



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**AMENDED NOTICE OF CONCILIATION  
AND ADMINISTRATIVE PENALTY ASSESSMENT**

Pursuant to 7 Del. C. § 6005

**Secretary's Order No. 2012-A-0007**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
ENFORCEMENT OFFICER*

**Issued To:**

Clean Earth of New Castle, Inc.  
Attn: Mr. Paul Lane, Vice President  
94 Pyles Lane  
New Castle, DE 19720

**Registered Agent:**

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

Dear Mr. Lane:

This letter is to notify Clean Earth of New Castle, Inc. ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 Del. C. Chapter 60; 7 DE Admin. Code 1100 ("Air Quality Regulations") and that violation is continuing. Accordingly, the Department is issuing this Amended Notice of Conciliation and Administrative Penalty Assessment ("Amended Order"), pursuant to 7 Del. C. § 6005. When this Order becomes final (either upon signature of the Waiver portion of this Amended Assessment and Order and payment of the penalty assessed herein or upon expiration of the time to request a hearing without one being requested), this Order will supersede and withdraw Notice of Conciliation and Administrative Penalty Assessment No. 2011-A-0016, issued to Respondent on July 27, 2011 ("Original Order").

***BACKGROUND***

Respondent owns and operates a facility located at 94 Pyles Lane in New Castle, Delaware ("Facility") where it treats soils contaminated with non-hazardous materials such as hydrocarbons from fuels. This is achieved through the use of a thermal desorption system designed to remove organic materials from the soil by heating the soil to high temperatures.

*Delaware's Good Nature depends on you!*

Operation of the equipment at Respondent's facility has the potential to emit sulfur oxides ("SO<sub>x</sub>") and nitrogen oxides ("NO<sub>x</sub>") in quantities in excess of the major thresholds for New Castle County, thereby triggering 7 DE Admin. Code 1130, Delaware's Title V State Operating Permit Program ("Regulation 1130" or "Title V") requirements and fees. Respondent has had a permit issued pursuant to Regulation 1130 ("Title V permit") since 1998 and because Title V permits have expiration dates, during that time has gone through the renewal process once resulting in the issuance of **Permit: AQM-003/00290 (Renewal 1)** effective May 4, 2007, and with an expiration date of December 16, 2009<sup>1</sup> ("Title V Permit-R1").

Regulation 1130 requires applications for renewal permits be submitted six months prior to the expiration of the permit. However, it further allows the Department to set forth a permit condition requiring earlier submission of the application. The Division of Air Quality<sup>2</sup> chose to set an earlier submission requirement, twelve months prior to the expiration date, in Respondent's Title V Permit-R1. Therefore, Respondent was required to submit its application for the second renewal of its Title V permit by no later than December 16, 2008. Respondent submitted its application on March 24, 2009, which was 98 days late.

Delaware's Title V State Operating Permit Program allows a facility to continue to operate after expiration of a Title V permit if a timely and complete renewal application is submitted to the Department and the Department is unable to issue a renewal permit prior to the expiration of the active permit. The Department has not yet completed the process for issuing Respondent's second renewal of its Title V permit. Consequently, because Respondent's renewal permit application was not timely, Respondent's permit expired on December 16, 2009, as did its right to operate its facility. Operation of its facility after that date is considered "operating without a permit", a violation of Delaware law. A Notice of Violation ("NOV") was issued to Respondent on July 22, 2010.

The Department issued to Respondent, **Permit: AQM-003/00290 (Renewal 2)** on June 30, 2011. To the Department's knowledge, between the time **Permit: AQM-003/00290 (Renewal 1)** expired and issuance of the second renewal, Respondent operated its facility without a valid permit.

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<sup>1</sup> There is a discrepancy in the permit with respect to the expiration date. The date on the front page of the permit indicates an expiration date of December 16, 2009. However, on page 8 of the permit, an expiration date of December 17, 2009 was used. All correspondence with the company related to the late application uses the date on the front page of the permit, December 16, 2009, as the official expiration date. Therefore, this Order is based on December 16, 2009, as the official expiration date.

<sup>2</sup> The Department has recently undergone a reorganization effective July 1, 2010. Previously the Air Quality Management Section was part of the Department's Division of Air and Waste Management. As of July 1, 2010, the Division of Air and Waste Management was split into two distinct Divisions: the Division of Air Quality ("DAQ") and the Division of Waste Management ("DWM").

