

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

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DOVER, DELAWARE 19901

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OFFICE OF THE  
SECRETARY

**AMENDED ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**  
Pursuant to 7 Del. C. §6005(b)(3)

Order No. 2008-A-0005

*Issued by Certified Mail/Return  
Receipt Requested to Respondent:*

Mr. Matthew P. Appelget, President  
Waste Associates  
1790 Darbytown Road  
Richmond, Virginia 23231

*Issued by an Environmental  
Protection Officer to Registered Agent:*

The Corporation Trust Co.  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

This is to notify Eastern Shore Environmental, Inc. ("Respondent" or "ESE"), that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 DE Admin. Code 1301, Delaware Regulations Governing Solid Waste or ("DRGSW"), and Solid Waste Permit SW-99/03, and accordingly, the Department is issuing a Notice of Amended Administrative Penalty Assessment, pursuant to 7 Del. C. §6005(b)(3).

**BACKGROUND**

Respondent privately owned and operated a solid waste transfer station, located at 836 Postles Corner Road in Little Creek (the "facility"), at the time the violations were discovered by the Department. Respondent operated under solid waste permit SW-99/03, which authorized the transfer of municipal solid waste ("MSW") and construction and demolition ("C&D") debris, in accordance with the DRGSW.

Department representatives conducted a compliance assessment at ESE on September 7, 2006. They discovered eight (8) violations of Respondent's permit during the inspection, which continued over a 3-day period (the 7<sup>th</sup>, 8<sup>th</sup>, and 11<sup>th</sup> of September). The Department issued Notice of Violation ("NOV") No. 06-SW-09, dated October 20, 2006, to Respondent, notifying them of the violations documented during the inspection. Respondent replied to the NOV in a letter dated and received on November 20, 2006, indicating that they had corrected all of the violations documented by the Department.

*Delaware's Good Nature depends on you!*

Department representatives discovered similar violations during a compliance inspection at ESE in December of 2005.

## ***FINDINGS OF VIOLATION***

### **Violations of the Delaware Regulations Governing Solid Waste (“DRGSW”)**

1. **Section 4.1.1.3. (formerly 4.A.1.c.)\* of the DRGSW states:**

*“Permittees shall abide by the conditions of their permit issued by the Department.”*

On September 7, 8, and 11, 2006, Department representatives conducted a compliance inspection at Respondent’s facility and discovered eight (8) violations of Respondent’s permit. These violations demonstrate that Respondent failed to abide by the conditions of their permit.

2. **Section 10.5.1.2. (formerly 10.E.1.b.)\* of the DRGSW states:**

*“Transfer stations shall be maintained and operated to conform with the Plan of Operation submitted at the time of permit application and approved by the Department.”*

On September 7, 8, and 11, 2006, Department representatives conducted a compliance inspection at Respondent’s facility and discovered eight (8) violations of Respondent’s permit. These violations demonstrate that Respondent failed to maintain and operate their facility in conformance with the Plan of Operation submitted at the time of permit application and approved by the Department. The Plan of Operation provides the comprehensive internal framework for compliance with Respondent’s permit. See Plan of Operation sections 3.2.1, 3.2.2, 3.3, 3.4, 3.5(1), and 3.7.

### **Violations of Permit SW-99/03**

1. **Condition II.L. of Permit SW-99/03 states:**

*“The Transfer Station shall be operated in a manner to prevent the establishment of habitat for nuisance organisms such as flies, maggots, roaches, rodents, and similar vermin.”*

On September 7, 2006, Department representatives observed damaged exterior wall panels on the south side of the transfer station building. Upon further investigation, Department representatives observed numerous large, active

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\* The Registrar of Regulations has implemented a revised numbering system.

rodents amid the MSW that had fallen through the damaged wall panels and out of the transfer station building. A closer inspection of the MSW that had fallen through the damaged wall panels, revealed municipal trash, including a bag of dog food, which appeared to be attracting the rats. Respondent attributes the damage to wind gusts of up to 25 miles per hour on September 2, 2006.

Department representatives noted as well, that they had warned Respondent, during a previous compliance inspection in December of 2005, about damaged wall panels on the opposite side of the transfer station building.

2. **Condition II.N. of Permit SW-99/03 states:**

*“Storage. All solid waste received at the Transfer Station shall be transported offsite within 72 hours of delivery to the site. Solid waste shall not remain at the Transfer Station for more than 72 hours. This time restriction does not apply to recyclable materials removed from the dry waste. Recyclable materials shall be stored inside the TSB until they are collected by a recycler or transported offsite to end markets.”*

On September 7, 2006, Department representatives observed waste accumulation in areas of the transfer station that exceeded the 72-hour limit for storage. A push wall in the C&D handling area inside the building had accumulated waste between the push wall and the exterior wall of the transfer station building. The exterior wall was damaged and waste was falling out of the building and onto the ground. Department representatives inquired about the removal frequency of accumulated wastes and the facility manager indicated that it was on a weekly basis, thus exceeding the 72-hour time limit for transferring solid waste.

