

STATE OF DELAWARE



AGREEMENT AND SECRETARY'S ORDER

BETWEEN

DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL

AND

BLESSING GREENHOUSES AND COMPOST FACILITY

EFFECTIVE

MARCH 19, 2012

AGREEMENT AND SECRETARY'S ORDER

This AGREEMENT AND SECRETARY'S ORDER (Agreement) is entered into between the Department of Natural Resources and Environmental Control (Department) and Blessing Greenhouses and Compost Facility (Blessing), additionally jointly referred to as Parties.

WHEREAS, Blessing currently owns and operates a composting facility located approximately 5 miles northeast of Milton, Delaware; and

WHEREAS, the Blessing composting operation involves the composting of, among other things, animal manure, food processing waste, dissolved air flotation solids, hatchery waste, poultry offal, poultry mortalities, feathers, and sewage sludge from wastewater treatment facilities into a "Class A" "Exceptional Quality" (EQ) compost; and

WHEREAS, on March 29, 2010, the Department issued Blessing Notice of Violation 10-SWD-03 (NOV), requiring steps be taken at Blessing including, but not limited to, ensuring that the composting operation was not impacting surface and groundwater or causing violations of state or federal drinking water standards and the State of Delaware's *Regulations Governing Storm Water Discharges Associated with Industrial Activities*; and

WHEREAS, on September 14, 2010, a letter was sent to Blessing reiterating and updating NOV requirements that were still outstanding; and

WHEREAS, on October 21, 2010, the Department issued a letter to Blessing indicating that State Permit Number DM 0014/06 would not be renewed unless specific requirements were met including, but not limited to, complying with NOV-10-SWD-03 and ensuring that a bond of \$10,000 was in place; and

WHEREAS, as Blessing still had not complied with NOV requirements, on December 30, 2010, the Department issued a letter requiring Blessing to install a network of groundwater monitoring wells and monitor the wells for a specific list of parameters in order to have a path forward to comply with the NOV and mitigate concerns that composting activities were impacting surface and groundwater; and

WHEREAS, on December 30, 2010, the Department issued Blessing a letter indicating that storm water improvements must be made at the facility; and

WHEREAS, on January 1, 2011, a permit renewal of one year was granted to Blessing giving Blessing an opportunity to correct compliance deficiencies while remaining in operation, complying with the NOV and resolving concerns that composting activities were impacting groundwater; and

WHEREAS, groundwater monitoring proposals prepared by Duffield Associates, Inc. (Duffield) on behalf of Blessing were submitted to the Department on February 17, 2011, entitled, "Groundwater Evaluation Services" and on April 6, 2011, entitled, "Groundwater Monitoring Plan"; and

WHEREAS, a report submitted by Duffield on behalf of Blessing dated October 21, 2011, indicated that several wells are likely impacted by composting operations; and

WHEREAS, on October 25, 2011, the Department issued Blessing a letter summarizing uncorrected items from the NOV that remained outstanding; and

WHEREAS, on December 2, 2011, the Department issued Blessing a letter indicating that Blessing's distributing and marketing (D&M) permit would expire on December 31, 2011, thus rendering Blessing unauthorized to bring onto the Blessing facility any materials regulated under State Permit Number DM 1102-S-03 (this permit superseded State Permit Number DM 0014/06) and further that compostable material and/or bulking material may not be added to the precompost pile at the Blessing facility without written approval from the Department; and

WHEREAS, Blessing has now expressed an intention to enter into an Agreement with the Department to achieve compliance with the NOV and remedy all outstanding compliance items; and

WHEREAS, both Blessing and the Department have agreed to adopt an interim facility management plan, more fully delineated *infra*, to effectuate the purposes of this Agreement and further, to diligently pursue timely and efficient performance of the actions identified herein; and

WHEREAS, both Blessing and the Department agree that the performance of the remedial actions pursuant to this Agreement will achieve improvements in Delaware's water quality; and

WHEREAS, both Blessing and the Department agree that settlement of alleged violations of 7 Del. Admin. C. §7103, the Department's Guidance and Regulations Governing the Land Treatment of Wastes (Waste Regulations), 7 Del. C., Chapter 60, Delaware's *Regulations Governing Storm Water Discharges Associated with Industrial Activities* and Blessing's former DM permit is in the best interest of Blessing, the Department, and the public; and further, that execution of this Agreement is the most appropriate means of resolving all such alleged violations;

