



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

NOTICE OF CONCILIATION AND SECRETARY'S ORDER

Pursuant to 7 Del. C. § 6005(b)(2)

Order No. 2012-WH-0030

*PERSONALLY SERVED BY AN ENVIRONMENTAL
CRIMES UNIT OFFICER*

Issued To:

Mr. Michael P. Davidson, Owner & President
Mike Davidson Enterprises, LLC
3051 Willow Grove Road
Camden, DE 19934

Registered Agent:

National Corporate Research, LTD.
615 S. DuPont Highway
Dover, Delaware 19901

Dear Mr. Davidson:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Mike Davidson Enterprises, LLC, ("Respondent") in violation of Resource Recovery Facility Permit SW-09/03 ("permit"), issued November 6, 2009. Accordingly, the Department is issuing this Notice of Conciliation and Secretary's Order, pursuant to 7 Del. C. § 6005(b)(2).

BACKGROUND

Respondent is permitted to operate a construction and demolition waste recycling facility (Resource Recovery Facility) located at 3051 Willow Grove Road, Camden, Delaware 19934, Tax Parcel NM-00-11600-01-0700-00001. Respondent's permit regulates the facility's process of handling and managing construction and demolition (C&D) waste.

The Department issued Notices of Violation ("NOV") No. 10-SW-01 on April 6, 2010 and No. 12-SW-05 on May 14, 2012, formally notifying Respondent of violations and requiring Respondent to achieve compliance immediately and to document compliance within 30 days of receipt of each NOV.

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The Department conducted compliance assessments on May 17, 2012 and July 16, 2012 during which samples of mulch were taken. Analysis of the samples collected by the Department on May 17, 2012 revealed that concentrations of arsenic and chromium exceed the analytical and performance criteria specified in the permit. Analysis of the samples collected by the Department on July 16, 2012 revealed that concentrations of arsenic, chromium and PCBs exceed the analytical and performance criteria specified in the permit.

The Department issued Secretary's Order to Cease and Desist No. 2012-WH-0020 on June 8, 2012 in an effort to protect the environment and public health requiring Respondent to cease and desist the sale or use of mulch and to document compliance within 30 days of receipt of the Order. Respondent has failed to achieve compliance with the Order to Cease and Desist.

To date, Respondent has failed to correct its violations stipulated in previous enforcement documents; therefore, the Department is issuing this Notice and Order to prevent the facility from distributing mulch that fails to meet the analytical and performance criteria of the permit.

FINDINGS OF VIOLATIONS

1. Condition III.H of Permit SW-09/03 issued November 6, 2009 states:

H. Sampling and Analysis

1. Sampling and analysis for C&D mulch product for the Alternate Daily Cover (ADC) market:

Three 500 ml mulch product grab samples will be taken at random and thoroughly mixed together to make each composite sample. Frequency of composite ADC mulch product sampling will be:

- a. A composite sample will be taken on the initial day of grinding operation, and every grinding day thereafter until the analytical and performance criteria in Table 1 are achieved. The collected composite sample on the initial day of grinding ("day 1" sample) must also be analyzed using the Toxic Characteristic Leaching Procedure (TCLP) given in EPA method SW846. The mulch product sample must pass the TCLP test and must not exhibit a Resource Recovery and Conservation Act (RCRA) characteristic. When the analytical and performance criteria are achieved, sampling frequency will be reduced from daily to:*
- b. One grinding day each week, for at least three consecutive weeks; and one grinding day each week thereafter until the analytical and performance criteria in Table 1 are achieved. After three weeks, or as soon thereafter as the analytical and performance criteria are achieved, sampling frequency will be reduced from weekly to:*
- c. One grinding day a month for two consecutive months, and one grinding day each month thereafter until the analytical and performance criteria in Table 1 are achieved. After two months, or as soon thereafter as the analytical and performance criteria are achieved, sampling frequency will be reduced from monthly to:*
- d. Quarterly. This is the minimum sampling frequency.*

Each composite ADC mulch product sample will be analyzed for the analytical parameters, and compared to the analytical and performance criteria, listed below in the third column of Table 1. ADC mulch product from each sampling day will be stored at the facility until analytical results have been received and the analytical and performance criteria in Table 1 have been achieved.

If, at any time, Davidson's monthly or quarterly ADC mulch product sample fails to achieve any criteria listed in Table 1, the facility will review operating procedures and take steps to correct the problem. Additionally, Davidson's must return to step "b" of section III.H.1, the sampling analysis plan listed above for weekly sampling of the mulch product.

