

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

<b>IN THE MATTER OF:</b>  <b>PAGE COUNTY SANITARY LANDFILL; Permit 73-SDP-01-75P</b>	<b>ADMINISTRATIVE CONSENT ORDER</b>  <b>NO. 2009-SW- 12</b>
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**TO:** Myron Magwitz  
Page County Landfill Assoc.  
2032 N. Avenue  
Clarinda IA 51632

**I. SUMMARY**

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (Department) and Page County Landfill Association to provide a schedule to bring the Page County Sanitary Landfill into compliance with applicable regulations. This Order resolves all outstanding issues in the two contested cases now pending before the Iowa Department of Inspections and Appeals, designated DIA Nos 08DNR021 and 09DNR009.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Amic Davidson, P.E.  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8645

**Relating to this Order to:**

Jon C. Tack, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**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; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. The Page County Landfill Association owns and operates a sanitary landfill in Page County, Iowa pursuant to Department permit #73-SDP-01-75P. The Page County Sanitary Landfill is a municipal solid waste landfill (MSWLF) subject to IAC chapter 567-113.
2. Pursuant to subrule 567 IAC 113.2(8), existing MSWLF units that did not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance were to cease accepting waste by October 1, 2007. The Page County Sanitary Landfill includes areas in which approved liners have been constructed and areas which do not have a liner which satisfies the current requirements of IAC Chapter 567-113.
3. Pursuant to Special Provision paragraphs 2 and 2.a. of permit #73-SDP-01-75P, waste disposal at the Page County Sanitary Landfill is limited as follows:
  2. The permit holder shall develop and operate the site in accordance with the hereby approved Development and Operations Plan dated February 26, 2008, as submitted by Turkle-Clark Environmental Consulting, Inc. and the following:
    - a. Waste disposal is limited to the lined area of Phase 1 as shown on Sheet 11 of the construction certification dated September 14, 2005 and the 0.5 acre abutment area as shown on Figure 1 of the construction certification report dated February 15, 2008. Any further disposal beyond this area shall require Department approval. Waste shall only be placed directly over the approved lined area.
4. The restrictions of Special Provision paragraphs 2 and 2.a. have been appealed by the Page County Landfill Association and are the subject the pending contested case designated as DIA No. 08DNR021.
5. Pursuant to permit amendment #2 dated November 18, 2008 the permit holder was authorized to initiate use of the lined abutment area as shown on Figure 2 of the record drawings for the construction of the 2008 Abutment Liner, dated November 11, 2007 as submitted by FOX Engineering. This area is approved to receive waste in addition to the area described in Special Provision paragraph 2.a. of permit #73-SDP-01-75P
6. On February 23, 2009, the Department issued notice pursuant to paragraph 113.2(10)"a" asserting that adequate cause existed to require the Page County Landfill Association to complete the closure of all areas of the landfill in which current landfill liner requirements have not been satisfied and to prohibit the further disposal of solid waste in such areas. The notice required the completion of closure within 180 days of March 30, 2009.

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7. The Page County Landfill Association has appealed the requirements set forth in the Department's February 23, 2009 notification. This appeal is currently pending and has been designated as DIA No. 09DNR009.

8. The Page County Landfill Association has indicated an intent to construct a sanitary landfill liner which is compliant with all current Iowa standards and to close the remaining areas of the landfill in accordance with applicable requirements, except to the extent that closure may be rendered unnecessary by the pending construction of a liner. This liner will constitute full closure of such areas. Such closure is proposed to occur by January 31, 2011.

9. The construction of a liner over areas of previous waste disposal constitutes a vertical expansion pursuant to rule 113.3 and subrule 113.2(10). The construction of the proposed liner will be facilitated by the placement of solid waste in areas of the landfill that are not compliant with current liner requirements. Pursuant to paragraph 113.2(10)"a", the Department, in conjunction with the MSWLF owner or operator, shall determine the maximum amount of time necessary for continued waste placement on top of or against the previously filled noncompliant MSWLF unit to achieve an adequate slope in order to maintain drainage of leachate to the leachate collection system after expected settlement. This Order is intended, in part, to formalize the determination of the maximum amount of time determined to be necessary for the continued placement of waste in such areas.

#### **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 such rules at 567 IAC chapters 100-123. The Commission has adopted 567 IAC 113 to provide for the regulations of municipal solid waste landfills.

2. The specific rules applicable to the issuance of this Order are as follows:

**113.2(8) Closure of existing MSWLF units.**

*a.* Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2)"a," pertaining to airports, in 113.6(2)"b," pertaining to floodplains, or in 113.6(2)"f," pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

*b.* Existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

*c.* Rescinded IAB 12/31/08, effective 2/4/09.

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*d.* Those portions of existing MSWLF units demonstrating placement of final cover in conformance with previously approved plans and specifications or regulations in effect at the time of such closure shall not be required to apply additional cover solely to achieve compliance with rule 113.12(455B).

**113.2(9)** Existing MSWLF units that continue accepting waste after October 1, 2007, shall submit an implementation plan to the department by January 31, 2008, that identifies how the MSWLF shall achieve compliance with these rules. The plan shall include a compliance schedule which shall not extend beyond January 31, 2011. This subrule shall not preclude compliance with subrule 113.2(8).

