

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  PJ Food Service, Inc.	ADMINISTRATIVE CONSENT ORDER  NO. 2023-AQ-27
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To: PJ Food Service, Inc.  
Shane McCarty  
1913 Guthrie Avenue  
Des Moines, Iowa 50316

PJ Food Service, Inc.  
CT Corporation System  
Registered Agent  
400 E Court Avenue  
Des Moines, Iowa 50309

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and PJ Food Service, Inc. 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. PJ Food Service, Inc., is a distribution center for Papa John's, located at 1913 Guthrie Avenue in Des Moines. The company offers a variety of services relating to food service distribution. The company has been in business since 1984. PJ Food Service, Inc., is a minor source of emissions to the outside atmosphere.

2. Each minor source of emissions is required to submit a minor source emissions inventory (MSEI) once every three years. The State of Iowa is split into thirds (eastern, central, and western). PJ Food Service, Inc., failed to submit its MSEI in a timely manner, as required by 567 IAC 21.1(3). On January 10, 2023, DNR sent a letter to PJ Food Service, Inc., stating that DNR was conducting a MSEI review for the central portion of Iowa, in which PJ Food Service, Inc., is located, and that submittal of a MSEI for 2022 was required to be submitted to DNR by May 15, 2023.

3. On April 15, 2023, DNR sent a postcard reminding PJ Food Service, Inc., of the upcoming May 15, 2023, due date for the 2022 MSEI.

4. PJ Food Service, Inc., failed to submit its 2022 MSEI by the due date of May 15, 2023.

5. On May 23, 2023, DNR issued a Letter of Non-Compliance to PJ Food Service, Inc., requiring that the MSEI be submitted by June 30, 2023.

6. On June 22, 2023, the Iowa Air Emissions Assistance Program (IAEAP) contacted PJ Food Service, Inc., to offer its assistance in completing the MSEI.

7. PJ Food Service, Inc., failed to submit the 2022 MSEI by second due date of June 30, 2023.

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8. On July 19, 2023, DNR issued a Notice of Violation letter, requiring that the MSEI be submitted by August 9, 2023. On July 20, 2023, DNR telephoned PJ Food Service, Inc., and provided emissions inventory contact information for assistance.

9. PJ Food Service, Inc., failed to submit the 2022 MSEI by the third due date of August 9, 2023.

10. On August 29, 2023, DNR sent a follow up email to PJ Food Service, Inc., to check on the status of the MSEI.

11. The 2022 MSEI was received by DNR on October 10, 2023.

12. PJ Food Service, Inc., has a history of failing to timely submit MSEI information. On July 13, 2004, DNR issued a Letter of Noncompliance to DNR for failure to timely submit its 2013 MSEI.

**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. 567 Iowa Administrative Code (IAC) 21.1(3) requires that, for all new and existing equipment and control equipment as defined in the rules, the person responsible for the equipment shall provide to the DNR director 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. This information is for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts.

3. An emission inventory is a listing, by source, of the amounts of pollutants actually discharged over a period of time, usually annually. Facilities not subject to the Title V Operating Permit Program are required to submit MSEIs once every three years. PJ Food Service, Inc., is a minor source, and was required by the director to submit a MSEI accounting for its 2022 emissions. PJ Food Service, Inc., failed to submit its 2022 MSEI timely, as required.

**V. ORDER**

THEREFORE, DNR orders and PJ Food Service, Inc., agrees to the following:

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1. In the future, PJ Food Service, Inc., shall submit MSEI documents timely; and
2. Within 60 days of the date this order is signed by the director, PJ Food Service, Inc., shall pay a penalty of \$2,500.00.

**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 \$2,500.00 is assessed by this administrative consent order, in addition to the stipulated penalties specified above. The penalty shall be paid within 60 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.”

PJ Food Service, Inc., has received little or no economic benefit for failure to comply with the due dates for submitting the MSEI.

For these reasons, no amount is assessed for economic benefit.

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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.

No actual or threatened harm to the environment resulted from PJ Food Service, Inc., failure to submit the MSEI. However, failing to submit the MSEI in a timely manner does prevent the DNR, as well as the public, from promptly being informed of the facility's compliance status with regard to Iowa's air quality law. In addition, each week that PJ Food Service, Inc., fails to timely submit a MSEI further harms DNR's ability to accurately inventory minor source pollutants.

PJ Food Service, Inc.'s failure to submit the MSEI in a timely manner has forced DNR to spend additional time and resources in an effort to obtain the required report. Thus, this violation threatens the integrity of the DNR's air program.

For this reason, \$500.00 is assessed for gravity.

Culpability –DNR sent reminder letters, and provided PJ Food Service, Inc., with three deadlines to fulfill its requirement to submit a MSEI, and the MSEI was not submitted until October 2023. Other facilities in the same region as PJ Food Service, Inc., have submitted their MSEI by the May 15, 2023 deadline. In addition, PJ Food Service has been issued a compliance letter in the past for failure to timely submit a MSEI. PJ Food Service, Inc., thus displays a certain degree of negligence in this case.

For these reasons, \$2,000.00 is assessed for culpability.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of PJ Food Service, Inc. For that reason, PJ Food Service, Inc., waives its right to appeal this order or any part thereof.

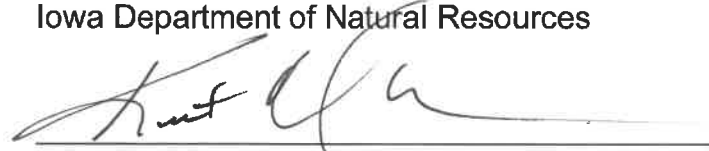
## **VIII. NONCOMPLIANCE**

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.

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Kayla Lyon, Director  
Iowa Department of Natural Resources



PJ Food Service, Inc.

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Dated this 13 day of  
DECEMBER, 2023.

DNR Air Quality Bureau; DNR Field Office 5; Anne Preziosi