

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: NEW COOPERATIVE, INC.	ADMINISTRATIVE CONSENT ORDER NO. 2023-AQ- 17
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TO: New Cooperative, Inc.
Jon Wells, Loss Control Manager
2626 1st Avenue South
Fort Dodge, Iowa 50501

New Cooperative, Inc.
Keith Jensen, Registered Agent
2626 1st Avenue South
Fort Dodge, Iowa 50501

New Cooperative, Inc.
Keith Jensen, Registered Agent
P.O. Box 818
Fort Dodge, Iowa 50501

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and New Cooperative, Inc. (New Cooperative) 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:
Mark Fields
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-343-6589

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

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

III. STATEMENT OF FACTS

1. New Cooperative operates a Group 2 grain terminal elevator located in Duncombe, Iowa, under Air Quality Construction Permit No. 21-A-127. The facility is considered a grain terminal elevator. A grain terminal is an elevator which has a permanent storage capacity of more than 88,100 m³ (ca. 2.5 million U.S. bushels), according to the provisions of 567 IAC 22.10.

2. The New Cooperative facility in Duncombe became a grain terminal elevator as the result of new storage installed as part of a project that was completed in 2019. New Cooperative installed the following equipment in August 2019:

- grain receiving system (EU-3)
- grain handling system (EU-12)
- grain loadout system (EU-13)

3. In August 2019, the facility became subject to the provisions of 40 CFR 60 New Source Performance Standard Subpart DD (NSPS DD), which has been adopted by reference by DNR at 567 IAC 23.1(2)“ooo”. NSPS Subpart DD and 567 IAC 23.1(2)“ooo” required opacity testing to be conducted on EU-3, EU-12, and EU-13 within 60 days of reaching the maximum production rate of the equipment, but no later than 180 days after initial startup. The required opacity testing was due to be conducted by January 28, 2020.

4. New Cooperative failed to timely conduct opacity stack testing by January 28, 2020, on grain receiving system (EU-3), the grain handling system

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(EU-12), and the grain loadout system (EU-13), as required by 40 CFR 60 New Source Performance Standard Subpart DD (NSPS DD).

5. On February 10, 2021, New Cooperative submitted a permit application for a Group 2 grain elevator permit.

6. On March 17, 2021, DNR issued a Letter of Noncompliance (LNC) to New Cooperative for failure to timely conduct testing on EU-3, EU-12, and EU-13. The failure to conduct testing on the grain handling system (EU-12) is an ongoing violation.

7. On April 15, 2021, New Cooperative submitted a compliance plan to test the grain soybean loadout system (EU-13) in May 2021 and the grain receiving and handling (EU-3 and EU-12) in fall 2021 to attain maximum production rates during testing. On May 7, 2021, New Cooperative conducted testing on the soybean loadout system (EU-13). The testing demonstrated compliance with the opacity limit.

8. On July 23, 2021, DNR issued Group 2 Grain Elevator Construction Permit No. 21-A-127 to New Cooperative.

9. Air Quality Construction Permit No. 21-A-127 identifies that the equipment installed in 2019 is subject to NSPS Subpart DD, adopted by reference by DNR at 567 IAC 23.1(2)“ooo”. As stated above, NSPS Subpart DD and 567 IAC 23.1(2)“ooo” required opacity testing to be conducted on EU-3, EU-12, and EU-13 within 60 days of reaching the maximum production rate of the equipment, but no later than 180 days after initial startup.

10. New Cooperative conducted compliance opacity testing on the grain receiving system (EU-3) on October 14, 2021. The testing resulted in opacity emissions of 8.26%, which is a violation of the 5% opacity limit contained in NSPS Subpart DD, 567 IAC 23.1(2)“ooo”, and Air Quality Construction Permit No. 21-A-127. Further, the facility canceled testing on the grain handling equipment (EU-12) due to inability to meet maximum production rates during scheduled testing timeframe.

11. DNR issued a Notice of Violation (NOV) dated January 11, 2022, for the opacity emission limit violation. The grain receiving system (EU-3) remains in violation of the 5% opacity emission limit. New Cooperative is currently in violation of the NSPS Subpart DD opacity standard when the grain receiving system is in operation.

12. On April 22, 2022, DNR requested via email a status update on the testing and compliance plan submitted by New Cooperative in April 2021. If testing

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was not conducted per the compliance plan then an updated plan and test schedule is required. New Cooperative did not respond to the April 22, 2022, email.