NOW THEREFORE, the Department and Blessing jointly and mutually agree as follows:

I. APPLICATION AND SCOPE

1. The Department and Blessing stipulate and agree that the provisions of this Agreement allow Blessing to conduct facility management operations, on an interim basis, involving solely the product physically located thereon, until Blessing completely satisfies the compliance measures, more fully delineated *infra*, and additionally obtains a distribution and marketing permit for the facility from the Department. Further, in the event that Blessing sells or transfers the composting facility, Blessing shall provide written notice to such purchaser or successor-in-interest of the existence of this Agreement, enclosing a copy thereof, and additionally send a copy of such written notification by first class mail to the Department prior to the sale or transfer. This provision does not relieve Blessing from

compliance with any other applicable state or local regulatory requirements regarding notice and transfer of facility permits.

2. This Agreement shall be for a term of one (1) year from the effective date or until such time as Blessing has secured a new D&M permit from the Department.

II. INTERIM COMPLIANCE MEASURES

3. Within thirty (30) calendar days after the effective date of the Agreement, Blessing shall have completed the following:
 - a. Provide the Department with documentary evidence that a bond or acceptable financial assurance mechanism in the amount of \$250,000, acceptable to the Department as evidenced by a Department writing, is in place.
 - b. The following locations shall be seeded with vegetation (perennial grass mixture) and properly stabilized utilizing a minimum of SCF-150 (double matted straw/coconut fiber mulch rolled erosion control product) or equivalent. Top-soiling of a minimum of four inches may be required to properly establish vegetation. Upon establishment of vegetation (defined as at least 70% coverage), all vegetation must be maintained to ensure adequate coverage:
 - i. The berm on the south and east portion of the facility;
 - ii. Areas adjacent to bunkers, as they are installed, that are not used for regular equipment traffic. A perimeter of vegetation around each bunker or series of bunkers must be maintained;
 - iii. A minimum of a 30-foot vegetated buffer around the perimeter of the facility, excluding the north end of the facility, entrances, or the bermed areas referenced above; and
 - iv. The approximately 15-foot wide swale located in the southwest end of the site adjacent to the facility office, running toward Slaughter Creek in a southerly direction along the tree line.
 - c. Prevent nutrient rich storm water runoff, up to and including a 25-Year, 24-Hour Rainfall Event, from entering into the forested wetland and Slaughter Creek, specifically from the precompost stockpile located on the southeast side of the site and nutrient rich storm water from the finished compost (unless all finished compost in this location is removed from the facility or isolated from contact storm water inside of bunker(s) with an impervious liner (or alternative as evidenced by a Department writing)) located on the west side of the property. This shall be accomplished by constructing a vegetated

earthen berm (or utilizing another alternative as acceptable to the Department as evidenced by a Department writing). Top-soil shall be utilized in berm construction, if required for vegetation establishment. Berm construction shall not disturb forested wetland. A 25-Year, 24-Hour Rainfall Event means the runoff event produced by a storm having an annual probability of occurrence of 4%, as defined by the National Weather Service Technical Paper Number 40, "Rainfall Frequency Atlas of the United States" (as amended), equivalent to regional or state rainfall probability information developed there from, or a rain event resulting in 6.7 inches for Sussex County in a 24-hour period.

4. Within sixty (60) calendar days after the Agreement effective date, Blessing shall have completed the following improvements to the composting facility:
 - a. All compost in the active composting area (the area on and around the concrete composting pad in the southeast corner of the facility (also known as the precompost area) must be placed on the concrete precompost pad. Compost that cannot fit on the concrete pad must be relocated into bunkers with an impervious liner (or alternative containment, after receiving written Department approval) to ensure that storm water and groundwater are not impacted.
5. Within ninety (90) calendar days after the Agreement effective date, Blessing shall have completed the following improvements to the composting facility:
 - a. All compost that is located on pervious surfaces must be placed inside of bunkers with an impervious liner (or alternative containment, after receiving written Department approval) to ensure that storm water and groundwater are not impacted by compost leachate.
 - b. All screened EQ compost stored in bunkers must be covered and protected from rainfall.
 - c. All compost in the active composting area (also known as the precompost area) must remain on the concrete pad and a protective berm (or alternative, after receiving written Department approval) must be constructed around the pad ensuring leachate does not leave the pad or that compost/leachate does not come in contact with storm water.
6. Within one hundred twenty (120) calendar days after the Agreement effective date, Blessing shall have completed the following improvements to the composting facility:
 - a. Starting at the southwest end of the precompost pad, at minimum an area of 100 feet (west to east) and the width of the pad north to south (approximately 90 feet) must be cleared of all compost and be inspected by the Department for integrity. Within thirty (30) calendar days of receipt of written notice from the Department for repairs required for this compliance measure, Blessing shall make repairs and demonstrate that sections of the concrete pad are impervious to the satisfaction of the Department as evidenced by a

