

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

IN THE MATTER OF:  
  
**CHAMNESS TECHNOLOGY, INC.**

ADMINISTRATIVE  
CONSENT ORDER

NO. 2020-HC- 02  
NO. 2020-SW- 02  
NO. 2020-WQ- 05  
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To: Chamness Technology, Inc.  
Gary Chamness, Registered Agent  
2255 Little Wall Lake Road  
Blairsburg, Iowa 50034

Re: Failure to operate industrial composting facility in compliance with Iowa law.

**I. SUMMARY**

This administrative order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Chamness Technology, Inc. (Chamness) to resolve alleged violations of Iowa law governing the proper operation of an industrial composting operation (facility) located in Eddyville, Iowa. DNR staff met with Mr. Chamness and his staff on February 3, 2020 in DNR Field Office (FO) 6 to discuss the allegations of non-compliance, settlement and a proposed consent order.

As detailed below, Chamness agrees to comply with a revised operating permit for the facility, to develop and submit to the DNR a leachate management plan, to have Chamness staff participate in site inspections with DNR staff on a quarterly basis, and to pay an administrative penalty of \$10,000.00. The basis for this Order and the penalty is further explained herein.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Kurt Levetzow, Env. Specialist Sr.  
Iowa Department of Natural Resources  
Field Office No. 6  
1023 W. Madison Street  
Washington, Iowa 52353  
Phone: 319-653-2135

**Relating to legal requirements:**

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

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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 Order is issued pursuant to Iowa Code § 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 455B.382, which authorizes DNR to prevent, abate and control exposure of citizens to hazardous conditions; Iowa Code § 455B.386, which authorizes penalties for failure to properly notify DNR in the event of discharges of hazardous substances; 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 promulgated or permits issued pursuant thereto; 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 October 19, 2018, staff from DNR FO 6 visited the facility and observed that the facility was not in compliance with its permit and operations plan. Among other violations, the facility failed to operate traditional windrows on the 18-acre compost pad.
2. On October 31, 2018, DNR FO6 staff sent a letter to Chamness explaining staff observations during the October 19 facility visit, enumerating violations of the facility's operations plan, and explaining the matters that needed to be addressed to bring the facility into compliance.
3. On March 26, 2019, FO6 staff conducted a follow-up visit to the facility and again documented violations similar to those observed in October 2018.
4. On April 1, 2019, DNR issued a Notice of Violation (NOV) to the facility. The NOV stated that the violations noted must be addressed and that another visit would be conducted to assess compliance.
5. On May 28, 2019, Chamness requested permission for a one-time discharge of leachate from the middle (large) lagoon at the facility due to excessive

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spring rains. DNR FO6 staff approved the one-time discharge of leachate into Palestine Creek.

6. On August 27, 2019, DNR FO6 received an anonymous complaint about black runoff entering Palestine Creek. DNR staff investigated and documented that leachate from the facility's compost pad appeared to be flowing directly into Palestine Creek. Water samples were collected.

	Ammonia	BOD	CBOD	pH	TSS
Upstream A	0.11 mg/l	<2	<2	8.1	2
Upstream B	0.73	4	<2	7.7	13
<b>Discharge Point</b>	<b>32</b>	<b>610</b>	<b>630</b>	<b>7.6</b>	<b>750</b>
Downstream	20	190	140	7.3	340
One mile downstream	5	5	4	7.8	53

7. On September 4, 2019 DNR FO6 staff conducted a site visit to the facility and documented several violations of the facility's operations plan.

8. On September 9, 2019, an NOV was issued to Chamness, citing various violations resulting from the August 27 inspection and sampling results.

9. On September 16, 2019, Jerry Parker, Wapello County Supervisor, received and forwarded a complaint to DNR FO6 regarding smoke and odor from the facility. Also, on September 16, 2019, FO6 received a separate complaint regarding fires in the compost pile, odor from the smoke, and the allegation that the operators of the facility were digging holes and burying the compost onsite.

10. On September 17, 2019, DNR FO6 staff investigated the complaints. The smoke and odor were found to be attributed to hot spots and diatomaceous earth in the compost that had not been effectively mixed. As for the burial allegation, facility staff claimed they were "reclaiming" farm ground by spreading finished/unscreened compost and working it into the row crops east of the main maintenance shed. Also on September 17, 2019, Chamness submitted a status update concerning efforts to bring the facility into compliance.

11. On October 1, 2019, an NOV was issued to Chamness regarding violations of the facility's permit and operations plans, in addition to other violations of Iowa law.

12. On November 4, 2019, FO6 staff conducted a visit to the facility to check the status of operations. The facility was not in compliance as of the date of this visit.

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13. On December 30, 2019, DNR sent an offer for settlement and administrative consent order to Chamness to settle the violations referenced in this Order. The parties subsequently met in person to discuss settlement.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.186 prohibits the depositing or discharging of any pollutant into any water of the state of Iowa. The facts outlined above establish a violation of this section of the Iowa Code.

