



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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**Administrative Penalty Assessment and
Secretary's Order to Revoke
Resource Recovery Facility Permit No. SW-09/03**
Issued Pursuant to *7 Del. C. Chapter 60*

ORDER NO. 2013-WH-0030

***PERSONALLY SERVED BY
AN ENVIRONMENTAL PROTECTION 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

This is to notify Mike Davidson Enterprises, LLC ("Respondent") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in continuing violation of Resource Recovery Facility Permit SW-09/03 ("Permit"), issued November 6, 2009, and Secretary's Order No. 2013-WH-0010 issued April 29, 2013. Due to longstanding violations and continued refusal to come into compliance, Permit No. SW-09/03 is hereby revoked with conditions.

BACKGROUND

The Secretary of the Department is responsible for the protection of the health of organisms and the environment and the public health and safety from the effects of the improper, inadequate, or unsound management of solid wastes, by establishing a program of regulation over the storage, transportation, handling and disposal of solid wastes, and to assure 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*.

Respondent operated a construction and demolition (C&D) waste recycling facility (Resource Recovery Facility) located at 3051 Willow Grove Road, Camden, Delaware 19934, Tax Parcel NM-00-11600-01-0700-00001.

Delaware's Good Nature depends on you!

The Department has conducted multiple compliance assessments at Respondent's facility between January 14, 2010 and the issuance of this Order. The Department has found numerous violations of Respondent's Permit, Delaware's *Regulations Governing Solid Waste*, and 7 *Del. C.* Chapter 60. Department staff had numerous conversations with the Respondent regarding the changes needed to bring the facility into compliance with the terms of the Permit and applicable laws. Upon Respondent's failure to reasonably respond, DNREC took the following administrative enforcement actions in attempt to bring Respondent into compliance:

- Notice of Violation dated April 6, 2010
- Notice of Violation dated May 14, 2012
- Secretary's Order to Cease and Desist dated June 8, 2012
- Secretary's Order and Notice of Conciliation dated August 3, 2012
- Notice of Intent to Suspend Permit No. SW-09/03 dated September 24, 2012
- Secretary's Order to Partially Suspend Permit No. SW-09/03 dated April 29, 2013
- A letter clarifying the Secretary's Order to Partially Suspend the Permit dated June 3, 2013.

Respondent failed to remedy the violations set forth in these administrative actions. Continuing or worsening violations include, but are not limited to:

- Improper storage and disposal of over 100,000 tons of waste.
- Exceeding analytical parameters established in the Permit, particularly for Arsenic, Chromium, and PCBs.
- Failure to submit reports as required.
- Managing large quantities of solid waste outside the permitted area.
- Acceptance and storage of prohibited waste.
- Grossly inadequate financial assurance.

Approximately 70,000 of the 100,000 tons of waste that has been improperly stored and disposed were added since May of 2012. Despite Respondent having been issued Notice of Violation (NOV) 12-SW-05 on May 9, 2012 detailing the existing violations and actions required to correct them, and multiple subsequent directives, Respondent clearly chose to operate the facility as an unauthorized, mismanaged landfill, not the recycling facility that was intended.

ORDER

IT IS HERBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 *Del. C.* Chapter 60, that:

1. Resource Recovery Facility Permit No. SW-09/03 is revoked.
2. Respondent shall immediately cease acceptance of solid waste¹.
3. Respondent shall immediately cease selling, or otherwise distributing, any mulch of any origin without demonstrating, to the satisfaction of the Department, its compliance with criteria set by the Department (attached hereto as Appendix A). Mulch may be sent to a permitted landfill without meeting the analytical and performance criteria if allowed by the landfill's acceptance procedures and if the transaction is reported as part of item 4.c. below.
4. Respondent shall immediately commence removal of all unprocessed, partially processed, or processed solid waste¹ on the facility and on adjacent properties

owned, now or formerly, by 5500 Anderby Hall Road, LLC (see Appendix B) in a manner that will eliminate the need for further maintenance or monitoring. This removal requirement shall include, but not be limited to, any solid waste¹ that may be in berms, blended with soil, or enveloped with soil. Furthermore, Respondent shall:

