

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>CHAMNESS TECHNOLOGY, INC.</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2021-SW-13</p>
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To: Chamness Technology, Inc.
Gary Chamness, Registered Agent
2255 Little Wall Lake Road
Blairsburg, Iowa 50034

Re: Revocation of Composting Permit 90-SDP-10-97P-COM and Order to properly dispose of remaining material following revocation.

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Chamness Technology, Inc. (Chamness) to resolve repeated violations of Iowa law governing the proper operation of an industrial composting operation (facility) located in Eddyville, Iowa. Despite years of compliance assistance, the facility continues to violate Iowa law resulting in, among other things, impacts to public health and safety and impacts to Iowa's air and water quality.

As such, permit 90-SDP-10-97P-COM is revoked, subject to the appeal provisions enumerated below. Subsequent to revocation, all material remaining at the facility, including but not limited to feedstock, bulking agent, material in the process of being composted, and yard waste whether generated on the property or not, is deemed to be solid waste that must be properly disposed of pursuant to the requirements enumerated in section V(3), below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Kurt Levetzow, Supervisor
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: 319-321-8504

II. JURISDICTION

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This Order is issued pursuant to Iowa Code §§ 455B.305(1) and 455B.307(2) which authorize the Director of the DNR to revoke permits and 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; Iowa Code §§ 455D.4A and 455D.23 which authorize the Director to deem improperly-recycled material, including compost material, as solid waste and to require the removal and proper disposal of such solid waste; Iowa Code 17A.18, which enumerates the process for revoking permits; Iowa Code § 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division III, Part 1 (water quality), and any rule or standard established or permit issued 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. In 2008, the DNR entered into Administrative Consent Order (2008-WW-31/2008-SW-40) (2008 Order) with Chamness to address allegations of wastewater and storm water violations at the facility. The 2008 Order required Chamness to develop an operating plan to ensure future compliance with the facility's permit and to prevent any future discharge of wastewater (leachate) or other waste material from the facility.

2. In June 2010, DNR entered into an Administrative Consent Order (2010-WW-10/2010-SW-27) (2010 Order) with Chamness addressing complaints received and violations that occurred in 2009 and 2010, including permit non-compliance, improperly stockpiling material, odor, and improper operation of leachate lagoons resulting in overflow/discharge in violation of the 2008 Order. The 2010 Order included multiple requirements intended to bring Chamness into compliance with its permit and to prevent wastewater discharges, as well as requiring the company to pay an administrative penalty.

3. In 2011, the Iowa District Court for Wapello County issued an order and decree for violations at the facility involving the intentional pumping of wastewater (leachate) into a nearby river in violation of the facility's composting permit, prior orders, and state and federal law. The court assessed a penalty of \$30,000.00 and also added injunctive provisions permanently enjoining future violations of the following,

- Iowa Code § 455B.186(1);
- 567 IAC 61.3(2), 64.3(1) and 105.3(3);
- The facility's National Pollution Discharge Elimination System (NPDES) permit (NPDES permit number 900-00-1-05);

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- The storm water management and pollution prevention plan requirements of the composting permit; and,
- The 2008 Order and the 2010 Order.

The Court expressly retained jurisdiction over these matters subject to contempt proceedings.

4. In April 2020, following continued efforts over multiple years by DNR Field Office 6 (FO6) staff to work with Chamness to address permit violations at the facility, the DNR entered into Administrative Consent Order 2020-HC-02/2020-SW-02/2020-WW-05 (2020 Order) with Chamness for permit violations occurring since at least 2018. Violations included improper operation of the facility pursuant to permit requirements and prior administrative and court orders, such as non-maintenance of windrows, black leachate runoff from the facility into Palestine Creek, smoke and odor emanating from the compost piles, fire at the compost piles, and excessive material at the facility resulting in material stored off the impervious compost pad. The 2020 Order required Chamness to, among other things, comply with its permit, comply with the permit's operations plan, and to develop and implement a long-term leachate management plan to prevent any further discharges into Palestine Creek. The 2020 Order stated that any permit violation would also be considered a violation of the 2020 Order.