## ***FINDINGS OF FACT***

1. Operation of equipment at Respondent's facility has the potential to emit pollutants, SO<sub>x</sub> and NO<sub>x</sub>, in quantities that trigger Title V requirements and fees.
2. Respondent has held a Title V permit since 1998 and has gone through the process of obtaining a renewal permit once before since then.
3. The Department issued to Respondent, **Permit: AQM-003/00290 (Renewal 1)** with an effective date of May 4, 2007, and an expiration date of December 16, 2009.
4. Respondent's Title V Permit-R1 required it submit its renewal application twelve months prior to the expiration date of its permit, which would have been December 16, 2008.
5. Regulation 1130 and Respondent's Title V Permit-R1 allows for continued operation of its facility after the expiration date if a complete and timely renewal application is received by the Department and the Department is unable to issue the renewal permit before the active permit expires.
6. Respondent submitted its permit renewal application on March 24, 2009, which was 98 days after the December 16, 2008 deadline.
7. A Notice of Violation was issued to Respondent on July 22, 2010.
8. The Department issued to Respondent, **Permit: AQM-003/00290 (Renewal 2)** on June 30, 2011.
9. To the Department's knowledge, between the time **Permit: AQM-003/00290 (Renewal 1)** expired and issuance of the second renewal, Respondent operated its facility without a valid permit.

## ***VIOLATIONS***

1. Seven *Del. C.* § 6003(a)(1) states:  

*"No person shall, without first having obtained a permit from the Secretary, undertake any activity in a way which may cause or contribute to the discharge of an air contaminant."*
2. Seven *Del. C.* § 6003(b)(1) states:  

*"No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant."*
3. Section 5.1.1.5 of 7 DE Admin. Code 1130 states:  

*"Covered sources shall file an application for renewal of an operating permit at least six months before the date of permit expiration, unless a longer period [not to exceed 18 months] is specified in the permit."*

4. Section 7.3.2 of 7 DE Admin. Code 1130 states:

*“A source's right to operate shall terminate upon the expiration of its permit, unless a timely and complete renewal application has been submitted at least six months before the date of expiration or such earlier date as the Department may specify in the permit.”*

5. Condition 2.1.2 of **Permit: AQM-003/00290 (Renewal 1)** states:

*“The Company's right to operate shall cease upon the expiration date unless a timely and complete renewal application has been submitted to the Department twelve (12) months prior to the expiration date of this permit.”*

### **CONCLUSION**

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated 7 Del. C. § 6003(a)(1) and (b)(1) and continues to violate the statute by operating equipment at its facility, which may cause or contribute to the discharge of an air contaminant, after its Title V renewal permit expired on December 16, 2009.
2. Respondent violated Section 5.1.1.5 of 7 DE Admin. Code 1130 and Condition 2.1.2 of **Permit: AQM-003/00290 (Renewal 1)** when it failed to submit an application for its Title V renewal permit by December 16, 2008.
3. Respondent violated Section 7.3.2 of 7 DE Admin. Code 1130 and continues to violate that Regulation since it has continued to operate its facility after expiration of its permit on December 16, 2009.

### **NOTICE OF CONCILIATION**

The Department issued to Respondent, **Permit: AQM-003/00290 (Renewal 2)** on June 30, 2011. Therefore, the Notice of Conciliation portion of the original Order is no longer applicable as Respondent is now bound by the terms of second renewal permit issued on June 30, 2011.

### **ASSESSMENT OF PENALTY**

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$12,750 for the violation identified in this Assessment and Order and costs according to 7 Del. C. § 6005(c). Respondent shall submit a check to the Department in the amount of \$12,750 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty. The check shall be made payable to the “State of Delaware” and shall be directed to: Valerie M. Satterfield, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.

## ***PUBLIC HEARING***

This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 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) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. 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***

Respondent may prepay the administrative penalty of \$12,750 and the Department's estimated costs in the amount of \$1,913 in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

If you have any questions, please contact Paul Foster at (302) 323-4542.

2/22/12  
Date

  
Collin P. O'Mara, Secretary

cc: Valerie M. Satterfield, Deputy Attorney General  
Ali Mirzakhali, P.E., Director  
Paul Foster, P.E., Program Manager  
Everett DeWhitt, PhD., Managing Engineer  
Dawn Minor, Paralegal  
Jenny Bothell, Enforcement Coordinator  
Dover File

## ***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Clean Earth of New Castle, Inc.** hereby waives its right to a hearing and its opportunity to appeal or contest this Amended Order and agrees to the following:

1. Respondent will settle the above alleged violations through this Amended Assessment and Order as set out below.
2. The Department shall accept \$6,375 of the administrative penalty to be paid to the Department within 30 days of receipt of this Amended Order. The penalty shall be paid by submitting a check payable to the "State of Delaware" to Valerie M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.
3. The Department shall allow Respondent to offset the remaining \$6,375 of the administrative penalty on a minimum 2:1 basis in the form of an Environmental Improvement Project ("EIP"). This EIP is described in Attachment A, which is incorporated herein by reference. Respondent shall complete the EIP as described, and by the dates specified, in Attachment A. If the Respondent fails to complete the EIP, Respondent shall pay the difference as an additional administrative penalty, within 30 days of notification in writing by the Department that Respondent has failed to meet the terms associated with the EIP.
4. Respondent will reimburse the Department in the amount of \$1,913, 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 be directed to Valerie M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

**Clean Earth of New Castle, Inc.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

## *ATTACHMENT A*

### Tree Planting Project

Respondent will plant and maintain two hundred, 5' to 6' Green Giant Arborvitae trees on its property located at 94 Pyles Lane in New Castle, Delaware. The environmental benefits expected from the successful implementation of this environmental improvement project ("EIP") include creation of a natural filter for pollutants generated at Respondent's facility, such as particulate matter, sulfur dioxide and carbon monoxide. In addition the trees will serve as visual and noise barriers for the residents who live near Respondent's facility. Upon completion of the project, Respondent will submit documentation to the Department providing the total amount expended for purchase and planting of the trees so that the Department can confirm that those expenditures are at least \$12,750 per the requirement of this Amended Order. Details of this EIP are contained in a proposal submitted to the Department under cover of a letter dated October 10, 2011 by Compliance Plus Services on behalf of its client Clean Earth of New Castle, LLC. This proposal, incorporated herein, is identified as Attachment B in this Amended Order.

Within 30 days of issuance of this Amended Order, Respondent will enter into a contract for the purchase and planting of two hundred, 5' to 6' Green Giant Arborvitae trees as described in Attachment B and provide the Department with a copy of said contract.

Within 180 days of the effective date of the contract, the purchase and planting of the trees as described in Attachment B shall be completed.

Within 30 days of completion of the project, Respondent shall submit documentation to the Department confirming completion of the project as well as documentation of the total amount spent for the purchase and planting of the trees as described in Attachment B.

The Department may, in its sole discretion, visit the site to further confirm satisfactory completion of the project. Within 30 days of receipt of the documentation regarding completion of the project and expenditures, the Department will inform Respondent in writing whether or not the EIP has been completed to its satisfaction.

***ATTACHMENT B***

Copy of October 10, 2011 EIP Proposal submitted to DAQ from Compliance Plus Services on behalf of Clean Earth of New Castle, LLC.

**CPS**  
**COMPLIANCE PLUS SERVICES**



October 10, 2011

Via UPS Ground

Mr. Paul E. Foster, P.E., Program Manager  
State of Delaware  
Department of Natural Resources and Environmental Control  
Division of Air and Waste Management  
715 Grantham Lane  
New Castle, DE 19720

**RE: Proposed Environmental Improvement Project to offset the Monetary Penalty Assessment Proposed in the Notice of Conciliation and Administrative Penalty Assessment, Secretary's Order No. 2011-A-0016 (the "Assessment and Order") Issued July 26, 2011 to Clean Earth of New Castle, LLC, 94 Pyles Lane, New Castle, Delaware**

Dear Mr. Foster:

Pursuant to our prior discussions, Compliance Plus Services, Inc., ("CPS") is pleased to submit for your consideration the attached proposal in response to the *Notice of Conciliation and Administrative Penalty Assessment*, on behalf of our client Clean Earth of New Castle, LLC. ("CENC").

As we discussed previously, CENC is proposing to implement an Environmental Improvement Project ("EIP") in lieu of paying the monetary penalty set forth in the July 26, 2011 Assessment and Order. The proposal includes the installation of 200 5-6' tall Green Giant Arborvitae trees which will provide a natural landscape perimeter buffer at CENC's current operating facility. The proposed tree-scape provides both an aesthetically pleasing buffer of the Facility for the people living in the adjacent neighborhood and also provides a natural filter for air born dusts, particulates and noise which will improve the air quality in the surrounding area. The total cost of the proposed project is approximately \$19,000, or about 1 ½ times the amount of the proposed penalty assessment.