**113.2(10)** Compliance with amendments to these rules.

*a.* Owners or operators of existing MSWLF units that have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall not be required to redesign or reconstruct the MSWLF units due to amendments to these rules subsequent to such approval unless the department finds that such facilities are causing pollution or that continued use of such facilities results in a vertical expansion on top of or against the side slopes of a previously filled noncompliant MSWLF unit. Prior to waste placement in the vertical expansion area, revised design plans shall be submitted to include construction of a separatory liner and leachate collection system that comply with all the requirements of subrule 113.7(5) to be placed between the area of vertical expansion and the underlying noncompliant MSWLF unit. The department, in conjunction with the MSWLF owner or operator, shall determine the maximum amount of time necessary for continued waste placement on top of or against the previously filled noncompliant MSWLF unit to achieve an adequate slope in order to maintain drainage of leachate to the leachate collection system after expected settlement.<sup>1</sup>

*b.* Except as authorized by subrule 113.2(9) and paragraph 113.2(10)"a," if any new requirement conflicts with a provision of or an operating procedure prescribed in the engineering plans or the MSWLF permit, the facility shall conform to the new rule.

## V. ORDER

A. The Department and the Page County Landfill Association agree and Page County Landfill Association is hereby ordered to comply with the following compliance schedule designed to bring the Page County Sanitary Landfill into full compliance with IAC chapter 567-113:

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<sup>1</sup> At its February 6, 2009 meeting the Administrative Rules Review Committee voted to object to the provisions of ARC 7474B relating to the closure of existing landfills. Objection filed February 10, 2009

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1. The Page County Landfill Association is immediately authorized to dispose of solid waste in the areas which abut the lined area of Phase 1, as shown on Sheet 11 of the construction certification report dated September 14, 2005, including the existing side slopes in those areas, and to move solid waste from such lined areas of Phase 1 onto such side slopes in conformance with the general proposal outlined by the Page County Landfill Association to the Department on June 3, 2009. Such approval is retroactive to June 3, 2009 and continues through August 3, 2009. Such approval is authorized by paragraph 113.2(10) "a" and is contingent upon the continued validity of said rule. The parties hereby agree that nullification of paragraph 113.2(10)"a" will nullify the Department's continuing authority pursuant to said rule and the authorizations contained in this paragraph and paragraphs 3 and 5, below, shall be null and void.

2. By July 31, 2009, the Page County Landfill Association shall submit preliminary designs for the construction of a sanitary landfill liner that is compliant with current Iowa regulations and for the final closure of all remaining areas of the Page County Sanitary Landfill for which such closure has not been previously certified. The preliminary designs shall include, at a minimum, the following:

- a. Cross-section details of the proposed liner, leachate collection system and final cover;
- b. A plan view showing the proposed base grades of the area to be lined including the final waste grade of the area described in item #1;
- c. A plan view showing the final contours; and
- d. The proposed liner phasing sequence.

3. Upon submission of the preliminary designs described in paragraph 2, above, the authorization to dispose of solid waste in the areas described in Paragraph 1, above, shall be automatically extended to November 2, 2009. Noncompliance with the submission deadline shall result in the suspension of approval to dispose of solid waste in those areas until such time as the required documentation has been submitted and the Department has authorized in writing the continuation of waste disposal activities.

4. By November 2, 2009, the Page County Landfill Association shall submit a request for a vertical expansion of the existing landfill including the construction of a liner that is compliant with current Iowa regulations, including all such accompanying designs and specifications as are required for the review of such application. By November 2, 2009, the Page County Landfill Association shall also submit an updated closure plan which sets forth the schedule and phasing for the closure of all remaining areas of the Page County Sanitary Landfill for which such closure has not been previously certified.

5. Upon submission of the design plans and specifications as described in paragraph 4, above, the authorization to dispose of solid waste in the areas described in Paragraph 1, above, shall be automatically extended to June 1, 2010. Noncompliance with the submission deadline shall result in the suspension of approval to dispose of solid waste in

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2. The Department hereby suspends the deadline contained in the Department's notification dated February 23, 2009 requiring the Page County Landfill Association to complete final closure within 180 days of March 30, 2009 for the disposal areas described therein, subject to compliance with the terms of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10.

3. The Department has determined that the assessment of a civil penalty is not appropriate at this time. The Department specifically reserves the right to assess civil penalties through a separate action alleging noncompliance with this Order, as set forth in Section VIII, subject to the right of the Page County Landfill Association to contest the appropriateness of any such assessment.

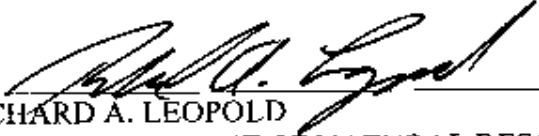
**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of the Page County Landfill Association. By signature to this Order, all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order.

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RICHARD A. LEOPOLD  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 3 day of  
August, 2009

  
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JAMES LONG, chairperson  
PAGE COUNTY LANDFILL ASSOCIATION

Dated this 28 day of  
July, 2009

Field Office #4; Jon Tack; Amie Davidson; VLB(2)(c)