2. Iowa Code § 455B.381 defines a "hazardous substance" as any substance that presents a danger to the public health or safety and includes any substance that is toxic, corrosive, flammable, or that is an irritant. Section 381 further defines a "hazardous condition" as any situation involving the actual, imminent, or probable spillage, leakage or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. The discharge of leachate to a water of the state is a hazardous condition. ***Chamness has stated during settlement negotiations that it has not accepted any hazardous materials for composting. DNR agrees with this statement. DNR is not asserting that Chamness has accepted hazardous materials for composting. DNR is asserting that industrial leachate is a hazardous material as defined in Iowa Code and leachate runoff from the property may cause a hazardous condition as defined in Iowa Code.***

3. The Iowa Environmental Protection Commission enacted Iowa Administrative Code section 567 IAC 105.3, which enumerates requirements for composting operations in Iowa.

4. 567 IAC 105.3(2) requires composting to be performed in a manner that minimizes the formation of compost leachate. As explained above, failure to maintain windrows and drains on both sides of the 18-acre compost pad at the facility resulted in leachate runoff into a nearby creek. These facts establish a violation of this requirement.

5. 567 IAC 105.3(4) requires composting facilities to be designed, constructed, and maintained so as to minimize ponding of water or liquids. Any ponding that does occur must be corrected through routine facility maintenance within 48 hours after the termination of the event causing the ponding. The facts above establish a violation of this requirement.

6. Finally, the facility was issued a permit for operation pursuant to the composting regulations (Permit No. 90-SDP-10-97P-COM). The permit included an operations plan. Violation of permit terms is a violation of Iowa law. The facts above establish numerous violations of the permit and operations plan, including failing to maintain windrows, failure to properly aerate the compost, failure to take

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internal temperature readings of the compost, failure to manage odors, and failure to keep feedstock on the cement pad. All of these facts establish violations of permit requirements and Iowa law.

**V. ORDER**

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

1. Chamness has applied for a new permit as previously requested by DNR. Permit renewal is pending, and Chamness' current permit is in force until a new permit is issued. As part of the new permit, Chamness will agree to the following provisions in addition to the standard permit conditions:

- a. Quarterly on-site meetings with DNR staff to review permit compliance. This provision will sunset if compliance is documented for a period of two years.
- b. Chamness will include a long-term leachate management plan to prevent any further discharges into Palestine Creek.
- c. Any permit violation will also be considered a violation of this Order.

2. Chamness will pay an administrative penalty of \$10,000.00 within 120 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. Iowa Code § 455B.191 provides for civil penalties of up to \$5,000.00 per day for water quality violations. Iowa Code § 455B.386 authorizes the DNR to impose penalties of up to \$1,000.00 for each failure to properly notify the DNR and other parties when hazardous substances are spilled.

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-cited violations is the issuance of an Order with a \$10,000.00 penalty, which is the

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maximum DNR is authorized to impose administratively. 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."

Failure to build and turn compost windrows has saved time and costs associated with operating the windrow turning equipment. Time and expenses have been saved by not routinely testing moisture content, oxygen content and temperature of the compost in the windrows. According to the facility's permitted operations plan, once compost is placed into a windrow the temperature must be measured at least twice weekly until it has reached the conclusion of the Process to Further Reduce Pathogens (PFRP). The operations plan also states that a minimum of five turns is required during high temperature periods. All of the above-stated issues have been ongoing since prior to October 2018.

Economic benefit for non-compliance is primarily determined in this matter by expenses saved by employees failing to conduct required activities at the facility. Composting activity (managing mixing area, building compost rows, turning compost windrows, monitoring temperature and oxygen) hours per week = 40; estimated wage of staff per hour = \$15.00; estimated number of weeks composting activity was not completed = 15.

Therefore, a very conservative economic benefit is estimated at \$9,000.00. Despite this estimate, the DNR has determined the most effective and efficient means of addressing the above-cited violations is through the administrative process; therefore only \$4,000.00 is being assessed for this factor.

- 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 maintain the leachate drains and failure to conduct traditional methods of windrowing resulted in the discharge of leachate that entered Palestine Creek. Impacts to Palestine Creek have been documented in previous inspections/complaint investigations. Long-term non-compliance with the permitted operations plan threatens the integrity of DNR's

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regulatory program.

Additionally, the facility has been the subject of a prior administrative consent order which has not been fully complied with.

Therefore, \$3,000.00 is being 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.

Facility operations staff failed to comply with their permitted operations plan and failed to comply with numerous Iowa regulations. Staff and management should be aware of conditions that can change and be prepared to respond. While there has been no evidence of false reporting or tampering, the leachate spillage was not voluntarily reported to DNR. Being in the industrial composting business for many years, facility staff should have complied with the terms of their permit and operations plan, and should have known the importance of following their own standard operating procedures for building and maintaining windrows and proper leachate management.

Chamness has been cooperative since being contacted in late 2018 concerning the numerous ongoing violations at the facility.

Therefore, \$3,000.00 is being assessed for this factor.

#### **VII. APPEAL RIGHTS**

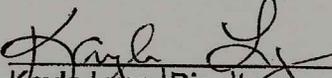
As this order is entered voluntarily by both parties, there is no right of appeal.

#### **VIII. NONCOMPLIANCE WITH THIS ORDER**

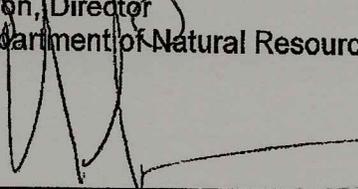
Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order)

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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 1<sup>st</sup> day of  
April, 2020.

  
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For: Chamness Technology, Inc.

Dated this 25<sup>th</sup> day of  
March, 2020

CC: DNR Field Office 6; David Scott; I.C.1, IV.A, VI.B.2.