The Arborvitae will be planted at strategic locations on CENC's property at 94 Pyles Lane, New Castle, Delaware consistent with the Tree Planting Plan included in the attached proposal. If the proposal is approved, the planting may be completed in either late fall or early spring.

CENC would appreciate the Departments consideration of this proposed EIP for satisfying the administrative penalty assessment. To this end, we would like to schedule a meeting with you to discuss the proposal in further detail. Please contact me at your convenience with a few dates that would be acceptable to you, and I will arrange the meeting with CENC.

Corporate Office:

P.O. Box 186

Harboro, PA 19040-0186

Ph: 215-734-1414 fax: 215-734-1424

[www.CPS-2Comply.com](http://www.CPS-2Comply.com)

Premier Industry Provider of Environmental and Safety Services

1-866-976-PLUS

Maryland Office:

P.O. Box 591

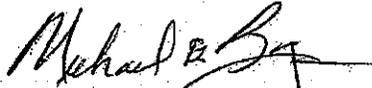
Hagerstown, MD 21741-0591

Ph: 410-409-3470

Mr. Paul E. Foster, P.E., Program Manager  
DNREC  
October 10, 2011  
Page 2

If you have any questions regarding the proposed EIP, please don't hesitate to call me. I can be reached to schedule the meeting or to discuss the EIP at 215.734.1414.

Sincerely,



Michael D. Logan, CHMM  
Vice President of Environmental Services  
*Compliance Plus Services, Inc.*  
**Corporate Consultant to the Clean Earth Companies**

MDL/des

Enclosure

cc: Averil Rance, CEI

# Proposed Environmental Improvement Project ("EIP") For Clean Earth of New Castle, LLC

## 1.0 PROJECT DESCRIPTION

Clean Earth of New Castle, LLC ("CENC") is proposing to plant landscape barriers along perimeter areas of its facility located at 94 Pyles Lane, New Castle, DE 19720 as part of an EIP. The newly landscaped areas will be comprised of Green Giant Arborvitae trees valued at approximately \$19,000 and are intended to enhance the aesthetic appearance of the site and provide additional controls for possible airborne particulates, noise and other potential pollutants. This EIP Proposal is in response to a Notice of Conciliation and Administrative Penalty Assessment issued to Clean Earth of New Castle, LLC by the Secretary on July 26, 2011 and is intended to provide an offset of the \$12,800 monetary assessment included in the Notice. The value of the trees and their planting represents an environmental improvement at this site that has a value of approximately 1½ times the penalty assessment. The expected costs of the EIP include the installation of up to 200 trees with an average height of 5-6 feet.

### 1.1 Tree Planting Plan

The location where the proposed tree-cape plantings will be installed at the facility are illustrated in Attachment 1. The trees will be installed at five (5) foot intervals on centers. This planting distance will allow the trees to mature into a physical screening barrier that will maximize the attributes and benefits of the proposed installation. The Green Giant Arborvitae are described as vigorous, fast "growing evergreens". These trees can grow up to 3 feet per year to establish a dense rich green foliage. The 200 trees proposed will provide over 1,000 feet of natural screening at the facility.

### 1.2 Tree Maintenance and Replacement Plan

CENC will maintain the Green Giant Arborvitae trees on a routine basis. The maintenance will be performed in order to help the trees become established, remain healthy and continue to grow. Monitoring trees for stress will be part of the maintenance program. The proposal for the installation includes a guarantee that any trees that die or fail to establish in the first year after planting will be replaced.

## 2.0 PROJECT BENEFITS

This proposed landscape project will provide a number of benefits and environmental enhancements to the local community and area surrounding the CENC facility. First, the planting of Green Giant Arborvitae trees along the facility property line will provide an aesthetic

enhancement to improve the integration of the CENC operation with the surrounding area. Additionally, the proposed tree line will provide a natural screen to act as a visual barrier for residents living in close proximity to CENC.

~~Secondly, the installation of up to 200 trees at this site is intended to improve air quality~~ conditions. These types of trees provide a physical filter of the air that moves through the trees by removing dusts and other airborne particulates. Additionally, through photosynthesis, trees absorb carbon dioxide from the air to form carbohydrates that are used in the plant's structure and life cycle. During this process, trees can also absorb other common air pollutants and "greenhouse" gases, such as ozone, carbon monoxide, and sulfur dioxide, while in return giving off oxygen.