- a. By August 30, 2013, provide to the Department the name and contact information of all businesses that have delivered any waste or recyclables of any kind to Respondent, the type of waste or recyclables received, and the quantity of waste or recyclables received since November 6, 2009, and all receipts Respondent has to document such transactions.
 - b. By August 30, 2013, provide to the Department the name and contact information of all facilities that have received any waste or recyclables from Respondent, the type(s) of material Respondent sent to such facility, the total quantity of each type of material Respondent sent between November 6, 2009 and August 9, 2013, and all receipts Respondent has to document such transactions.
 - c. Beginning on September 6, 2013 and recurring on a monthly basis to be due no later than the 6th day of each subsequent month, provide to the Department the name and contact information of all facilities that have received any waste or recyclables from Respondent for the prior month, the type(s) of material Respondent sent to such facility, the total quantity of each type of material Respondent sent for the prior month, and all receipts Respondent has to document such transactions. The data reported for the month of August 2013, should only be for the dates August 9th through August 31st.
5. By September 9, 2013, Respondent shall provide financial assurance sufficient to cover the costs of closure in the amount of \$8,289,509.00 which includes costs associated with loading, transportation, and proper disposal for the approximately 100,140 tons of material at the facility. Respondent shall provide financial assurance through one of the mechanisms described in section 4.1.11.2.4 of Delaware's *Regulations Governing Solid Waste*.
6. Respondent shall retain, and make immediately available upon request by the Department, the following logs and records for any date or period between August 9, 2010 and August 9, 2013:
- a. Weight and data received for each incoming solid waste¹ load
 - b. Weight and type of each waste or recyclable sold or sent for recycling
 - c. Weight and disposal location for loads sent for waste disposal
 - d. List of recycling facilities and solid waste transporters used, with addresses and phone numbers
 - e. Documentation of personnel training
 - f. Vector inspections
 - g. Safety inspections
 - h. Fire inspections and visits from the Felton Fire Department and State Fire Marshal's Office
 - i. Inspections for litter and dusting problems
 - j. Results from analytical and performance testing of mulch product

- k. Major equipment maintenance
 - l. A record of fires, spills, and uncontrolled releases
 - m. A record of complaints received about excessive dust, litter, noise, and odor
- 7. Remediate the formerly-permitted site and adjacent properties owned, now or formerly, by 5500 Anderby Hall Road, LLC in a manner that will eliminate the need for further maintenance or monitoring as determined in the Department's sole discretion.

ASSESSMENT OF PENALTY AND COSTS

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 \$10,000.00 per day for each day after August 9, 2013 that any unprocessed, partially processed, or processed solid waste¹ remains on the facility or on adjacent properties owned, now or formerly, by 5500 Anderby Hall Road, LLC. The first payment shall be due on September 9, 2013. All subsequent payments shall be due on a weekly basis, no later than 4:00 p.m. each Monday. The checks shall be made payable to the "State of Delaware" and shall be delivered to:

Ralph K. Durstein III, Deputy Attorney General
Department of Justice, Environmental Unit
102 W. Water Street - 3rd Floor
Dover, Delaware 19904.

Respondent shall notify the Department at least 30 days in advance of the date the waste removal is expected to be complete. Department representatives will evaluate existing conditions on the date waste removal is expected to be complete, and the Department shall determine, in its sole discretion, whether or not Respondent has satisfied the conditions of item 4 in this Order.

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, but not limited to, administrative and civil penalties for each day of violation, designation as a chronic violator, or an action for the recovery of Department costs expended in abating this violation.

Date: August 9, 2013



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

1 – Solid waste including, but not limited to, C&D waste and recyclables

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
James Faedtke, Chief, Environmental Crimes Unit
Jennifer M. Bothell, Enforcement Coordinator, OTS
Susan S. Baker, Paralegal, SHWMS
Glenn C. Mandalas, Baird Mandalas, LLC
Michael P. Davidson, Owner, 5500 Anderby Hall Road, LLC
SHWMS File

Appendix A - Analytical and Performance Criteria for Mulch Product

Analytical Parameter	Analytical Method	Criteria for Mulch (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 non-detect
Asbestos	PLM Dispersion Staining per 40CFR763	Must contain <1%
Arsenic	In accordance with EPA SW846	< 11 mg/kg
Barium	In accordance with EPA SW846	< 550 mg/kg
Cadmium	In accordance with EPA SW846	< 4 mg/kg
Copper	In accordance with EPA SW846	< 310 mg/kg
Chromium	In accordance with EPA SW846	< 35 mg/kg
Lead	In accordance with EPA SW846	< 400 mg/kg
Mercury	In accordance with EPA SW846	< 10 mg/kg
Selenium	In accordance with EPA SW846	< 26 mg/kg
Silver	In accordance with EPA SW846	< 39 mg/kg

Split sampling shall be required and sampling shall be done in the presence of Department representatives. Respondent shall collect a minimum of one (1) composite sample for every 100 cubic yards of mulch. Ten (10) 500 mL grab samples shall make up one (1) composite sample. Respondent shall have all samples analyzed by an accredited laboratory with copies of the results sent to Department representatives. Selling or otherwise distributing mulch shall be prohibited until compliance with the analytical criteria is met to the satisfaction of the Department.

APPENDIX B – FACILITY BOUNDARIES AND SURROUNDING PROPERTY

