

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>ANDERSON EXCAVATING CO., INC.</p> <p>Pottawattamie County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2024-SW-10</p>
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TO: Virginia Anderson
Anderson Excavating Co., Inc.
7433 Sawyer Brown Rd.
Nashville, TN 37209

AW Tauke, Registered Agent
Anderson Excavating Co., Inc.
300 West Broadway, Suite 175
Council Bluffs, Iowa 51503

I. SUMMARY

This administrative order (Order) requires Anderson Excavating Co., Inc. (Anderson Excavating) to comply with the provision in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Mike Sullivan, Supervisor
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/360-1671

Kelli Book, Attorney
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Appeal or Payment of penalty to:

Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

II. JURISDICTION

Pursuant to the provisions of 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 and the rules

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promulgated or permits issued pursuant to that division; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Anderson Excavating owns a former construction and demolition landfill located at 2520 Kanessville Boulevard, Council Bluffs, Iowa. The facility was formerly operated under sanitary disposal project permit #78-SDP-04-89P and was authorized to accept waste from August 31, 1995 until April 11, 2016. In April 2016, DNR issued Anderson Excavating a closure permit for the landfill. Three amendments have been made to the permit with the latest amended closure permit being issued on September 25, 2023.

2. The closure permit contained multiple conditions, two of which are the subject of this administrative consent order.

Leachate Control Plan:

3. Section X, Paragraph 6 of the amended closure permit requires that the leachate control system (LCS) be operated in accordance with the Leachate Control Plan, dated October 2006. Paragraph 6a further noted that the LCS had not been maintained and a compliance plan was required to be submitted by August 30, 2023.

4. Between May 2017 and November 2022, DNR received multiple reports from the facility and its consultant that proper LCS maintenance and reporting had not been occurring. The LCS has not been functioning properly as evidenced by the leachate accumulation in the leachate storage tank. For the time period between 2012 and 2022, only 5,900 gallons of leachate had been removed, indicating that the LCS had not been properly functioning for many years. In December 2023, the facility's engineering firm submitted an update of the repairs that had taken place; however additional work was needed in 2024 before the LCS would be operational.

5. Beginning in 2020, increasing contaminant concentrations in the groundwater became evident with 60% of all monitored pollutants increasing concentrations at the downgradient well.

Final Cover:

6. Section X, Paragraph 9 of the closure permit requires that all diversion and drainage systems be maintained to prevent damage to the final cover. Section X, Paragraph 10 requires that the vegetative cover be reseeded as needed to maintain good vegetative growth. Section X, Paragraph 11 requires that the integrity and effectiveness of the final cover be maintained by making the necessary corrections

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due to settling, subsidence, erosion, or other events. Paragraph 11 further requires that the cover be returned to the original specifications and re-seeding of the vegetative cover by May 1, 2024. There is no evidence that the final cover has been returned to the original specifications or re-seeded.

7. Between April 2016 and November 2022, semi-annual reports from the facility and multiple inspections by DNR Field Office 4 stated that there was little to no vegetation for the final cover. Field Office inspections also noted the presence of erosion gullies and small trees in the area of the final cover.

8. On January 30, 2013, DNR issued an administrative order to Anderson Excavating to require proper financial assurance and to pay an administrative penalty. In April 2016, DNR issued an amendment to the 2013 administrative order. The amendment removed the administrative penalty and required the facility to comply with the closure permit issued by the DNR.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123. The Commission has adopted 567 IAC chapter 114 to provide for the regulations of construction and demolition of solid waste landfills.

2. The closure permit and following amendments issued to Anderson Excavating established operating and closure requirements. Section X, Paragraph 6 of the amended closure permit requires that the LCS be operated in accordance with the Leachate Control Plan, dated October 2006. Paragraph 6a further noted that the LCS had not been maintained and a compliance plan was required to be submitted by August 30, 2023. Section X, Paragraph 9 of the closure permit requires that all diversion and drainage systems be maintained to prevent damage to the final cover. Section X, Paragraph 10 requires that the vegetative cover be reseeded as needed to maintain good vegetative growth. Section X, Paragraph 11 requires that the integrity and effectiveness of the final cover be maintained by making the necessary corrections due to settling, subsidence, erosion, or other events. Paragraph 11 further requires that the cover be returned to the original specifications and re-seeding of the vegetative cover by May 1, 2024. As demonstrated by engineering reports, semi-annual reports, and field office visits, Anderson Excavation have not been in compliance with the LCS and final cover requirements since the issuance of the initial closure permit in 2016 and subsequent amended permits. The above-mentioned facts indicate violations of the facility's closure permit and subsequent amendments.

3. 567 IAC 114.26(11)"a"(8) requires that a LCS shall be cleaned out once every three years, or more frequently if necessary. DNR records indicate the LCS was not cleaned out between 2012 and 2019; and only minimal leachate was

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removed between 2019 and 2022. The above-mentioned facts indicate violations of this provision.

4. 567 IAC 114.26(14)"e" requires that the LCS be operated and maintained and comply with all applicable rules and closure permit requirements. The LCS has not collected leachate for many years and is not currently collecting leachate. The above-mentioned facts indicate violations of this provision.

5. 567 IAC 114.26(14) "a-c" required that: a) all diversion and drainage systems be maintained to prevent damage to the final cover; b) the vegetative cover be reseeded as needed to maintain good vegetative growth; and c) the integrity and effectiveness of the final cover be maintained by making the necessary corrections due to settling, subsidence, erosion, or other events. As demonstrated by semi-annual reports and field office visits, Anderson Excavation has not been in compliance with the final cover requirements since the issuance of the initial closure permit in 2016 and subsequent amended permits. The above-mentioned facts indicate violations of these provisions.

V. ORDER

THEREFORE, the DNR orders Anderson Excavating to do the following:

1. Submit a written plan detailing providing a compliance schedule for the repairs to the LCS and establishment of the final cover. The completion date of the plan shall be no later than June 1, 2025. The plan shall be submitted to DNR within 60 days of the date the Director signs this Order and
2. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of the date the Director signs this Order, subject to the appeals rights provided in this Order.

VI. PENALTY

Iowa Code section 455B.307(2) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste violations involved in this matter.

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, 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. The administrative penalty assessed by this Order is determined as follows:

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Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Anderson Excavating has avoided the costs associated with final cover establishment and maintenance since at least 2017. It is estimated that the expense per year is at least \$250.00 and Anderson Excavating has avoided this expense for at least 7 years. Anderson Excavating has also avoided the cost of maintaining the final cover area by allowing rill erosion and the growth of trees in the area. It is estimated that the expense per year is at least \$100.00 and Anderson Excavating has avoided this expense for at least 7 years. Anderson Excavating has avoided the costs associated with LCS operation and maintenance. It is estimated that the expense per year is at least \$1,800.00 and Anderson Excavating has avoided this expense for at least 7 years. Even though the economic benefit exceeds the administrative threshold, DNR has determined an order is the appropriate enforcement action. Based on these considerations \$5,000.00 is assessed for this factor.

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, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Failure to maintain the LCS and establishing the final cover increased the potential for groundwater contamination. From the monitoring reports elevated pollutants have been noted downstream of the facility. These violations threaten the integrity of the regulatory program because compliance with the solid waste regulations is required of all persons in this state. Based on the above considerations, \$2,500.00 is assessed for this factor.

Culpability – Anderson Excavating has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Anderson Excavating has been notified and reminded of the requirements on multiple occasions since at least 2016. Based on the above considerations, \$2,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case

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hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources