



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. 2016-WH-0015

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

Issued To:

Mr. Richard P. Watson, P.E., BCEE
Chief Executive Officer
Delaware Solid Waste Authority
1128 S. Bradford Street
PO BOX 455
Dover, DE 19903-0455

This Assessment and Order serves to notify the Delaware Solid Waste Authority ("Respondent" or "DSWA") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. C.* Chapter 60, and 7 DE Admin. Code § 1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW"). 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 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.

Delaware's good nature depends on you!

The Department administers and regulates solid waste facility permits pursuant to the Secretary's authority under 7 *Del. C.* Chapter 60 and 7 DE Admin. Code § 1301. The Department conducts routine compliance assessments to assess a facility's compliance with its respective permit conditions, adherence to the DRGSW and Title 7 of the Delaware Code.

Respondent manages four solid waste facilities, specifically transfer stations, within the State of Delaware. Respondent's transfer stations receive municipal solid waste ("MSW") from public and private waste collection vehicles throughout the state. Transfer trailers are loaded at Respondent's facilities, which allow the transportation of large volumes of wastes to the landfill in a single load while reducing truck traffic and vehicle emissions, as compared to direct hauling of route collection vehicles to landfills.

On July 24, 2014, the Department conducted a compliance assessment at Respondent's Milford transfer station ("MTS"), to follow up on a compliance issue identified during a previous assessment on July 22, 2014. MTS, located in Milford, Delaware, operates under permit SW-14/01. During the July 24, 2014 assessment, the Department's representative(s) observed a loaded solid waste transfer trailer (Bestrans #1144) parked outside of the transfer station building ("the staging area") that was actively releasing leachate¹ onto the ground and into the environment, in violation of Respondent's permit. The Department formally notified Respondent of this violation by issuing Notice of Violation ("NOV") 14-SW-09 to Respondent on September 19, 2014.

By letter dated October 15, 2014, Lynsey Kocenko, Facility Manager for MTS, responded to NOV 14-SW-09. Ms. Kocenko stated that the operations contractor not only overlooked certain areas that were required to be inspected during the facility's daily inspections, but also conducted insufficient inspections. Ms. Kocenko provided specific remedies for the violations cited in NOV 14-SW-09, and she further stated that corrective actions were employed at the facility to prevent future violations.

On August 26, 2014, the Department conducted a routine, unannounced compliance assessment at Respondent's Pine Tree Corners transfer station ("PTCTS"). PTCTS, located in Townsend, Delaware, operates under permit SW-06/04. During this assessment, the Department's representative(s) conveyed its concerns about the cleanliness of the floor in Building 3 (the transfer trailer storage area) to Respondent's representatives and Waste Management's representatives, the on-site operator for the facility. Specifically, Department representatives observed that maggots and leachate were collecting in the drains located in the floor of Building 3. The Department's representative(s) advised both Respondent's representatives and Waste Management's representatives to conduct more regular inspections and cleanings of Building 3's floor to avoid future violations. The Department's representative(s) also determined during this inspection that Respondent failed to conduct routine

¹ 7 Del. Admin. C. § 1301-3.0 defines "leachate" as "liquid that has passed through, contacted, or emerged from solid waste and contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste."

operational inspections for a two-week period from August 11 through August 23, 2014, which warranted issuance of NOV 14-SW-11 on October 9, 2014.

On June 4, 2015, the Department conducted a routine unannounced compliance assessment at PTCTS, in the company of Respondent's representatives Mr. Jason Munyan (Facility Manager), Mr. Justin Wagner (Engineer Intern), and Waste Management's Site Supervisor, Mr. Kim Boyer. The Department's representative(s) observed maggots, flies, and general uncleanliness in Building 3. Given the history of the condition of Building 3's floor, the Department representative(s) expressed growing concerns that Respondent was failing to perform inspections and regular floor cleanings at PTCTS. As a result, Respondent's representative, Mr. Jason Munyan, and Waste Management's representative, Mr. Kim Boyer, both agreed to increase the frequency of the Building 3 floor cleanings to every two weeks to reduce the potential for violations. The Department's representative(s) agreed that more frequent cleanings could eliminate the issues with the maggots, flies, and general uncleanliness that were observed during the assessment. The Department's representative(s) further advised both parties that a return compliance visit would be forthcoming that summer.

On September 17, 2015, the Department conducted a routine compliance assessment at Respondent's Route 5 transfer station ("Route 5"). Route 5, located in Harbeson, Delaware, operates under permit SW- 13/01. Reminded of the issues at Respondent's other facilities and the condition of Building 3 at PTCTS in August, 2014, and again on June 4, 2015, the staging area inspection at Route 5 was the Department's representative(s)' top priority upon arrival. Here, Department representative(s) observed two transfer trailers parked in the staging area, outside of the transfer station building, that were discharging leachate onto the ground and into the environment from underneath the bed of the trailers ("cargo floor"). Department representatives documented the leaks with video and still photographs, and brought the leaks to the attention of the Route 5 Site Supervisor Carlos Mendez, of Independent Disposal Services, Inc./Independent Transfer Operations ("IDS/ITO")². Respondent's representative, Shawn Luvenguth, arrived shortly thereafter, and the issue was also brought to his attention.