Department writing. Repairs to the concrete pad are not required if Blessing notifies the Department of its intent to abandon this portion of the pad for composting.

7. Within one hundred fifty (150) calendar days after the Agreement effective date, Blessing shall have completed the following improvements to the composting facility:
 - a. In addition to the area specified in 6.a above, at minimum, an additional area of 100 feet (west to east) and the width of the precompost pad north to south (approximately 180 feet) must be cleared of all compost and be inspected by the Department for integrity. Within thirty (30) calendar days of receipt of written notice from the Department for repairs required for this compliance measure, Blessing shall make repairs and demonstrate that sections of the concrete pad are impervious to the satisfaction of the Department as evidenced by a Department writing. Repairs to the concrete pad are not required if Blessing notifies the Department of its intent to abandon this portion of the pad for composting.
8. As additional areas of the concrete precomposting pad are cleared of compost, the pad must be cleared to bare concrete, inspected by the Department for integrity and repaired if necessary as determined by the Department. Within thirty (30) calendar days of receipt of written notice from the Department for repairs required for this compliance measure, Blessing shall make repairs and demonstrate that sections of the concrete pad are impervious to the satisfaction of the Department as evidenced by a Department writing. Repairs to the concrete pad are not required if Blessing notifies the Department of its intent to abandon this portion of the pad for composting.
9. All composting activities at Blessing must continue to be composted in accordance with 7 Del. Admin.C. §7301 and requirements in State Permit Number DM 1102-S-03.

III. STIPULATED PENALTIES

10. Blessing shall pay stipulated penalties to the Department for violations of the terms of this Agreement according to the provisions of this section III. For each referenced violation, the amounts identified below shall apply for **each day of violation**:
 - i. Failure to secure a bond pursuant to section II, 3.a: \$500
 - ii. Failure to seed vegetation as required in section II, 3.b: \$100
 - iii. Failure to keep vegetation established as required in section II, 3.b and repair damage to vegetation within ten (10) calendar days of identifying damaged vegetation: \$50
 - iv. Failure to construct and maintain the berm according to section II, 3.c: \$500
 - v. Failure to place all precompost materials on the precompost concrete pad and eliminate compost from contact with surface water pursuant to section II, 4.a: \$500

- vi. Failure to remove all compost from the bare soil and place inside a bunker or approved DNREC alternative pursuant to section II, 5.a: \$500
 - vii. Failure to cover all screened EQ compost pursuant to section II, 5.b: \$50
 - viii. Failure to maintain all precompost on the precompost pad and construct a berm, ensuring leachate does not leave the pad or that compost/leachate does not come in contact with storm water, pursuant to section II, 5.c: \$500
 - ix. Failure to clear and inspect concrete pad pursuant to section II, 6.a: \$50
 - x. Failure to complete repairs required to the precompost pad pursuant to section II, 6.a: \$50.
 - xi. Failure to clear and inspect concrete pad pursuant to section II, 7.a: \$50
 - xii. Failure to complete repairs required to the precompost pad pursuant to section II, 7.a: \$50.
 - xiii. Failure to complete repairs required to the precompost pad pursuant to section II, 8: \$50.
11. Blessing shall pay any stipulated penalties upon written demand by the Department no later than thirty (30) calendar days after Blessing receives such demand. Blessing shall make payment to the Department by submitting a corporate check payable to the State of Delaware to:
- Kevin P. Maloney
Deputy Attorney General
Delaware Office of the Attorney General
Environmental Unit – Third Floor
102. W. Water Street
Dover, Delaware 19904
12. Subject to the provisions of section VII (Effect of Settlement), the Department reserves the right to pursue any other statutory and regulatory remedies to which it is entitled, including, but not limited to, additional injunctive relief, for any violations by Blessing of the Agreement or applicable regulatory standards.