5. In March 2021, FO6 staff submitted a letter to Chamness noting multiple areas of permit non-compliance in violation of the previous orders that must be addressed including fixing drainage, screening on-site material, and re-establishing windrows as required by the facility's permit. DNR staff noted on calls with Mr. Chamness that the issues must be addressed by July 1, 2021, to prevent permit action.

6. On July 7, 2021, DNR entered into Administrative Consent Order (2021-SW-11/ 2021-WW-18) (2021 Order) with Chamness due to the ongoing failure of the facility to comply with its permit. These violations included a May 1, 2021, discharge resulting in leachate runoff into Palestine Creek. Samples determined the runoff was from the compost piles and resulted in water quality violations. Additionally, none of the required compliance matters referenced in the March 2021 correspondence had been addressed. The 2021 Order temporarily suspended Chamness' composting permit by preventing any feedstocks or bulking agents to be deposited at the site until August 15, 2021. If the facility was in compliance as of that date, the suspension would be lifted. If not, the suspension would be extended at the discretion of the DNR. The 2021 Order was entered by consent, so it was agreed to and signed by Chamness.

7. On August 19, 2021, following a DNR site inspection, DNR extended the permit suspension until at least September 30, 2021, due to failure to bring the facility into permit compliance.

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8. In mid-August 2021, the facility experienced a multi-day fire resulting from multiple, ongoing violations of Iowa law. Those violations were enumerated in a Notice of Violations dated September 2, 2021. The violations included:

- Failure to operate the facility in a manner that minimizes the formation of leachate;
- Failure to prevent compost leachate (wastewater) from leaving the facility;
- Failure to operate the facility in a manner that prevents ponding of water and failing to correct water-ponding violations in a timely manner;
- Failure to conduct all composting operations on an impervious all-weather surface;
- Failure to properly dispose of solid waste that cannot be composted;
- Failure to manage solid waste in a manner that prevents odors, dust or other nuisance conditions that may impact public health;
- Failure to move compost material off-site within 18 months;
- Failure to restrict access to the facility with a lockable gate, and to only those times when an employee is on-duty;
- Failure to have all employees certified as required by the Iowa Code and by previous orders;
- Multiple failures to comply with the facility's operations plan as required by the facility permit;
- Failure to operate the facility in compliance with the facility's NPDES permit; and,
- Failure to comply with the legitimate recycling requirements enumerated in the facility's permit and the Iowa Code.

IV. CONCLUSIONS OF LAW

1. Each violation referenced in the preceding sections is, at a minimum, a violation of the facility's permit, the 2020 Order, the 2021 Order, and the 2011 Order from the Wapello County District Court.

2. Iowa Code § 455B.305 authorizes the Director to revoke permits.

3. Iowa Code § 455B.307 authorizes penalties of \$5,000.00 per day for permit non-compliance.

4. Iowa Code Chapter 455D regulates recycling of materials that would otherwise be solid waste. Section 455D.4A addresses the requirements a facility must meet to establish that the facility is legitimately recycling material. Chamness' permit requires that the facility comply with the requirements of Iowa Code § 455D.4A in addition to the composting rules referenced below.

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5. Iowa Code § 455D.4A(3) authorizes the DNR to deem material that is not legitimately recycled to be solid waste.

6. Iowa Code § 455D.23 authorizes the DNR to require material that is not legitimately recycled to be properly disposed of.

7. The Environmental Protection Commission (Commission) promulgated 567 IAC 105, which establishes operational requirements for compost facilities.

8. 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 compost pad at the facility, in addition to placement of material off of the composting pad, resulted in leachate runoff into a nearby creek. These facts establish a violation of this requirement.

9. 567 IAC 105.3(3) requires that measures be taken to prevent water from running onto the facility from adjacent land and to prevent compost leachate and runoff from leaving the composting facility. Runoff from the composting facility must be properly managed. The above-stated facts establish a violation of this regulatory requirement.

10. 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.

11. 567 IAC 105.3(5) requires composting facilities to conduct all operations on an all-weather, impervious pad. The facts above establish continued violations of this requirement.

