

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Wayne-Ringgold-Decatur Solid  
Waste Management Commission**

ADMINISTRATIVE  
CONSENT ORDER

NO. 2020-SW- 03

To: Kraig Pennington, Commission Chair  
WRD SWMC  
109 West Madison Street  
Mount Ayr, Iowa 50854

Re: Non-compliance with intermediate- and daily-cover regulations.

**I. SUMMARY**

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and the Wayne-Ringgold-Decatur Solid Waste Management Commission (the Commission) to address chronic non-compliance with Iowa solid waste regulations requiring daily and intermediate cover over solid waste disposed of at the landfill. As detailed below, the Commission shall immediately, and hereafter, comply with all Iowa waste cover regulations, and shall pay an administrative penalty of \$6,000.00.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Bill Gross, Env. Specialist Senior  
Iowa Department of Natural Resources  
Field Office No. 5  
Wallace State Office Building  
Des Moines, Iowa 50319  
Phone: 515-725-0271

**Relating to legal requirements:**

David Scott, Attorney  
Iowa Department of Natural Resources  
1023 W. Madison Street  
Washington, Iowa 52353  
Phone: 319-653-2135

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
[Include Order Number with Payment]

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code § 455B.307(2), which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules and regulations adopted pursuant to that part; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

The following facts are relevant to this matter:

1. On June 2, 2016, staff from DNR Field Office (FO) 5 visited the landfill operation and found inadequate intermediate cover on the north slope of the active area.
2. On June 6, 2016, DNR issued a Notice of Violation (NOV) to the Commission and requested a response and explanation.
3. In response to DNR's NOV, on June 30, 2016, the Commission provided photos of proper cover having been applied.
4. On March 20, 2017, FO5 staff conducted a follow-up site visit and again found insufficient intermediate cover over the waste.
5. On March 27, 2017, a site inspection report letter was issued to the Commission notifying them of the deficiency.
6. On November 3, 2017, FO5 conducted another follow-up site inspection and found adequate cover, but insufficient erosion control. Staff sent a site inspection report to the Commission to notify them of the deficiency.
7. On January 16, 2019, FO5 staff again visited the landfill and, among other things, found inadequate daily cover.
8. On January 22, 2019, DNR issued an NOV notifying the Commission of the non-compliance.
9. On February 6, 2019, the Commission again submitted a response with photos showing adequate cover.
10. On February 24, 2020, FO5 staff inspected the landfill and found inadequate daily cover. It was apparent that waste had not been covered for several weeks and the cover borrow area was frozen and inaccessible. An NOV was issued to the Commission with a notification that the matter would be referred to DNR's legal services bureau due to repeated violations.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (EPC) shall establish rules governing the handling and disposal of solid waste. The EPC has adopted such rules at 567 IAC chapters 100-121.

2. Pursuant to 567 IAC 113.8(2)"f"(1) concerning daily cover material at municipal solid waste landfills requires the facility operator to place approved cover material at an approved depth over waste in the active portion of the landfill at the end of each operating day, at a minimum. The Commission has violated this requirement on multiple occasions over multiple years.

3. Pursuant to 567 IAC 113.8(2)"f"(2) concerning intermediate cover material at municipal solid waste landfills requires compacted cover material or an approved alternative cover to be placed and maintained over waste in the active portion of the landfill that has not or will not receive for certain extended periods. The Commission has violated this requirement on multiple occasions over multiple years.

**V. ORDER**

**THEREFORE**, the DNR orders and the Commission agrees to the following:

1. The Commission will immediately, and hereafter, comply with all Iowa waste cover regulations.

2. The Commission will pay an administrative penalty of \$6,000.00 within 60 days of this Order being signed by the Director.

**VI. PENALTY**

1. Iowa Code § 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 authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-

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cited violations is the issuance of an Order with a \$6,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

- a) Economic Benefit: 567 IAC chapter 10 requires that the 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, the department 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."

The economic benefit from failure to adequately apply cover is estimated based on one hour of equipment operation each day for \$100/hour. The economic savings would quickly add up to thousands of dollars when waste is consistently not covered.

As such, the economic benefit for failing to properly cover waste is conservatively estimated at \$2,000.00.

- b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

Failure to cover solid waste adequately presents the risk of disease if vectors (birds, insects, vermin, etc.) have access to garbage. It also poses a risk for fire containment as waste cells may be full of flammable material. Finally, inadequate cover increases the potential for litter as waste is exposed to wind, and the development of industrial leachate as the waste is exposed to precipitation.

As such, \$2,000.00 is assessed for this factor.

- c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

The Commission has been warned about this problem multiple times over multiple years.

As such, \$2,000.00 is assessed for this factor.

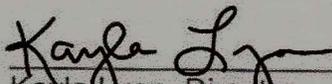
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**VII. APPEAL RIGHTS**

As this Order is entered by consent of the parties, there is no right of appeal.

**VIII. NONCOMPLIANCE WITH THIS ORDER**

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

  
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Kayla Lyon, Director  
Iowa Department of Natural Resources

Dated this 7th day of  
April, 2020.

  
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Craig Pennington, Commission Chair  
WRD SWMC

Dated this 6<sup>th</sup> day of  
April, 2020.

CC: DNR Field Office 5; David Scott; VI.B.2.d.