IV. RIGHT OF ENTRY

13. Any authorized representative of the Department, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Blessing facility at any time for the purposes of monitoring compliance with the provisions of this Agreement. Nothing in this Agreement shall limit the authority of the Department to conduct tests and inspections under applicable statutory and regulatory provisions.

V. FORCE MAJEURE

14. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Agreement, Blessing shall notify the Department in writing as soon as practicable but in any event within ten (10) calendar days of when Blessing first knew of the event or should have known of the event by the exercise of due diligence. In this notice Blessing shall specifically reference this paragraph of this Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Blessing to prevent or minimize the delay, and the schedule by which those measures will be implemented. Blessing shall adopt all reasonable measures to avoid or minimize such delays.
15. Failure by Blessing to comply with the notice requirements of paragraph 14 as specified above shall render this section V voidable by the Department as to the specific event for which Blessing has failed to comply with such notice requirement; and, if voided, it shall be of no effect as to the particular event involved.
16. The Department shall notify Blessing in writing regarding Blessing's claims of a delay or impediment to performance within ten (10) calendar days of the Department's receipt of the Force Majeure notice required under paragraph 14.
17. If the Department agrees that the delay or impediment to performance has been or ever will be caused by circumstances beyond the control of Blessing, including any entity controlled by Blessing, and that Blessing could not have prevented the delay by the exercise of due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances or such other period as may be appropriate in light of the circumstances. Such stipulation may be entered as a modification to this Agreement by agreement of the Parties. Blessing shall not be liable for stipulated penalties for the period of any such delay. If the Parties cannot agree to an extension of the required deadline(s) for all requirement(s) affected by the delay, then Blessing may invoke Dispute Resolution under section VI of this Agreement with respect to the affected deadline(s). If the Department does not accept Blessing's claim of a delay or impediment to performance, the Department's position shall be binding unless Blessing invokes Dispute Resolution under section VI of this Agreement.
18. Blessing shall bear the burden of proving that any delay of any requirement(s) of this Agreement was caused by or will be caused by circumstances beyond its control, including any entity controlled by Blessing, and that Blessing could not have prevented the delay by the exercise of due diligence. Blessing shall also bear the burden of proving the duration and extend of any delay(s) attributed to such circumstances. An extension of one compliance

date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

19. Unanticipated or increased costs or expenses associated with the performance of Blessing's obligations under this Agreement shall not constitute circumstances beyond Blessing's control or serve as a basis for an extension of time under this section.
20. Notwithstanding any other provisions of this Agreement, no inference shall be drawn nor presumptions adverse to any Party established as a result of Blessing transmitting a notice of Force Majeure or the Parties' inability to reach agreement.

VI. DISPUTE RESOLUTION

21. The dispute resolution procedure provided by this section shall be available to resolve all disputes arising under this Agreement, provided that the Parties shall make a good faith attempt to resolve the matter independent of dispute resolution.
22. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the Parties to this Agreement to the other, advising of a dispute pursuant to this section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice and the Parties shall expeditiously schedule a meeting to discuss the dispute informally, not later than fourteen (14) calendar days from the receipt of such notice.
23. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiation shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the Department and Blessing unless the Parties' representatives agree to shorten or extend this period.
24. In the event that the Parties are unable to reach agreement during such informal negotiation period, the Department Secretary shall issue a written decision summarizing the Secretary's position regarding the dispute. The Parties agree that any written decision issued by the Secretary in accordance with this paragraph constitutes an action that substantially affects Blessing's interest, as identified in 7 Del. C. §6008, and, therefore, intends that such decisions may be appealed to the Delaware Environmental Appeals Board pursuant to 7 Del. C. §6008.
25. Where the nature of the dispute is such that more timely resolution of the issue is required, the time periods set out in this section may be shortened upon the agreement of the Parties.