13. On June 16, 2022, DNR attempted to contact New Cooperative a second time concerning the delinquent compliance plan and on-going violations. New Cooperative responded that the stack test company was supposed to contact DNR and the facility would follow up.

14. On July 11, 2022, DNR issued an NOV to New Cooperative for failure to complete the required NSPS Subpart DD testing on the grain handling system (EU-12) and for failure to adhere to the compliance plan that New Cooperative had provided for the grain receiving system (EU-3) violation.

15. On July 23, 2022, New Cooperative submitted an updated compliance plan stating testing would be conducted on October 3, 2022. In October and November 2022, DNR attempted to observe scheduled opacity testing at the facility. Testing was cancelled for three separate attempts in October and November 2022 due to lack of grain trucks during testing. New Cooperative continued to attempt to conduct testing after the DNR observer left the site, but DNR was later informed by the stack testing company that the testing was never completed. New Cooperative did not inform DNR that the testing was not conducted and has not provided an updated compliance plan to address the ongoing violations. The facility displayed a lack of coordination or urgency to complete the delinquent testing and address the ongoing opacity emission limit violation.

III. 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 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. As stated above, New Cooperative has failed to comply with the requirements of Air Quality

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Construction Permit No. 21-A-127, which identifies that the equipment installed in August 2019 is subject to NSPS Subpart DD, adopted by reference by DNR at 567 IAC 23.1(2)“ooo”.

4. Also, prior to the issuance of Construction Permit No. 21-A-127 and since the installation of equipment in August 2019, New Cooperative has been subject to and has failed to comply with the requirements of NSPS Subpart DD, adopted by reference by DNR at 567 IAC 23.1(2)“ooo”.

V. ORDER

THEREFORE, DNR orders and New Cooperative agrees to the following:

1. Within 30 days of the date this administrative consent order is signed by the Director, New Cooperative shall conduct compliance demonstration stack testing for opacity on EU-3 and EU-12; and

2. In accordance with the provisions of 567 IAC 25.2(7), New Cooperative shall submit to DNR in writing a test notification, protocol, and a complete stack test report, whether or not the testing demonstrates compliance; and

3. If New Cooperative fails to conduct the opacity testing at the maximum capacity of the equipment, the New Cooperative shall conduct the stack testing again while operating at maximum capacity by no later than November 20, 2023, to demonstrate compliance with the emission standards for EU-3 and EU-12 contained in Air Quality Construction Permit No. Construction Permit No. 21-A-127, 40 CFR NSPS Subpart DD, and 567 IAC 23.1(2)“ooo”; and

4. Within 30 days of the date this order is signed by the Director, and in accordance with the provisions of 567 IAC 24.2(2), New Cooperative shall submit for approval to the DNR a proposed Operation and Maintenance Plan for the grain receiving system (EU-3) that will prevent future violations of the 5% opacity standard; and

5. Within 30 days of the date this order is signed by the director, New Cooperative shall pay a penalty of \$6,000.00.

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 \$6,000.00 is assessed by this administrative consent order. The penalty

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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.”

New Cooperative has gained economic benefit by continuing to operate equipment while in violation of emission limits.

For the reasons stated above, \$3,000.00 is assessed for this factor.

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.

Actual harm to the environment and public health is likely occurring due to the amount of opacity being emitted above the emission limits set forth in construction permit #21-A-127, NSPS Subpart DD, and 567 IAC 23.1 “ooo”.

The opacity emissions indicate excess emissions of PM and PM10, which pose a public health risk. Numerous scientific studies have linked particle pollution exposure to a variety of problems, including: premature death in people with heart

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or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.

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

Culpability – New Cooperative was required to conduct stack testing by January 28, 2020. When delinquent compliance testing was conducted on the grain receiving a violation of the 40 NSPS Subpart DD emission standard was documented. Failure to conduct required stack testing and operating in violation of emission standards demonstrates negligence on behalf of the facility.

The facility has failed to adhere to compliance plans to address the violations at the facility on three (3) separate occasions. DNR personnel have had to spend considerable time trying to bring the facility into compliance.

New Cooperative has failed to address these violations for over three (3) years. New Cooperative currently does not have a compliance plan submitted to DNR to address ongoing violations at the facility.

Due to the nature of the violations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

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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



New Cooperative, Inc.

Dated this 27th day of
June, 2023.

DNR Air Quality Bureau; Field Office 2; Anne Preziosi