Table 1: Analytical and Performance Criteria for ADC Mulch Product:

Analytical Parameter	Analytical Method	Performance Criteria for ADC mulch product (Result must be)
Percent Moisture	ASTM D2974	Minimum 20 %
Percent Inert	ASTM D2974 Method C	Minimum 65%
Particle Size	Modified ASTM D422	90% must pass through 2" screen
PCB's	EPA Method 8082	Must not be in excess of 3 ppm
Asbestos	PLM Dispersion Staining per 40CFR763	Must contain <1%
Arsenic	In accordance with EPA SW846	< 11 mg/kg
Barium	In accordance with EPA SW846	< 14,000 mg/kg
Cadmium	In accordance with EPA SW846	< 100 mg/kg
Copper	In accordance with EPA SW846	< 8,200 mg/kg
Chromium	In accordance with EPA SW846	< 610 mg/kg
Lead	In accordance with EPA SW846	< 1,000 mg/kg
Mercury	In accordance with EPA SW846	< 610 mg/kg
Selenium	In accordance with EPA SW846	< 1,000 mg/kg
Silver	In accordance with EPA SW846	< 1,000 mg/kg

2. Sampling and analysis for C&D mulch product for residential/commercial use:

a. Phase 1 – Daily Sampling:

- i. At the end of each grinding day, all the material ground into mulch during that day will be placed in a single pile. From this pile, five (5), 500 ml grab samples will be randomly collected from different locations within the pile.
- ii. The five (5), 500 ml grab samples will be mixed together to produce one (1) composite sample that will be analyzed for the analytical parameters listed in Table 2. In addition, the collected composite sample on the initial day of grinding (1 sample) must also be analyzed using the TCLP given in EPA method SW846. The mulch product sample must pass the TCLP test and must not exhibit any RCRA characteristic.

- iii. *The pile must remain separate from any other mulch product piles and cannot be processed or sold until the sampling analysis results meets the analytical requirements specified in Table 2. If the results indicate that the mulch does not meet the requirements in Table 2 then the mulch product cannot be used for residential/commercial mulch.*
- iv. *Phase 1 will be conducted for the first five (5) days that C&D wood waste is ground into mulch product. Once Davidson's receives the analytical results from the 5 composite mulch product samples and the samples meet all of the analytical requirements listed in Table 2 then Davidson's can proceed to the "Phase 2 – Weekly Sampling" plan. If any of the samples fail to meet the analytical requirements listed in Table 2 then Davidson's will 1) notify SHWMB, 2) modify operating procedures to ensure that material resulting in sample analysis failure are removed prior to grinding and 3) remain at the "Phase 1 – Daily Sampling" plan until 5 consecutive days of samples can meet the analytical requirements.*

b. *Phase 2 – Weekly Sampling:*

- i. *At the end of each grinding week, all the material ground during that week will be placed in a single pile. From this pile, five (5), 500 ml grab samples will be randomly collected from different locations within the pile.*
- ii. *The five (5), 500 ml grab samples will be mixed together to produce one (1) composite sample that will be analyzed for the analytical parameters listed in Table 2.*
- iii. *The pile will remain separate from any other mulch product piles and cannot be processed or sold until the sampling analysis results meet the analytical requirements specified in Table 2. If the results indicate that the mulch does not meet the requirements in Table 2 then the mulch product cannot be used for residential/commercial mulch.*
- iv. *Phase 2 will be conducted for at least three (3) consecutive weeks. Once Davidson's receives the analytical results from the three (3) weekly mulch product samples and the samples meet all of the analytical requirements listed in Table 2, then Davidson's can proceed to the "Phase 3 – Monthly Sampling" plan. If any of the samples fail to meet the analytical requirements listed in Table 2 then Davidson's will 1) notify the SHWMB, 2) modify operating procedures to ensure that material resulting in sampling analysis failure are removed prior to grinding and 3) must return to the "Phase 1 – Daily Sampling" plan.*

c. *Phase 3 – Monthly Sampling:*

- i. *At the end of each grinding month, all the material ground during that month will be placed in a single pile. From that pile, ten (10), 500 ml grab samples will be randomly collected from different locations within the pile.*

- ii. *The ten (10), 500 ml grab samples will be mixed together to produce 1 composite sample that will be analyzed for the analytical parameters listed in Table 2. In addition, once a year, one (1) of the collected composite sample must also be analyzed using the TCLP given in EPA method SW846. The mulch product sample must pass the TCLP test and must not exhibit any RCRA characteristic.*
- iii. *The pile will remain separated from any other mulch product pile and cannot be processed or sold until the sampling analysis results meet the analytical requirements specified in Table 2. If the mulch does not meet the requirements listed in Table 2, then the mulch product cannot be used for residential/commercial mulch.*
- iv. *If any of the samples fail to meet the sampling requirements listed in Table 2, then Davidson's will 1) notify the SHWMB 2) modify operating procedures to ensure that material resulting in sampling analysis failure are removed prior to grinding and 3) return to the "Phase 2 – Weekly Sampling" plan.*

Any mulch that does not meet the analytical requirements listed in Table 2 can be used for ADC if and only if, the samples meet the analytical requirements listed in Table 1. If the mulch does not meet the ADC requirements listed in Table 1, then the mulch must be disposed of properly.