12. 567 IAC 105.3(6) requires composting facilities to properly dispose of solid waste that cannot be composted. This includes material “stored” at the facility or on private property. The facts above establish violations of this requirement.

13. 567 IAC 105.3(7) requires composting facilities to manage material in a manner to prevent odors, dust, and other nuisance conditions, such as fires, that may impact public health or the environment. The facts above establish multiple, continued violations of this requirement.

14. 567 IAC 105.3(8) requires composting facilities to move compost material off-site within 18 months. The facts above establish violations of this regulatory requirement.

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15. 567 IAC 105.7(2) requires a composting facility to operate at all times in compliance with its operations plan. The facts above establish multiple violations of this requirement including, but not limited to, failing to establish and maintain windrows, failure to manage odors, failure to market a finished product, and failure to maintain conditions to allow proper composting.

16. 567 IAC 105.9(1)"a" requires composting facilities to install a lockable gate at its entrance. The facility is not in compliance with this regulatory requirement.

17. 567 IAC 105.9(1)"b" requires composting facilities to restrict access to only those times when an employee is on duty. The facility is not in compliance with this regulatory requirement.

18. 567 IAC 105.10 requires employees responsible for facility operation to be certified. This requirement is also enumerated in the 2021 Order. The facility is not in compliance with this requirement.

19. The facility's NPDES permit requires the facility to maintain a minimum of 2 feet of freeboard in each leachate storage basin at all times. The facility is in violation of this requirement.

20. The facility is in violation of the legitimate recycling requirements enumerated in its permit and in Iowa Code Chapter 455D.

21. Finally, pursuant to Section VIII (General Conditions) of the facility's permit, "failure to comply with Iowa Code [Chapters] 455B and 455D, or any rule of order promulgated pursuant thereto, or any or all provisions of this permit may result in . . . the suspension or revocation of this permit."

V. ORDER

THEREFORE, the DNR orders the following:

1. Chamness' permit (90-SDP-10-97P-COM) shall be revoked subject to the requirements established by Iowa Code § 17A.18 and Section VII, below. Upon revocation, the facility shall be closed pursuant to the facility's closure plan.

2. Upon permit revocation, all compost material including feedstocks, bulking agent, and any material that is in the process of being composted is deemed solid waste.

3. Upon permit revocation, Chamness must initiate removal and proper disposal of all solid waste from the facility and the property within 14 days pursuant to the facility's closure plan. All material must be removed from and properly disposed of within 30 days of permit revocation. Any solid waste remaining on the

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property after 30 days may result in daily penalties of up to \$5,000.00 per day for the illegal disposal of solid waste.

4. All leachate generated at the facility must be properly managed. Upon revocation, all leachate must be properly disposed of within 30 days.

5. All prior orders remain in effect until such time as the DNR determines that the facility and property have been properly cleaned up and the material has been properly disposed of.

VI. CIVIL 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.

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 penalty should be.

4. No penalty is incorporated in this Order. Any previous penalties imposed in prior orders remain due if yet unpaid.

VII. APPEAL RIGHTS

This Order is subject to appeal pursuant to Iowa Code § 455B.110 and the contested case rules promulgated pursuant to that section. An appeal must be received by the DNR within 60 days of the date this Order is issued, at which time a contested case hearing will be scheduled before an Administrative Law Judge. All prior Orders remain in effect during the appeal period.

Regarding permit revocation, Iowa Code § 17A.18 requires that the DNR provide Chamness with an opportunity to show at an evidentiary hearing that the facility complies with all legal requirements for retention of the permit. Filing the timely notice of appeal will result in the matter being scheduled for a hearing in front of an administrative law judge. Failure to file a timely notice of appeal will result in permit revocation effective 61 days from the date this Order is issued.

VIII. NONCOMPLIANCE WITH THIS ORDER

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Failure to comply with any requirement of this Order may result in the imposition of administrative penalties and referral to the Iowa Attorney General.

Kayla Lyon, Director
Iowa Department of Natural Resources

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