Finally, the proposed tree line will provide a natural barrier to alternate noise that may be produced from the plant's current operation. The noise dampening effects of these tree-scapes are used widely for noise reduction along highways and have been reported as providing as much as 5-10 decibels reduction in noise. Green Giant Arborvitae trees are fast growing and can grow together forming a privacy fence surrounding the proposed areas. Green Giants have a nice pyramidal shape with dense, rich green foliage that has a graceful fernlike texture. These trees can grow 2-4 feet annually, are drought and cold tolerant, and visually pleasing. Green Giant Arborvitae trees require little pruning, if any, and will grow uniformly in all types of soils preferring slightly sandy soil types. Green Giant Arborvitae can grow as high as 40-60' in height and with a mature width of 10-16'.

### **3.0 SUMMARY OF PROJECT COSTS**

CENC contacted several landscape professionals to help determine the costs associated with this project. Because of the time of year, many landscapers are already involved in fall landscaping work. However, CENC was able to obtain a quotation from Brandywine Nurseries, which we believe represents a fair market price and is consistent with internet pricing that we have obtained for similar size trees (See Attachment II). Each Green Giant Arborvitae tree, with a height of 5-6' will cost \$95.00 to furnish and install. Accordingly, the total project costs for purchasing 200 of the Green Giant Arborvitae trees, and having them installed on 5' centers as indicated on the plan drawing, will be \$19,000.00 or approximately 148% of the penalty assessment value. A copy of the Brandywine Nursery Proposal is included as Attachment II of this Proposal.

### **4.0 TAX DEDUCTIBILITY**

CENC will not deduct any costs incurred in connection with or in any way associated with the project for any tax purpose or otherwise obtain favorable tax treatment for those costs.

## 5.0 PUBLICITY ABOUT THE PROJECT

CENC agrees that whenever it publicizes the Project in any way, it will state that the Project was undertaken as part of the settlement agreement of an enforcement action with DNREC.

## 6.0 PROJECT SCHEDULE

The following table outlines the proposed project schedule by task:

Project Item or Task	Time in Days
Execution of Conciliation and Administrative Penalty Assessment with DNREC that incorporates the EIP.	Day 0
CENC will sign contract with a Landscaper to purchase trees and plant them as indicated in the Tree Planting Plan.	Day 30
CENC estimates completion of the project (either late fall or early spring)	Day 180
CENC will submit documentation to the Department confirming the completion of the transaction.	Day 210