Table 2: Analytical and Performance Criteria for Residential/Commercial Mulch Product:

<i>Analytical Parameter</i>	<i>Analytical Method</i>	<i>Requirements for Residential/Commercial mulch product (Result must be)</i>
<i>PCBs</i>	<i>EPA Method 8082</i>	<i>Must be non-detect</i>
<i>Asbestos</i>	<i>PLM Dispersion Staining (40 CFR 763)</i>	<i>Must contain < 1%</i>
<i>Arsenic</i>	<i>In accordance with EPA SW846</i>	<i><11 mg/kg</i>
<i>Barium</i>	<i>In accordance with EPA SW846</i>	<i><550 mg/kg</i>
<i>Cadmium</i>	<i>In accordance with EPA SW846</i>	<i><4 mg/kg</i>
<i>Copper</i>	<i>In accordance with EPA SW846</i>	<i><310 mg/kg</i>
<i>Chromium</i>	<i>In accordance with EPA SW846</i>	<i><35 mg/kg</i>
<i>Lead</i>	<i>In accordance with EPA SW846</i>	<i><400 mg/kg</i>
<i>Mercury</i>	<i>In accordance with EPA SW846</i>	<i><10 mg/kg</i>
<i>Selenium</i>	<i>In accordance with EPA SW846</i>	<i><26 mg/kg</i>
<i>Silver</i>	<i>In accordance with EPA SW846</i>	<i><39 mg/kg</i>

- 3. *The DNREC retains the right to collect composite samples of the ADC mulch product and/or residential/commercial mulch product, on a quarterly basis, to be analyzed for the analytical parameters in Table 1. Davidson's shall bear the expense of all samples obtained and analyzed by the DNREC. Davidson's and the DNREC retain the right to split samples for separate analysis.*

Respondent failed to comply with the required sampling frequency and the analytical and performance criteria. Analysis of the samples collected by the Department on May 17, 2012

and July 16, 2012, pursuant to condition III.H.3 of Permit SW-09/03, revealed that concentrations of arsenic, chromium, and PCBs exceed the analytical and performance criteria specified in the permit. Department representatives witnessed Respondent's distribution of mulch to a customer on July 16, 2012, signage advertising the sale of mulch at the facility, and a commercial billboard advertising the sale of mulch by Respondent. Failing to conduct the required sampling and analysis, and selling or providing mulch that failed to achieve the analytical and performance criteria specified in the permit are **violations of permit condition III.H.**

2. Condition III.I of Permit SW-09/03 issued November 6, 2009 states in part:

Reporting...

Quarterly:

A report on C&D Mulch product analytical parameters and performance criteria and amounts of C&D wastes handled and products generated is required on a quarterly basis. These quarterly reports may be submitted to SHWMB via e-mail. The reports are due 15 days after the end of the quarter; April 15th (for the quarter ending March 31st), July 15th, October 15th, January 15th. These quarterly reports will provide the following information:

- a. C&D mulch product analytical parameters and performance criteria.*
- b. Results for any TCLP tests run during the preceding quarter.*
- c. Quantity of C&D waste received at the facility.*
- d. Quantity and type of waste from C&D loads sold or sent for recycling.*
- e. Quantity of non processable waste from C&D loads sent to the landfill.*
- f. Quantity of unprocessed C&D waste stored on site.*

And:

Annually:

No later than February 15 each year, Davidson's will provide an updated closure cost estimate taking into account the rate of inflation, the facility's current solid waste removal cost, and the maximum amount of C&D waste that was stored on the site at one time in the preceding calendar year. If the cost estimate has increased over the amount of financial assurance provided; Davidson's must accordingly provide increased financial assurance, along with an updated Irrevocable Standby Letter of Credit, within six weeks of the updated closure cost estimate.

No later than February 15 each year, Davidson's will submit an annual report for the previous calendar year in hard copy format, and include the following information:

- a. A summary of the information provided to the DNREC in the four quarterly reports that were submitted for the year.*
- b. A list of recycling facilities used during the year.*
- c. A list of solid waste transporters who deliver waste to the facility during the year.*

Respondent failed to comply with the reporting requirements. The quarterly report due January 15, 2010 was late; the cover letter was dated February 8, 2010. The quarterly report due April 15, 2010 was late and incomplete; it was received May 10, 2010 and included no analytical or performance data. The quarterly reports due July 15, 2010 and

October 15, 2010 were not received. The quarterly report due January 15, 2011 was incomplete; it included no data for October 2010 and no analytical or performance data. The quarterly reports due April 15, 2011, July 15, 2011, October 15, 2011, January 15, 2012, and April 15, 2012 were not received. The quarterly report due July 15, 2012 was submitted on time but was also incomplete.

