



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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**Notice of Conciliation Proceedings, Administrative Penalty  
Assessment and Secretary's Order**  
Issued Pursuant to 7 *Del. C.* § 6005

**ORDER NO. 2013-WH-0009**

***PERSONALLY SERVED BY  
AN ENVIRONMENTAL CRIMES  
UNIT OFFICER***

**Issued To:**

Ms. Frances Reed-Dunlap &  
Mr. Frederick T. Reed  
206 Lake Drive  
Milton, Delaware 19968

This Assessment and Order serves to notify Ms. Frances Reed-Dunlap and Mr. Frederick T. Reed ("Respondents") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondents in violation of 7 *Del. C.* Chapter 60, and 7 DE Admin. Code 1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW"). The Department, as set forth below, has determined that Respondents have: (1) unlawfully disposed of solid wastes, and (2) are storing solid wastes while operating a materials recovery facility on private property, without the required permits from the Department. The collection, storage, treatment, and disposal of these solid wastes constitute ongoing violations of Delaware laws and applicable environmental regulations. Accordingly, the Department is issuing this Notice of Conciliation Proceedings, Administrative Penalty Assessment and Secretary's Order, pursuant to 7 *Del. C.* § 6005(b)(2) and (b)(3).

**BACKGROUND**

The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of the improper, inadequate, or unsound management of solid wastes. Regulations pertaining to the collection, storage, transportation, treatment, and disposal of solid wastes have been established to assure

*Delaware's Good Nature depends on you!*

the safe and adequate management of solid wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.

Mr. Reed, a demolition contractor by trade, is the owner of Driftwood Construction, LLC. Mr. Reed has disposed of and is storing solid wastes illegally on two separate parcels of land on Diamond Farm Road in Milton, Delaware, and on one parcel on Round Pole Bridge Road in Milton. The three sites are held in trust and managed by Ms. Frances Reed-Dunlap, Trustee.

The primary disposal site ("Site 1") is a wooded 5.26 acre section of agricultural land located west of Diamond Farm Road at Walker Road and is identified by the Sussex County government tax records as parcel 235-26.00-4.00 (121.72 acres in total area). The solid wastes deposited at this site consist of wood debris from residential housing demolition and incidental metal, plastics, vinyl siding, and regular non-putrescible household waste items including furniture, sinks, mattresses, etc. This site is also a storage yard for tree debris and land clearing vegetation wastes, assumed to have been generated on site.

The second site of illegal disposal activity ("Site 2") is a rear easterly section of abandoned agricultural land with farm outbuildings at a parcel of property adjacent to Walker Road on the south and east of Diamond Farm Road. This property is identified by Sussex County government tax records as parcel 235-26.00-6.00 (118.34 acres in total area). Wastes at this location consist mostly of woody tree debris not generated on site. Mr. Reed voluntarily admitted to Department staff that said waste was removed during land clearing activity at other locations and transported to, and deposited on, this site by Mr. Reed. Other wastes at this site are comprised of tires, concrete, stone, and Construction and Demolition ("C&D") wastes.

The third and final site ("Site 3") subject to this action is a small portion of a larger parcel of property on Round Pole Bridge Road in Milton, Delaware. Site 3 is an estimated ½ acre cleared area of wooded agricultural land identified by the Sussex County government tax records as parcel 235-15.00-33.00 (325.61 acres in total area), on the north side of Round Pole Bridge Road, approximately 1.77 miles east of Cave Neck Road in Milton. This site was formerly a lot for a small home that was demolished; however, most of the brick and block from the foundation remains onsite. The site, for the purposes of this action, has a few small piles of C&D wastes that were deposited resulting from the demolition, and/or brought on site by Mr. Reed from other activities.

On or about June 29, 2011, Respondents were investigated by the Department's Environmental Crimes Unit ("ECU"), acting upon an anonymous tip that C&D and yard wastes were being deposited on the property referred to in this Assessment and Order as Site 1.

