

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

<b>IN THE MATTER OF:</b>  <b>CITY OF KEOKUK, IOWA</b>	<b>ADMINISTRATIVE CONSENT ORDER</b>  NO. 2021-SW- 10 NO. 2021-WQ- <del>WW</del> -17
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**To:** Robert Helenthal  
Director of Public Works  
City of Keokuk  
601 Main Street, 3<sup>rd</sup> Floor  
Keokuk, Iowa 52632

**Re:** Closure Permit 56-SDP-04-77C

**I. SUMMARY**

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and the City of Keokuk, Iowa, in order to address non-compliance with the City's Solid Waste Disposal Project's Closure Permit, including failure to properly operate and maintain a leachate collection system and the illegal discharge of leachate into a water of the State. While it appears that the City is addressing some of the non-compliance issues raised in this Order, failure to properly operate the leachate collection system has been an ongoing problem with the City since at least 2015 and has resulted in at least one illegal discharge into a water of the State.

Questions should be directed to:

**Relating to technical requirements:**

Brian Lee, Environmental Specialist  
Field Office #6  
Iowa Department of Natural Resources  
1023 W. Madison Street  
Washington, Iowa 52353  
Ph: 319-461-8849

**Relating to the legal terms of this Order:**

David Scott, Attorney  
Iowa Department of Natural Resources  
Legal Services Bureau  
1023 W. Madison Street  
Washington, Iowa 52353  
Ph: 319-321-8504

**Send payment of stipulated penalties**

**to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 E. Ninth St.  
Des Moines, Iowa 50319

[Note the Order Number on the payment]

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director 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 adopted pursuant to that part; Iowa Code section 455B.175 which authorizes the Director to issue orders addressing water quality violations; 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**

The following facts are relevant to this matter:

1. The City of Keokuk previously operated a sanitary landfill on the property located west of highway 61, north of 242<sup>nd</sup> avenue and south of 320<sup>th</sup> street (Parcel ID: 042318292000200) (the property). A closure permit was issued to the City of Keokuk for this site in 1992.

2. On September 14, 2015, staff from DNR Field Office 6 (FO6) inspected the property and observed a leachate tank overflowing. A report was sent to the City of Keokuk on October 15, 2015.

3. On August 9, 2016, FO6 staff conducted a site visit, and noted continued failure by the City to properly operate the leachate collection system. A Notice of Violation (NOV) was issued on August 16, 2016 to the City of Keokuk.

4. On October 27, 2016, FO6 received a response from the City. The City stated that some ponding and erosion had been addressed and that efforts to come into compliance would continue. Additionally, the City had purchased a video camera to monitor contractors hauling leachate. Further, a new leachate hauling contractor was set to begin work on October 1, 2016 which would increase hauling frequency.

5. On November 5, 2018, FO6 staff conducted a site visit. Staff again noted the failure to properly operate the leachate collection system. An NOV was issued to the City on November 14, 2018.

6. On December 6, 2018, FO6 received a plan of action from the City of Keokuk. The City stated it was working with an engineer to determine how to approach the leachate issues. The engineer provided three options which the City was considering.

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7. On December 13, 2018, FO6 staff submitted a letter to the City of Keokuk requiring that a progress report addressing the leachate collection system be submitted to FO6 by May 1, 2019.

8. On May 20, 2019, FO6 received a status update from the City of Keokuk regarding leachate issues at the property. The City had obligated \$230,000.00 to construct a leachate re-circulation system. The project was expected to be completed by June 2020.

9. On May 21, 2019, FO6 staff instructed the City to provide another status report by October 1, 2019.

10. On October 14, 2019, the City of Keokuk notified FO6 that a new leachate system would be installed on the property.

11. On January 10, 2020, FO6 received correspondence from the City of Keokuk indicating that an on-site system/ lagoon would be installed pending the settlement of certain property issues.

12. On February 19, 2020, the City provided FO6 with an updated plan that included a new retention lagoon for leachate.

13. On April 22, 2020, FO6 staff conducted a site visit. Staff noted that the leachate tank was overflowing and discharging directly into a water of the state. An NOV was issued to the City of Keokuk on May 11, 2020.