The annual report due February 15, 2010 was late and incomplete; received February 26, 2010 and missing closure cost estimates. The annual report due February 15, 2011 was incomplete; missing closure cost estimates, list of recycling facilities used, list of solid waste transporters who delivered to the facility, and the analytical and performance data summary. The annual report due February 15, 2012 was not received until May 3, 2012 and was missing closure cost estimates, a list of recycling facilities used, a list of solid waste transporters who delivered to the facility, and the analytical and performance data summary. **NOVs addressing these violations were issued April 6, 2010 and May 14, 2012 with compliance expected within 30 days, but compliance was never achieved.** Failing to submit complete reports by the dates specified in the permit is a violation of **permit condition III.I.**

3. **Condition III.J of Permit SW-09/03 issued November 6, 2009 states:**

Recordkeeping

The following logs and records will be stored on site and retained for at least three (3) years and made immediately available upon DNREC request.

1. *Weight and data received for each incoming C&D load.*
2. *Weight and type of each waste derived from C&D waste sold or sent for recycling.*
3. *Weight and disposal location for waste from C&D loads disposed of as solid waste.*
4. *List of recycling facilities and solid waste transporters used, with addresses and phone numbers.*
5. *Documentation of personnel training.*
6. *Vector inspections.*
7. *Safety inspections.*
8. *Fire inspections and visits from the Felton Fire Department.*
9. *Inspections for litter and dusting problems.*
10. *Results from analytical and performance testing of mulch product specified in section III.H of this permit.*
11. *Major equipment maintenance.*
12. *A record of fires, spills, and uncontrolled releases.*
13. *A record of complaints received about excessive dust, litter, noise, and odor.*

Respondent failed to comply with the recordkeeping requirements. Records of analytical and performance testing were requested via email on several occasions including December 16, 2010, April 5, 2011, April 19, 2011, and November 1, 2011. Failing to maintain and provide records of analytical and performance testing specified in the permit is a **violation of permit condition III.J.**

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent violated, and continues to violate, the above cited permitting provisions despite the Department's efforts to work with the facility to achieve compliance. To protect the environment and human health, there is an immediate need to prevent Respondent's distribution of contaminated mulch, to have Respondent properly dispose of the contaminated mulch, and to have Respondent properly remove the sources of contamination.

NOTICE OF CONCILIATION

It is the responsibility of the Department to insure that Respondent corrects all current violations and avoids any future violations. Therefore, in consideration of the foregoing findings, notice is hereby given that it is proposed, pursuant to 7 Del. C. § 6005(b)(2), that Respondent can best achieve compliance with the sampling and analysis requirements in conditions III.H, III.I, and III.J of Resource Recovery Permit SW-09/03 ("permit"), issued November 6, 2009, by undertaking the following actions:

In a manner in full compliance with all applicable laws and regulatory requirements, Respondent shall:

1. Immediately upon receipt of this Notice and Order, stop distributing any and all ADC mulch or residential and commercial mulch until it is documented to the Department, and Department concurrence is received, that the mulch meets the analytical and performance criteria in condition III.H. of the permit.
2. Within 72 hours of receipt of this Notice and Order, identify and permanently remove from the facility, via proper disposal, prohibited items specified in condition II.B of the Permit.
3. Within 15 days of receipt of this Notice and Order, provide documentation to the Department indicating that the mulch failing the analytical and performance criteria has been properly disposed, which shall include proof of hauling and proof of receipt by an appropriate facility as specified in condition III.H.2 of the Permit.
4. Perform the permit-required sampling (section III.H. of the permit) in the presence of Department representatives, split the samples with the Department for analysis, and report the results to the Department within the permit-required timeframes (section III.I. of the permit).
5. Submit all documentation and correspondence to:

Department of Natural Resources and Environmental Control
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, DE 19901

Nothing in this document shall be deemed to stop, or in any way preclude, any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating this violation.

PUBLIC HEARING

This Notice of Conciliation and Secretary's Order shall become effective and final, and all proposals under Notice of Conciliation, above, are hereby ordered, unless the Department receives from Respondent, no later than twenty (20) days from receipt of this Notice and Order, a written request for a public hearing on these matters as provided in 7 Del. C. § 6005(b)(2). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Notice of Conciliation and Secretary's 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.

8/3/12
Date


Collin P. O'Mara, Secretary

- cc: Ralph K. Durstein III, Deputy Attorney General
Marjorie A. Crofts, Director WHS
Nancy C. Marker, Program Administrator, SHWMS
Bill Miller, Program Manager, SHWMS
James D. Short, Environmental Scientist, SHWMS
Jennifer M. Bothell, DNREC Enforcement Coordinator
Susan S. Baker, Paralegal
Michael P. Davidson, Owner, 5500 Anderby Hall Road, LLC
SHWMS File