On or about December 6, 2011, Respondents were investigated by the Department's ECU for a similar anonymous complaint claiming that Mr. Reed was illegally depositing the C&D wastes and tree debris at Site 1. The officer made contact with Respondents and issued a verbal warning to stop bringing in any more wastes.

On or about January 11, 2012, the ECU was again called out to Site 1 for a complaint about illegal dumping. The ECU report indicates the Respondents were again investigated for illegally dumping and storing solid wastes on site without a permit or approval from the Department. Mr. Reed was issued two (2) citations for three (3) violations of illegal disposal, more specifically, violations of 7 Del. C. § 6025(b), disposing of solid wastes in an area not designated by the Department.

Seven Del. C. § 6025(b) states: *“No person shall cause or contribute to the disposal or discharge of solid waste anywhere in the state including any surface or ground water, except:*

- 1.) Through municipal or private solid waste collection systems which have received a permit from the Department; or*
- 2.) In solid waste disposal facilities which have received a permit from the Department; or*
- 3.) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency, or company which has received a permit from the Department.”*

On January 30, 2012, the Department’s Solid and Hazardous Waste Management Section (SHWMS) issued a letter to Mr. Reed providing guidance for cleanup at Site 1 and reiterating his verbal agreement to commence remediation of the site within 30 days of the receipt of the SHWMS letter. Mr. Reed also verbally agreed to voluntarily begin cleanup by February 28, 2012.

On February 29, 2012, remediation efforts began. Mr. Reed initially began screening and segregating salvageable wastes from the waste piles. However, the Department anticipated the site being fully remediated in a timely fashion rather than salvaged for profit. The SHWMS advised the Respondents that the cleanup of the site was to maintain sufficient progress in order to complete remediation in a satisfactory and timely manner. Mr. Reed stated to the SHWMS that his current financial situation has made cleanup efforts extremely difficult. The SHWMS has been in regular contact with Mr. Reed through phone calls and regular site visits to the referenced property.

The SHWMS, having conducted weekly inspections on the 8<sup>th</sup>, 15<sup>th</sup>, and 21<sup>st</sup> of March 2012, and the 11<sup>th</sup> and 25<sup>th</sup> of April 2012, documented very little progress with site remediation. This is unsatisfactory to the Department. Respondents have provided to the Department fifteen (15) weigh tickets totaling 93.75 tons of incidental trash pulled from the waste piles. These wastes were transported by Respondents to the Delaware Solid Waste Authority Jones Crossroads landfill in Georgetown. In addition, Respondents have provided three (3) weigh tickets totaling 6.53 tons of recyclable waste material.

During the March 8<sup>th</sup>, 2012 field inspection, staff members from the SHWMS identified the waste piles and accumulated salvageable wastes at Site 2. Through his own admission, Mr. Reed acknowledged the vegetative debris was brought to this location for the purposes of storing the wastes until a tub grinder was available for mulching. Mr. Reed was advised by the SHWMS

several times that DRGSW requires a permit from the Department in order to carry out this type of operation. The SHWMS provided Mr. Reed with a permit application and checklist on at least one occasion. A permit application has not been submitted, nor has a permit been obtained.

On or about May 3, 2012, Mrs. Reed-Dunlap contracted with Mid-Atlantic Composting and Recycling ("MACR") to grind the C&D waste materials. MACR brought a tub grinder to "Site 1" at a rate of \$350 per hour to grind an unknown volume of C&D waste materials. Mrs. Reed-Dunlap voluntarily informed the Department that the grinding of the waste materials cost approximately \$3,500.00. The Department advised Mrs. Reed-Dunlap to have the mulch pile tested prior to recycling/disposal.

