



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

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DOVER, DELAWARE 19901

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OFFICE OF THE
SECRETARY

**NOTICE OF ADMINISTRATIVE PENALTY
ASSESSMENT AND ORDER**

Pursuant to *7 Delaware Code* §6005(b)(3)

Order No. 2010-W-0044

***PERSONALLY SERVED BY AN
ENVIRONMENTAL ENFORCEMENT
OFFICER***

Issued To:

Mr. Bruce Blessing
Blessing Greenhouses
9372 Draper Road
P.O. Box 647
Milford, DE 19963

And

Isdell Sanitation and Pumping Service
9372 Draper Road
P.O. Box 647
Milford, DE 19963

Dear Mr. Blessing:

This is to notify you (Respondent) that the Secretary of the Department of Natural Resources and Environmental Control (Department) determined that the Blessing Greenhouses and Isdell Sanitation and Pumping Service discharged pollutants in violation of their National Pollutant Discharge Elimination System (NPDES) permit and stormwater permit and, additionally, was in violation of *7 Del. C.*, §6003 and *7 Del Admin. C. §7201 et seq.*—the *Regulations Governing the Control of Water Pollution*, herein referred to as the Water Pollution Regulations. Therefore, the Department is assessing an administrative penalty.

FINDING OF FACTS

The Department is responsible for the administration of the NPDES program and enforcement of the NPDES permits issued by the authority contained in the Federal Water Pollution Control Act,

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33 U.S.C. §1251 *et seq.*, and 7 *Del. C., Chapter 60*. Pursuant to this authority, the Department has promulgated 7 *Del. Admin. C. §7201 et seq.*, the Water Pollution Regulations.

The Respondent is the owner of Blessing Greenhouses and Isdell Sanitation and Pumping Service located on Draper Road near Milford, Sussex County, Delaware. The Respondent operates a composting operation under the company name of Blessing Greenhouses and land applies approved materials under the company name Isdell Sanitation and Pumping Service in accordance with Department issued permits.

Blessing Greenhouses is a composting operation that collects animal manure, food processing waste, poultry offal, poultry mortalities, hatchery waste, feathers, and sewage sludge and composts the materials into a Class A compost product under a distribution and marketing permit—State permit number DM 0014/06. The facility consists of approximately 23 acres of land used for composting and storing bulking materials, soil, and finished compost product. Isdell Sanitation and Pumping Service is a liquid and solid non-hazardous waste management operation that land applies approved wastes under an agricultural utilization permit—State Permit Number AGU 1003-S-05. The lands permitted for agricultural utilization of wastes include approximately 935 acres of land.

In 2007, the Department's Surface Water Discharges Section (SWDS) representatives conducted a site visit at Blessing Greenhouses and witnessed a tanker truck discharging a dark liquid on the south end of the Blessing Greenhouses facility immediately adjacent to the east side of Mr. Blessing's office. Department representatives informed Mr. Blessing that this activity was a direct violation of his stormwater permit, and Mr. Blessing stated that it would not happen again.

On March 25, 2010, the SWDS received a copy of a video dated November 2, 2009, from the Department's Environmental Crimes Unit. The video showed an Isdell Sanitation and Pumping Service tanker truck discharging a dark liquid on the south end of the Blessing Greenhouses facility immediately adjacent to the east side of Mr. Blessing's office. The discharge location was approximately 500 feet from Slaughter Creek and approximately 50 feet from an area designated as a wetland, according to the most recent Statewide Wetlands Mapping Project (SWMP) GIS data layer (1994). Polluted water entered the wetland and potentially entered Slaughter Creek after passing through the wetland.

On May 7, 2010, the SWDS issued Mr. Blessing a letter requesting additional information in reference to the discharge video. In a May 21, 2010, response letter to the Department, Mr. Blessing stated that the dark liquid discharged in the November 2, 2009, video was "as a result of vacuuming up mud in the vacuum process, not an intentional discharge of some type of pollutant." In addition, the May 21, 2010, response letter states: "In this instance, previous offsite pumping of plastic filter media from a fish farm created the necessity of unclogging the tanker without using the larger vacuum spreader.... A decision was made to empty the tanker contents of storm water and plastic media onto the ground so the media could be recovered and

discarded.” Mr. Blessing stated that “somewhere around 3000 gallons may have been on the truck at the time of the discharge.” In addition, Mr. Blessing stated: “I am aware of four instances where the area behind the office has been used in the same manner over the past several years.”