The Department representative(s) observed leaks from multiple areas along the length of the trailers' cargo floor and puddles on the ground beneath the trailers with concentrations of flies. IDS/ITO employs the use of plastic "Kiddie Pools" to capture leaks when they are identified under the trailers. Department representatives observed an employee placing a Kiddie Pool under a trailer (Bestrans #1171) upon the Department's arrival to the site. The Department representative(s) observed both trailers parked in the staging area (Bestrans #1171 and #1160) to be actively leaking and discharging leachate to the gravel parking area with no containment. The Department issued NOV 15-SW-34 to Respondent, on September 28, 2015, for the violations discovered during this compliance assessment.

Due to the documented leaks from the transfer trailers during previous compliance inspections at Respondent's facilities, the Department conducted a follow-up compliance assessment at PTCTS on September 18, 2015. Upon arrival, Respondent's scale attendant

² IDS/ITO is the contractor, employed by DSWA, currently operating Route 5.

granted the Department representative(s) permission to enter the facility, and the Department's representative(s) meet with Mr. Kim Boyer, Waste Management's Site Supervisor for PTCTS. During the September 18 inspection, Department representative(s) observed four transfer trailers parked inside Building 3 (Bestrans #1144, #1169, #1170, and #1173). It is important to note that the transfer trailer identified as Bestrans #1144 is the same transfer trailer that the Department representative(s) observed leaking at MTS during the July 24, 2014 inspection, which was the basis for the violations identified in NOV 14-SW-09 and issued to Respondent on September 19, 2014. The Department representative(s) further observed active leaks dripping from trailers onto Building 3's concrete floor and accumulations of leachate covering most of Building 3's floor area. Building 3 was again infested with maggots, and the Department's representative(s) observed a large concentration of flies both inside and outside of the building. Though Building 3's floor is designed to capture liquids and route these liquids to the leachate collection system, the Department representative(s) observed standing pools of leachate on Building 3's floor, indicating that the floor was not draining properly. The Department issued NOV 15-SW-35, dated September 28, 2015, to Respondent for the violations discovered during this compliance assessment.

Respondent provided responses to NOV 15-SW-34 with regard to the violations observed at Route 5 on September 17, 2015, and to NOV 15-SW-35 with regard to the violations observed at PTCTS on September 18, 2015, in separate letters dated October 28, 2015.

VIOLATIONS

Pine Tree Corners Transfer Station

1. Condition II. L. of Permit SW-06/04 states:

“The Transfer Station shall be operated in a manner to prevent the establishment of habitats for nuisance organisms (such as flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.”

On September 18, 2015, at PTCTS, the Department's representative(s) observed loaded waste transfer trailers in Building 3 that were actively leaking leachate onto the building's concrete floor. Building 3's floor is designed to capture liquids and route these liquids to the leachate collection system via floor drains; however, the representative(s) observed standing pools of leachate on Building 3's floor and that the floor was not draining properly. The Department representative(s) observed significant maggot concentrations in the puddles of leachate on Building 3's floor and flies within Building 3's entire area. The standing pools of leachate and waste stored in Building 3 created a favorable habitat for nuisance organisms in violation of Condition II. L. of Respondent's Permit SW-06/04.

2. Condition II. N. of Permit SW-06/04 states:

“Good housekeeping practices shall be employed in accordance with the Operations Manual. The DSWA shall provide for routine maintenance and general cleanliness of the entire site.”

On September 18, 2015, at PTCTS, the Department’s representative(s) observed standing pools of leachate on the concrete floor in Building 3, the transfer trailer storage area. The Department’s representatives also observed leachate dripping from loaded transfer trailers onto Building 3’s floor. Floor drains are set in Building 3’s floor that are intended to capture standing liquids; however, the Department’s representative(s) observed that leachate from loaded transfer trailers had accumulated in low areas of the floor instead of being diverted to the floor drains and into the leachate collection system. During the June 4, 2015 assessment, Respondent’s and Waste Management’s staff agreed to increase the frequency at which they would clean the floor drains and power wash the floor to reduce odors, leachate accumulation, and the potential for nuisance organisms. During the September 18 visit however, Mr. Kim Boyer, Respondent’s representative, stated that Building 3’s floor had not been cleaned since at least the middle of August, 2015. Respondent thus failed to comply with Condition II. N. of Permit SW-06/04, because Respondent failed to perform routine maintenance and ensure that Building 3’s floor is kept generally clean.

Route 5 Transfer Station

3. Condition II. H. of Permit SW-13/01 states:

“...2.) Transfer trailers used for storage of solid waste outside the building shall be designed and maintained to prevent the release of liquids to the environment.”