26. As part of any resolution of any dispute submitted to dispute resolution or any appeal of a permit issued by the Department in accordance with this Agreement, the Parties, by agreement, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Agreement to account for the delay in the work that occurred as a result of dispute resolution or any appeal of a permit issued by the Department in accordance with this Agreement. Blessing shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

VII. EFFECT OF SETTLEMENT

27. Payment of the civil penalty in accordance with section III of this Agreement constitutes full settlement of and shall resolve all civil liability of Blessing to the State of Delaware for any violations of or noncompliance with any statute, regulation, permit provision, standard, order, or notice with respect to the violation for which the stipulated penalty was paid.
28. This Agreement is **not** a permit but represents an interim facility management agreement. Compliance with its terms does not guarantee compliance with any applicable federal, state, or local law or regulation. Nothing in this Agreement shall be constructed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

VIII. GENERAL PROVISIONS

29. This Agreement shall be governed by, and interpreted under, the laws of the State of Delaware.
30. Other Laws. Except as specifically provided by this Agreement, nothing in this Agreement shall relieve Blessing of its obligation to comply with all applicable federal, state, and local laws and regulations. Additionally, Blessing agrees to provide monthly reports to the Department documenting the compliance completion process. Monthly reports are due on or before the 15th of the month following the completed reporting period. Furthermore, subject to section VII, nothing contained in this Agreement shall be construed to prevent, alter, or limit the ability of the Department to seek or obtain other remedies or sanctions available under other federal, state, or local statutes or regulations in response to any violation by Blessing of applicable statutes and regulations.
31. Third Parties.
- a. This Agreement does not limit or affect the rights of Blessing or the Department against any person or entity, not party to this Agreement, nor does it limit the rights of any person or entity, not party to this Agreement, against Blessing except as otherwise provided by law.

b. This Agreement shall not be considered to create rights in, or grant any cause of action to, any third party not party to this Agreement.

32. Public Documents. All information and documents submitted by Blessing to the Department pursuant to this Agreement shall be subject to public inspection unless determined by the Department to be business confidential in accordance with applicable state laws and regulations.

33. Notice. Unless otherwise provided herein, notifications to or communications with the Department or Blessing shall be deemed submitted on the date they are postmarked and sent either by overnight-receipt mail service or by first-class, certified, or registered mail, return receipt requested, or on the date that they are hand delivered. Except as otherwise provided herein, when written notification or communication is required by the Agreement, it shall be addressed as follows:

As to Blessing:

Bruce Blessing
Blessing Greenhouses and Compost Facility
P.O. Box 647
Milford, Delaware 19963

As to the Department:

Kathy Stiller, Director
Division of Water
Delaware Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, Delaware 19901

34. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

35. This Agreement shall be binding upon all Parties to this Agreement, their successors, and assigns. The undersigned representative of each Party to this Agreement certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

36. Modification. This Agreement may be modified only by the written consent of the Department and Blessing.

37. Effective Date. The effective date of the Agreement shall be the date upon which the Agreement is last executed by a Party.

38. This Agreement constitutes the entire agreement and settlement between the Parties.

IX. TERMINATION/DEFAULT

39. This Agreement shall terminate upon the occurrence of either (1) Blessing's complete satisfaction of all the compliance requirements delineated in this Agreement or (2) the Department's determination that Blessing is in default of any of the compliance requirements at any time during the term of this Agreement. If the former, Blessing shall notify the Department in writing that all compliance requirements, including the remittance of all penalties, have been satisfied. Within thirty (30) calendar days of receipt of said completion notification, the Department shall physically inspect the facility and issue Blessing either a written completion approval or a list of any outstanding activities/requirements that requires completion before approval can ensue. If the latter, the Department shall provide Blessing written notification of the specific default and allow Blessing thirty (30) calendar days from the receipt of default notice to cure said default. In the event Blessing fails/refuses to cure the default, such failure shall constitute cause for termination of this Agreement.

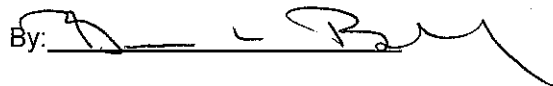
FOR THE STATE OF DELAWARE



Collin P. O'Mara, Secretary
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

Date: 3/15/12

FOR BLESSING GREENHOUSES AND COMPOST FACILITY

By: 

Date: 2-27-2012

Bruce Blessing
Owner
Blessing Greenhouses and Composting Facility
P.O. Box 647
Milford, Delaware 19963