Mr. Blessing further stated, in the May 21, 2010, response letter that the practice has been stopped and will not happen again. Additionally, Mr. Blessing stated: “At the point where the truck content was emptied there is no direct path to Slaughter Creek.” And “It is doubtful that the contents of the tanker entered Slaughter Creek.”

Mr. Blessing was operating his facility against practices outlined within his existing Stormwater Management Plan (SWP) at the time of the investigation. A review of his existing SWP indicated that the composting operations would be performed in enclosed areas with concrete flooring. Accumulated stormwater would be contained within the structures and ultimately collected and land applied onto approved croplands. Mr. Blessing was not operating the compost production within the stated contained areas but in open and exposed locations, thus exposing the stock piles and materials to potential storm water runoff. As a result, Notice of Violation W-10-SWD-03 was issued on March 29, 2010.

NPDES PERMIT VIOLATIONS

The Respondent failed to obtain an individual NPDES permit for the non-stormwater discharge as described above, violating 7 Del. C. §6003 and 7 Del. Admin. C. §7201-9.1.7.1 of the Water Pollution Regulations.

As described in the letter from Mr. Blessing, dated May 21, 2010, it was determined that the stormwater within the truck contained residual off-site fish filter media leachate, which when discharged is a non-stormwater discharge. 7 Del. Admin. C. §7201-9.1.7.1 of the Water Pollution Regulations states, in pertinent part: “Discharges to a storm water system of anything other than storm water, except those discharges described in the subparagraph (9.1.7.2) below, shall either be eliminated or in compliance with an appropriate individual NPDES permit.”

Additionally, 7 Del. Admin. C. §7201-9.1.7.2 of the Water Pollution Regulations states: “Industrial facilities that qualify for coverage under this subsection may discharge the following non-storm water discharges through outfalls identified in the SWP:

- “9.1.7.2.1 discharges from fire fighting activities and fire hydrant flushings;
- 9.1.7.2.2 uncontaminated potable water sources including waterline flushings;
- 9.1.7.2.3 lawn watering and similar irrigation drainage;
- 9.1.7.2.4 water from the routine external washing of buildings, conducted without the use of detergents or other chemicals;

- 9.1.7.2.5 water from the routine washing of pavement conducted without the use of detergents or other chemicals and where spills or leaks or toxic or hazardous materials have not occurred (unless a spilled material has been removed);
- 9.1.7.2.6 uncontaminated air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines;
- 9.1.7.2.7 water from foundation or footing drains where flows are not contaminated with pollutants (e.g. process materials, solvents, and other pollutants);
- 9.1.7.2.8 springs and other uncontaminated ground water; and
- 9.1.7.2.9 mist discharges which originate from cooling towers (as long as the discharge has been evaluated for contaminated chemicals used in the cooling tower and determined that the levels of such chemicals in discharges would not cause or contribute a violation of applicable water quality standards)....”

The discharge did not meet any of the criteria described above and is not an approved non-stormwater discharge. This discharge required an individual NPDES permit.

Based on the discoloration of the discharge water observed in the November 2, 2009, video, the Department concluded that the discharge water contained high levels of Total Suspended Solids (TSS) levels and potentially high levels of nutrients. If the discharge was comprised strictly of stormwater, based on the severe discoloration of the water, it was concluded that water quality of the discharge had elevated levels of TSS. In addition, the stormwater may have consisted of water of similar composition to stormwater and compost leachate samples collected on March 3, 2010, including high levels of nutrients, Biochemical Oxygen Demand (BOD), and bacteria.