14. On May 28, 2020, FO6 staff notified the City of Keokuk that the matter was being referred to the DNR's Legal Services Bureau for enforcement.

15. On May 29, 2020, the City of Keokuk indicated that an additional leachate storage tank was installed on the property.

16. On June 4, 2020, the City's engineer submitted a report outlining its findings regarding leachate in the storm water system. The collection system piping was damaged and would be repaired.

17. On July 16, 2020, the City's engineer submitted a revised plan to install additional storage for leachate instead of constructing a lagoon.

18. On December 1, 2020, the City's engineer submitted an email indicating additional leachate tanks had been installed.

19. On May 12, 2021, DNR staff visited with City staff on the Property to assess the installation of new leachate collection structures. No overflows or discharge of leachate were found. An overflow alarm was installed. The City

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stated that additional leachate collection system and surface ponding work was to commence in the near future.

**IV. CONCLUSIONS OF LAW**

1. 567 IAC 113.7(5)(b) states that the leachate collection system shall be designed and constructed to function for the entire active life of the facility and the post closure period. The leachate collection system installed for this closed landfill did not function properly for at least six years, resulting in at least one discharge into a water of the state. The above-stated facts establish a violation of this requirement.

2. 567 IAC 62.1(1) prohibits the discharge of any pollutant from a point source into a water of the state unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. In this case, the facility discharged pollutants to a water of the state (to an unnamed tributary of Sugar Creek). This facility has not been issued a NPDES permit. The above-state facts establish a violation of this requirement.

3. 567 IAC 61.3(2) prohibits certain waste water discharges and discharges resulting in an increase of turbidity of waters of the state. The above-stated facts establish violations of these restrictions.

**V. ORDER**

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

1. The new leachate tank system must be properly operated and maintained to prevent overflows and discharge of leachate.

2. The City must continue to maintain logs regarding leachate hauling dates and volume until further notice from the DNR. Upon request from DNR, the City will provide copies of the logs for review. Failure to maintain logs or make logs available for inspection will be considered a violation of this Order.

3. The City shall pay an administrative penalty of \$6,500.00 within 30 days of this Order being signed by the Director. The basis for this penalty is summarized below.

**VI. PENALTY**

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

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2. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the water quality violations involved in this matter.

3. 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.

4. 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.

a. Economic Benefit. The economic benefit element of a penalty is intended to recoup the economic benefit a party enjoyed as a result of non-compliance. Despite notification of leachate handling violations back to 2015, significant action addressing leachate overflows was not taken by the City until 2019-2020. Compliance action could have been taken sooner to prevent overflows from the leachate collection system and the discharge of leachate into a water of the state. An economic benefit was obtained through avoiding the cost of installing and maintaining adequate leachate control measures. As such, \$2,500.00 is assessed for this factor.

b. Gravity of the Violation. 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. Leachate contains pollutants/contaminants that negatively impact water quality and aquatic life. Leachate discharge(s) to a water of the state also prevents the attainment of state water quality goals and causes a decline in the quality of life generally. Multiple overflows of leachate were documented. 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. This Order arises from a long-term failure to comply with leachate collection and overflow issues. Action was taken by the facility, but only after the issue was repeatedly brought to the attention of the City by DNR staff over multiple years. As such, \$2,000.00 is assessed for this factor.

5. The DNR has determined that a penalty of \$6,500.00 is warranted in order to settle this matter administratively.

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**VII. APPEAL RIGHTS**

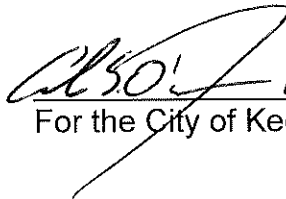
This Order is entered into knowingly by and with the consent of the City of Keokuk. As such, there is no right of appeal.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Compliance with sections V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section IV (Conclusions of Law) of this Order. In the event of non-compliance with the on-going requirements in section V, the DNR reserves the right to pursue additional administrative penalties or to refer the matter to the the Iowa Attorney General's Office.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

 Cole S. O'Donnell  
For the City of Keokuk City Administrator

06/22/2021  
Date

CC: Field Office #6; David Scott; Michael Sullivan; VI.B(2)(c), I.C(1).