. In accordance with the provisions of 567 Iowa Administrative Code chapter 22, Northern Filter Media is subject to Title V Operating Permit requirements, but has never applied for and does not have a Title V Operating Permit.

5. 567 Iowa Administrative Code 21.1(3) states that the person responsible for equipment as defined herein 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 and its various parts. Northern Filter Media failed to timely file minor source emission inventories as required by May 15 in 2019 and 2022, as stated above.

V. ORDER

THEREFORE, DNR orders and Northern Filter Media agrees to the following:

1. Within 30 days of the date this administrative consent order is signed by the director, Northern Filter Media shall submit to DNR an air quality construction permit application for the Sand Dryer located at the facility.

2. Within 30 days of the date this administrative consent order is signed by the director, Northern Filter Media shall submit to DNR a complete list of all the equipment and control equipment located at the facility that emits to the outside atmosphere;

3. Northern Filter Media shall submit air quality construction permit application(s) within 30 days of notification that the DNR has determined a permit is required for any equipment identified in paragraph 2, above; and Northern Filter Media shall comply with any and all air quality construction permit(s) once issued, including completion of any changes required to conform with issued air quality construction permits and achieve compliance; and shall comply with all state and federal applicable air quality requirements;

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4. In the future, Northern Filter Media shall obtain air quality construction permits timely, in accordance with the provisions of 567 Iowa Administrative Code 22.1(1), which states no person shall construct, install, reconstruct or alter any equipment, control equipment without first obtaining a construction permit;

5. Within 90 days of the date this order is signed by the director, Northern Filter Media shall pay a penalty of \$10,000.00.

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 \$10,000.00 is assessed by this administrative consent order. The penalty must be paid within 90 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.”

Northern Filter Media has gained an economic benefit by failing to obtain the required air quality construction permit and permit modifications for the sand

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dryer, and by failing to evaluate and obtain other air quality construction permits, as required.

The facility has operated since at least 1985 without the required air quality construction permit for the sand dryer and would have saved at least \$4,000.00 by not having to comply with air quality construction permit conditions such as monitoring, recordkeeping, and maintenance requirements.

For these reasons, \$4,000.00 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.

The facility has operated since at least 1985 without the required air quality construction permit for the sand dryer. Without permitted operating limits or emissions limits that would be contained in air quality construction permits, the PM10 PTE for the sand dryer alone is estimated to be over 216 tons/year. Also, without the required air quality construction permit, Northern Filter Media should have applied for and received a Title V operating permit.

Failure to submit a timely construction permit threatens the integrity of the regulatory program and can put public health and the environment at risk.

On several occasions, Northern Filter Media has submitted late minor source emissions inventories. The DNR has had to spend considerable hours to ensure compliance with minor source emission inventory requirements.

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

Culpability – Northern Filter Media has shown negligence by failing to apply for air quality construction permits as required by 567 Iowa Administrative Code 22.1(1). As a source of emissions to the outside atmosphere, Northern Filter Media has a responsibility to remain knowledgeable of applicable air quality requirements. On December 21, 2021, DNR informed Northern Filter Media of the requirements to obtain construction permits prior to commencing construction. Northern Filter Media was issued a March 1, 2022, Notice of Violation letter requiring the facility to submit a permit application for the Sand Dryer by April 8, 2022.

Northern Filter Media has not submitted a permit application for the sand dryer. The facility continues to operate unrestricted as a major source of PM10. These actions threaten the integrity of the DNR's air quality program.

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

VII. WAIVER OF APPEAL RIGHTS

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

David Rausser

Northern Filter Media, Inc.

Dated this 31 day of
October, 2022.

DNR Air Quality Bureau; Field Office 6; Anne Preziosi; VII.A.1, VII.A.2.