STATUTORY AND REGULATORY VIOLATIONS

7 Del Admin. C. §7201- 9.1.5.1.1 of the Water Pollution Regulations, states, in relevant part: “Persons who engage in industrial activities...shall develop and continually implement a Storm Water Plan (SWP)....” The discharge observed in the November 2, 2009, video constitutes a violation of Blessing SWP where stormwater is to be properly conveyed through the approved conveyance system on site. Once accumulated standing surface water from the composting facility is manually extracted and collected, if not discharged from an approved stormwater conveyance system, it becomes agricultural liquid waste, which is to be land applied on approved agricultural utilization sites or otherwise properly disposed.

Additionally, this discharge occurred at an unauthorized location as described in the Notice of Intent (NOI) and the SWP. *7 Del. Admin. C. §7201- 9.1.1.2.3* of the Water Pollution Regulations states, in relevant part: “Once coverage... has been obtained, the person is authorized to discharge storm water only from the location indicated on the submitted NOI form. Further, *7 Del. Admin. C. §7201- 9.1.5.1.1* of the Water Pollution Regulations states, in relevant part: “Persons who engage in industrial activities...shall develop and continually implement a Storm

Water Plan (SWP)...” implying that the plan must be followed, including utilizing designated outfall areas as prescribed in §9.1.6 of the Water Pollution Regulations. Furthermore, “All persons...shall identify each storm water outfall covered under this subsection with a legible outfall tag or stencil.”

CONCLUSIONS

The Department has determined that the Respondent violated 7 *Del. C.* §6003 and 7 *Del. Admin. C.* §§ 7201- 9.1.1.2.3, 9.1.5.1.1, and 9.1.7.2 of the Water Pollution Regulations.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 *Del. C.* §6005(b)(3), this is written notice to the Respondent that on the basis of its findings, the Department is assessing the Respondent an administrative penalty of ***seven thousand five hundred forty dollars*** (\$7,540) for the violations identified in this Assessment and Order.

In addition to the penalty assessment, the Respondent is hereby assessed estimated costs in the amount of ***one thousand one hundred thirty one dollars*** (\$1,131) pursuant to 7 *Del. C.* §6005(c).

The Respondent shall remit two checks payable to the State of Delaware in the amounts of \$7,540 and \$1,131, within thirty (30) days of receipt of this notice, to Kevin Maloney, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901.

PUBLIC HEARING

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than thirty (30) days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* §6005(b)(3). In the event the Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take any additional enforcement action that it deems appropriate, including, but not limited to, the imposition of civil penalties and recovery of the Department’s costs pursuant to 7 *Del. C.* §6005. The Department does not otherwise intend to convene a public hearing on these matters but reserves the right to do so at its discretion.

PRE-PAYMENT

In the alternative, the Respondent may prepay the penalty to the Department within thirty (30) days from the receipt of this Notice and sign the attached waiver and return it to the Department. By doing so, the Respondent waives the right to a hearing and the opportunity to appeal or contest this Assessment and Order.

DATE: 16 December 2010



Collin P. O'Mara, Secretary
Department of Natural Resources and
Environmental Control

- c: Kevin Maloney, Deputy Attorney General
Laura Gerard, Deputy Attorney General
Kathy Bunting-Howarth, Director, DNREC Division of Water
Robert G. Underwood, Program Manager, Division of Water
Roy W. Heineman, Paralegal, Division of Water

WAIVER OF STATUTORY RIGHT TO A HEARING

Blessing Greenhouses and Isdell Sanitation and Pumping Service hereby waive their rights to a hearing and the opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Blessing Greenhouses and Isdell Sanitation and Pumping Service** will pay the administrative penalty in the amount of **\$7,540** by sending a check payable to the State of Delaware within 30 days of receipt of this Assessment and Order. The check shall be directed to Kevin Maloney, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901;
2. **Blessing Greenhouses and Isdell Sanitation and Pumping Service** will reimburse the Department in the amount of **\$1,131**, which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the State of Delaware and shall be directed to Kevin Maloney, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901; and
3. **Blessing Greenhouses and Isdell Sanitation and Pumping Service** further agree to abide by all of the terms and conditions of this Assessment and Order.

Blessing Greenhouses

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)

Isdell Sanitation and Pumping Service

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)