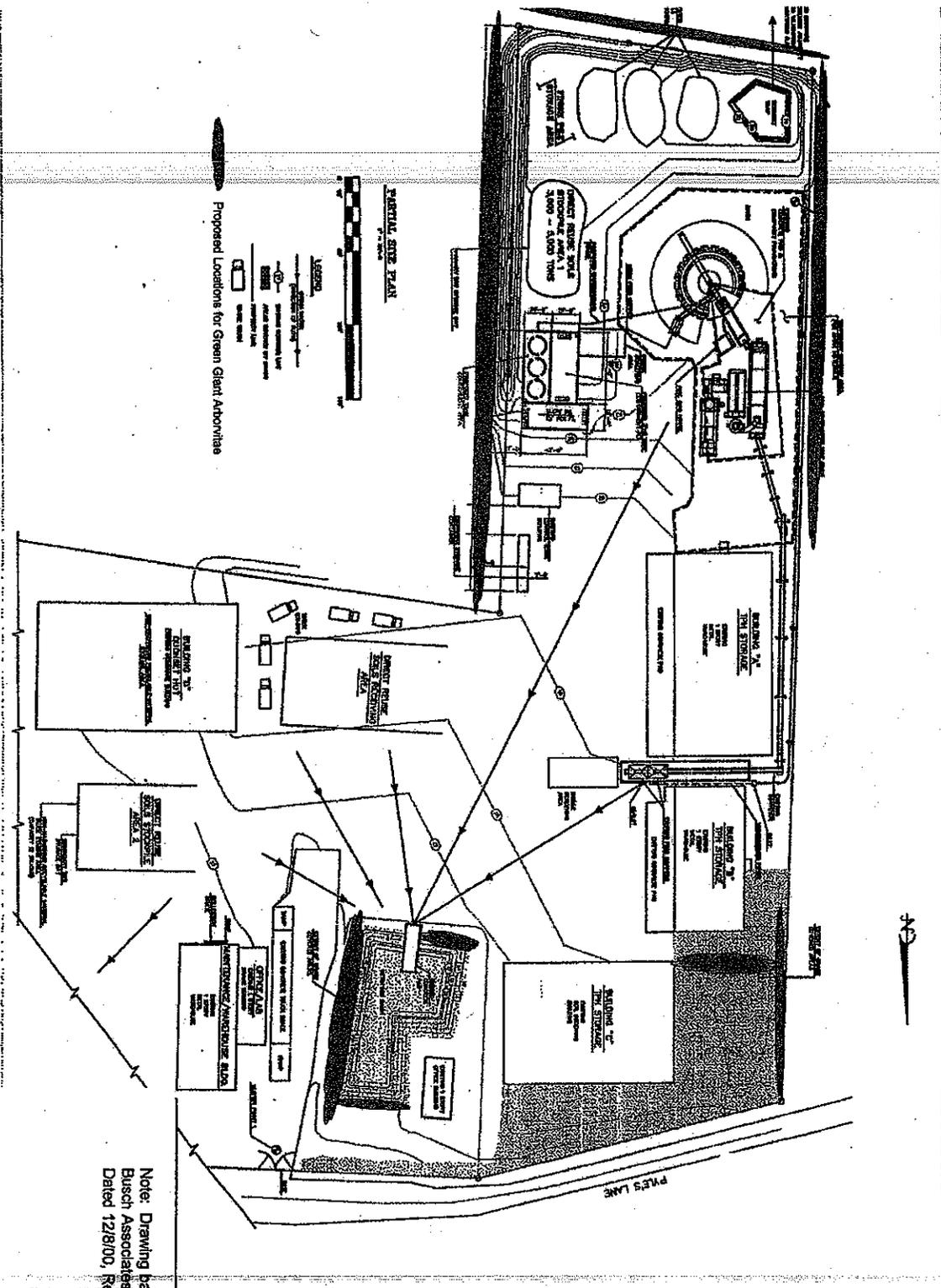
## 7.0 COMPLETION OF THE PROJECT

CENC will provide a final completion report to the Department within thirty (30) days following the planting of the trees.

*N:\#0150 - CLEAN EARTH INC\Project #0150-0799-02\CENC Facility\NOV\July 2011 Air Permit Administrative Penalty Assessment\Proposed Community Environmental Project.docx*

*Proposed Facility Landscaping Drawing*

**Attachment I**



Proposed Locations for Green Giant Arborvitae

Note: Drawing based on Leonard Busch Associates Facility Site Plan Dated 12/8/00, Rev: 12/22/09.

<b>Proposed Facility Landscaping</b> Clean Earth of New Castle, LLC 94 Pyles Lane New Castle, DE 19720			Project No. 0150.0796.02
Revision No. 0			Modified By: R. Mayer
Date: 9/29/2011		Approved By: Bradley J. Cunningham, P.E.	
Compliance Plus Services, Inc. P.O. Box 166 Hatboro, PA 19040 Phone (215) 734-1414 Fax (215) 734-1424 www.CPS-2comply.com			

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**Attachment II**

*Proposal for the Purchase and Planting of  
Green Giant Arborvitae Trees*

Proposal



# Brandywine Nurseries

Since 1946

P.O. Box 9333 • Wilmington, Delaware 19809-0333 • (302) 429-0865 • Fax (302) 429-0167

PROPOSAL SUBJECT: <b>REARTR</b>	PHONE	DATE: <b>09/28/11</b>
STREET: <b>94 PYLE LANE</b>	JOB NAME	
CITY, STATE: <b>WILMINGTON, DE, 19805</b>	JOB LOCATION	

We hereby submit specifications and estimate for:

**SUPPLYING ALL LABOR + EQUIPMENT + MATERIAL TO:**

**FURNISH AND INSTALL 200 GREEN GIANT ARBORVITAE 4-5' \$75.00 EA \$15,000.00**

**FURNISH AND INSTALL 200 GREEN GIANT ARBORVITAE 5-6' \$95.00 EA \$19,000.00**

**TREES WILL BE PLANTED ON 5' CENTERS**

- Deposit of one-half (1/2) due at signing of contract. Balance due at completion.
- See reverse side for guarantee and important information.
- Prices quoted are valid for 1 month from date of proposal.
- This proposal price covers only the labor and material herein stated. There will be an additional charge for any extra material and labor not specifically stated in this proposal.

Your signature on this proposal constitutes an agreement to all terms stated herein and is a contract for the services or goods specified.

You, the buyer, may cancel this transaction any time prior to midnight on the 3rd day after the date of signing.

Accepted by: \_\_\_\_\_

Submitted by: Brian R. Janni

Page \_\_\_\_ of \_\_\_\_

Date: \_\_\_\_\_

Date: 9-28-11