On September 17, 2015, at the Route 5 transfer station, the Department’s representative(s) observed two transfer trailers, trailers #1171 and #1160, loaded with MSW parked outside of the transfer station building in the truck staging area. The Department’s representative(s) observed transfer trailers #1171 and #1160 actively leaking liquid onto the ground and into the environment, in violation of Condition II. H. of Permit SW-13/01.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent violated the above cited permit conditions.

NOTICE OF CONCILIATION

It is the desire of the Department 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 by undertaking the following actions.

Upon receipt of this Assessment and Order, and in full compliance with all applicable laws and regulatory requirements, Respondent shall:

1. Immediately identify and remove from service all transfer trailers that are used for storage of solid waste outside of buildings that fail to prevent the release of liquids to the environment and ensure that these transfer trailers are repaired before returning these transfer trailers to service. Respondent shall, within 30-days of completion of the necessary repairs to the transfer trailer, submit documentation to the Department of the cost and type of repair(s) made to the transfer trailer.
2. Immediately ensure documentation is kept on site for each transfer trailer once loaded and ready for transfer. The documentation shall include, at a minimum, trailer designation (number), time and date loaded, unloaded and loaded weight, destination, the time and date of departure from the facility, and verification that the loaded trailer was inspected and free of leaks prior to departing the facility.
3. Within 30-days of receipt of this Notice of Conciliation, provide documentation to the Department describing the procedural changes that Respondent will implement to ensure the protection of the environment from the outside storage of loaded waste transfer trailers.
4. Within 30-days of receipt of this Notice of Conciliation, submit to the Department for review and approval a plan for an on-going inspection and maintenance program for loaded transfer trailers to be stored outside of the transfer station building(s) at all of Respondent's transfer stations. The plan should define the protocol selected to prevent the establishment of nuisance organisms, maintain general cleanliness in these areas, and to provide protection to the environment in the event of an incident or release.
5. Within 60-days of receipt of this Notice of Conciliation, submit an updated plan of operations for all of Respondent's transfer facilities to the Department for review and approval. The updated plan shall provide a detailed trailer inspection checklist and establish a protocol for maintaining records on each trailer's use, service, and repair. The trailer inspection checklist shall, at a minimum, include the following information and require inspection of the following components:

- a. the trailer fleet designation (number);
- b. the condition of the trailer's cargo floor equipment (seals, slats, hydraulics, fittings, valves, bearings, etc.);
- c. the structural integrity of the trailer; and
- d. any areas where there is a potential for leakage, other than mechanical equipment.

Respondent shall submit all documentation and correspondence related to this Assessment and Order 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 Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of **\$8,517.00** 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 **\$1,277.55**, pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation and abatement of the noted violations.

The Department shall waive the **\$8,517.00** administrative penalty if, in the Department's sole discretion, Respondent meets the deadlines listed in items 1-5 above and comes into full compliance. Should Respondent fail to meet a deadline specified in items 1-5 above, Respondent shall pay the assessed administrative penalty within 30 days of the missed compliance date.

The **\$1,277.55** in estimated costs shall be due and payable to the Department within thirty (30) days from receipt of this Assessment and Order, whether or not Respondent achieves compliance with items 1-5 above.

Respondent shall submit payment by check to the Department. The checks shall be made payable to the "State of Delaware" and shall be directed to: William J. Kassab, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

Additionally, Respondent shall be assessed \$1,000.00 per day for each day of non-compliance, beginning 61 days after receipt of this Assessment and Order.

The Department reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING

This Assessment and Order and all proposals included in this Order, shall become effective and final, unless the Department receives from Respondent, no later than thirty (30) days from the 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)c., (b)(3) and (c). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion. If no public hearing is requested within thirty (30) days, this Order and the deadlines specified in items 1-5 shall become final.

Any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board, pursuant to 7 *Del. C.* § 6008(a), within twenty (20) days of receipt or publication of the Secretary's final order.

If Respondent fails to meet any of the deadlines specified in items 1-5 above, and no hearing is requested or no appeal is filed, the administrative penalty of **\$8,517.00** and costs in the amount of **\$1,277.55** shall be due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting two (2) checks payable to the State of Delaware in the amounts of **\$8,517.00** and **\$1,277.55** and mail to: William J. Kassab, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee that should be made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

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

Date:

3/30/14



David S. Small, Secretary
Department of Natural Resources
and Environmental Control

xc: William J. Kassab, Deputy Attorney General
Marjorie A. Crofts, Director, WHS
Nancy C. Marker, Program Administrator, SHWMS
Jason W. Sunde, Environmental Program Manager, SHWMS
A. Brad Richardson, Environmental Scientist, SHWMS
David Perrego, Senior Environmental Control Specialist, SHWMS
Susan S. Baker, Paralegal, SHWMS
SHWMS File

WAIVER OF STATUTORY RIGHT TO A HEARING

The Delaware Solid Waste Authority hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Delaware Solid Waste Authority** will pay the administrative penalty in the amount of **\$8,517.00** 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 William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. **Delaware Solid Waste Authority** will reimburse the Department in the amount of **\$1,277.55** 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 William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

Date: _____

By: _____
Richard P. Watson (Chief Executive Officer)