On July 23, 2012, the Department received a letter from Tim Willard, Esquire, of Fuqua, Yori, and Willard, P.A., formally informing the Department that he was representing Mrs. Reed-Dunlap. Mr. Willard indicated that it was his understanding that the Department was preparing an Administrative Order for cleanup of Mrs. Reed-Dunlap's property. He instructed the Department to send that correspondence directly to his attention. Mr. Willard further indicated that his client "anticipates cooperating" with the Department.

Mr. Willard arranged for sampling of the ground wood waste, or mulch pile, on December 17<sup>th</sup>, under advisement of the Department. Mr. Willard contacted Mr. Ian Kaufman, Certified Professional Soil Scientist, with Delmarva Environmental, Inc., to conduct the sampling. The Department was on site for sampling of the mulch pile. Mr. Kaufman gathered a composite sample from three locations within the mulch pile and prepared and shipped the samples to an analytical laboratory.

On January 14, 2013, the Department received the analytical results of the mulch sample analysis. Upon review of the analysis, the Department deemed the mulch pile in question acceptable for a residential and/or commercial mulch product, as briefed in a letter dated January 22, 2013 to Mr. Willard. The Department informed Mrs. Reed-Dunlap that she may proceed with recycling/disposal options for the mulch pile that was sampled and tested. Since that time, the Department has received no updates as to the status of the mulch pile.

On March 4, 2013, Mr. Willard informed the Department, via e-mail, of a fire that occurred at "Site 1" on the evening of March 2<sup>nd</sup>. The Department responded to the site in question, on the afternoon of March 4<sup>th</sup>, and determined that approximately 13,000 square feet of the disposal area on "Site 1," was actively burning upon its arrival. By March 5<sup>th</sup>, on the following day, the fire was completely extinguished, under the Department's direction, with the assistance of the Milton Fire Department and the Delaware State Forestry Service. The Milton Fire Department recorded in their incident summary that the fire had been set, but the official results of their investigation have not yet been released.

Based on Respondent's lack of continuing progress and due diligence for remediating the illegally deposited solid wastes at the above referenced sites, and in consideration of the leniency the Department has granted Respondents thus far (based on Mr. Reed's stated financial situation and with repeatedly ignored requests to continue any regular site remediation), the Department

has no option other than to pursue enforcement to ensure timely and appropriate remediation of the three sites.

Over the course of the initial investigations and through the current status of the remediation at Site 1, the Department's Environmental Crimes Unit has deemed Ms. Frances Reed-Dunlap, trustee for the above mentioned properties, and Mr. Frederick T. Reed, Respondents, in violation of 7 *Del. C.* § 6025(b). Additionally, Respondents are in violation of 7 *Del. C.* § 6003 and DRGSW.

### VIOLATIONS

The Department has found Respondents in continued violation of 7 *Del. C.* § 6025(b). Further, Respondents continue to be in violation of 7 *Del. C.* Chapter 60 and 7 DE Admin. Code 1301, Delaware's *Regulations Governing Solid Waste*, resulting from the illegal disposal and storage of solid wastes in areas not designated by the Department, and without permit or approval by the Department.

Respondents were investigated by the Department regarding the illegal disposal and storage of solid wastes at the above referenced properties. Respondents managed some of the stored wastes by separating recyclable wastes from non-recyclable wastes. The activities of storing, and processing solid wastes each require a permit as set forth in 7 *Del. C.* § 6003(a)(4) which reads in part:

*(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity...*

*(4) In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or...*

In addition, these activities are in violation of DRGSW § 4.1.1.1 which reads:

*No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under Section 2.3, without first having obtained a permit from the Department.*

The Department, tasked with overseeing the remedial activities at the three disposal sites, has worked cooperatively with Respondents to provide a sufficient amount of time to remove the solid wastes. Respondents' efforts have not been satisfactory by the Department in either the remediation schedule or the rate of progress.

As Respondents have no documentation of work onsite other than eighteen (18) weigh tickets, the Department shall assess an administrative penalty to Respondents for the continued violation of state statute and regulations.

### CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondents have violated, and continue to violate, the above cited statutory and regulatory provisions despite the Department's efforts to work with the Respondents to achieve compliance.

### NOTICE OF CONCILIATION

It is the desire of the Department that Respondents correct all current violations and avoid 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 Respondents can best achieve compliance by undertaking the following actions.

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

1. Immediately upon receipt of this Assessment and Order, identify the wastes on the subject properties, and determine which wastes are to be lawfully disposed and which wastes can be legally recycled at an approved recycling facility;
2. Within thirty (30) days of receipt of this Assessment and Order, have permanently removed from the three properties in question, "Site 1," "Site 2," and "Site 3," via proper recycling, all solid wastes that can be recycled. Proof of lawful recycling or lawful management in the form of the original weigh tickets shall be submitted to the Department within forty-five (45) days of receipt of this Assessment and Order;
3. Within thirty (30) days of receipt of this Assessment and Order, have permanently removed from the three properties identified as "Site 1," "Site 2," and "Site 3," via proper disposal, all solid wastes that cannot be recycled. Proof of lawful disposal in the form of the original weigh tickets shall be submitted to the Department within forty-five (45) days of receipt of this Assessment and Order.

Submit all documentation and correspondence to:

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

### **ASSESSMENT OF PENALTY AND COSTS**

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondents that on the basis of its findings, the Department is assessing Respondents an administrative penalty of \$50,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$7,500.00, pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

The Department shall waive the \$50,000.00 administrative penalty if, in the Department's sole discretion, Respondents satisfy the deadlines listed in items 1-3, above and come into full compliance. The \$7,500.00 assessed estimated costs shall be due and payable to the Department, whether or not Respondents achieve compliance, within thirty (30) days from receipt of this Assessment and Order.

Should Respondents fail to achieve the deadlines in items 1-3, above, Respondents shall submit one check to the Department in the amount of \$50,000.00 and one check to the Department in the amount of \$7,500.00 to pay the estimated costs within thirty (30) days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.

Additionally, Respondents shall be assessed \$1,000.00 per day for each day of non-compliance, beginning 31 days after receipt of this Assessment and Order.

### **PUBLIC HEARING**

This Assessment and Order and all proposals included in this Order, shall become effective and final, and are hereby ordered, unless the Department receives from Respondents, no later than thirty (30) days from receipt of this Assessment and Order, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(2). In the event Respondents request a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondents' properties, 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.

Nothing in this document shall be deemed to estop, 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 these violations.

**PRE-PAYMENT**

Respondents may prepay the administrative penalty of \$50,000.00 and the Department's estimated costs in the amount of \$7,500.00 in the manner described in the assessment section above. By doing so, Respondents waive their right to a hearing and the opportunity to appeal or contest the Assessment and Order which shall become a final Order.

If you have any questions, please contact David Perrego at (302) 739-9403.

Date:

4/3/2013



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

xc: Ralph K. Durstein III, Deputy Attorney General  
Marjorie A. Crofts, Director, WHS  
Nancy C. Marker, Program Administrator, SHWMS  
David Perrego, Senior Environmental Control Specialist, SHWMS  
Susan S. Baker, Paralegal, SHWMS  
SHWMS File

## WAIVER OF STATUTORY RIGHT TO A HEARING

**Ms. Frances Reed-Dunlap and Mr. Frederick T. Reed** hereby waive their right to a hearing and their opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Ms. Frances Reed-Dunlap and Mr. Frederick T. Reed** will pay the administrative penalty in the amount of \$50,000.00 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 Ralph K. Durstein III, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **Ms. Frances Reed-Dunlap and Mr. Frederick T. Reed** will reimburse the Department in the amount of \$7,500.00 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 Ralph K. Durstein III, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

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

By: \_\_\_\_\_  
Frances Reed-Dunlap

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

By: \_\_\_\_\_  
Frederick T. Reed