3. **Condition II.O. of Permit SW-99/03 states:**

*“Leachate management. Leachate generated at the Transfer Station shall be collected in a corrosion-resistant tank, in accordance with Section 4 of the Application for a Permit to Construct/Operate a Transfer Station dated March 29, 2000 (Design and Engineering Report). Tank volume shall be closely monitored to prevent the release of leachate to the environment, and tank contents shall be properly transported to an appropriate disposal site.”*

On September 7, 2006, Department representatives were incapable of performing an inspection of the leachate collection system. An accumulation of MSW from the tipping floor had filled the sump area of the leachate collection tank, allowing no safe access to the sump area to inspect the collection tank, nor to inspect the tank's condition and structural integrity. Respondent was unable to locate the floor drains on the tipping floor until the following day, on the 8<sup>th</sup> of September, subsequent to clearing the accumulation of MSW.

Department representatives were still unable to conduct an inspection of the leachate collection tank on September 8<sup>th</sup>. Respondent had exposed only the top of the tank for observation, parts of which appeared to be corroded. Department representatives informed Respondent that an inspection of the entire tank would be necessary. Both parties discussed replacement of the tank, due to its apparent poor condition; however, Department representatives informed Respondent that it would be necessary to notify the Department prior to tank removal. Upon returning to ESE on Monday, September 11<sup>th</sup> to complete their inspection, Department representatives discovered that Respondent had removed the 3,000 gallon leachate tank without first contacting the Department, as instructed. Department representatives observed the partially corroded tank sitting in a container which Respondent had loaded onto a roll-off container at the facility, to prepare for proper disposal. Respondent informed Department representatives that they had replaced the leachate collection tank with a new corrosion-resistant (plastic) tank.

4. **Condition II.R. of Permit SW-99/03 states:**

*“While the Transfer Station is receiving, storing, or transferring solid waste, ESE shall conduct operational inspections of the facility and shall maintain records of these inspections in accordance with Section II.S of this permit. As a minimum, operational inspections shall consist of the following:*

1. *Operating staff shall inspect the facility each operating day to identify and correct problems with litter, operating equipment, general housekeeping, odors, and vectors.”*

On September 7, 2006, Department representatives reviewed the daily operational inspection forms for the transfer station. They discovered that Respondent had pre-recorded signatures, dates, and in some cases, favorable inspection results, onto inspection forms prior to conducting the actual inspections. Additionally, some of the forms contained different handwriting in the context of the form, than that of the person who had signed the form to authorize it.

Respondent’s staff admitted to Department representatives that they had pre-signed and dated the inspection forms prior to the inspector conducting the actual inspections. They explained that the Operations Manager would conduct the inspections without taking the inspection forms with him. He would then return to the office and report to the administrative staff that he had found all of the inspection items to be favorable. The administrative staff would then complete the inspection forms, accordingly.

The Operations Manager explained to Department representatives that he preferred “to not do a lot of writing”; therefore, his staff photocopied his signature onto the forms in advance of the inspections. He offered no explanation for the pre-recorded favorable inspection results on some of the forms.

5. **Condition II.K. of Permit SW-99/03 states:**

*“ESE shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along the roads approaching the site if accumulation of litter along the approach roads is clearly the result of the operation of the Transfer Station.”*

On September 7, 2006, Department representatives observed litter that had accumulated along South Little Creek Road (the road approaching the transfer station), comparable to the type of industrial dry waste that ESE transports from the waste generation source to the transfer station. Department representatives informed Respondent of the violation that day, however, according to Department representatives; the same litter observed on the 7<sup>th</sup> remained on the 11<sup>th</sup>, the final day of inspection.

6. **Condition I.C. of Permit SW-99/03 states:**

*“Access to the Transfer Station shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This shall not be construed to limit the right of entry by the Secretary of DNREC of his/her duly authorized designee pursuant to 7 Del. C., §6024.”*

On September 11, 2006, at approximately 9:00 a.m., Department representatives observed that the gate that provides access to ESE was in the open position and entrenched in several inches of solidified dirt. The condition of the gate, dirt, and vegetation, indicated that Respondent had not physically closed it for more than 24 hours prior, and that access to ESE had, therefore, not been properly restricted.

7. **Condition II.A. of Permit SW-99/03 states:**

*“The Transfer Station shall be operated in a manner that will preclude degradation of land, air, or water.”*

On September 11, 2006, Department representatives observed damaged exterior wall panels on the south side of the transfer station building, which had allowed MSW to fall out of the building and onto the ground and come into contact with the soil and surface waters. Exposure of MSW to these elements has the potential to contaminate the surrounding bodies of subsurface soils and waterways through leaching or surface water runoff, respectively.

8. **Condition II.G. of Permit SW-99/03 states:**

*“Prohibited materials. ESE shall not accept the following wastes at the Transfer Station:*

- 1. Regulated hazardous waste.*

2. *Infectious waste.*
3. *Radioactive waste.*
4. *Bulk liquid wastes.*
5. *Special solid wastes (wastes requiring extraordinary management).*
6. *Asbestos-containing materials.*”

On September 11, 2006, Department representatives discovered poles, which were the shape and usual diameter of telephone or dock poles, on the floor of the transfer station. The poles were creosoted and otherwise included a tar-like substance or preservative. The poles are classified as a “special solid waste”, a prohibited material requiring extraordinary management. Respondent is required to properly screen incoming loads of waste for prohibited materials to prevent those materials from reaching the tipping floor and ultimately, from reaching the landfill for disposal.

### ***ASSESSMENT OF PENALTY***

Since the issuance of Administrative Penalty Assessment and Order No. 2007-A-0045, on October 17, 2007, Respondent has completed closure activities at the Little Creek, Delaware transfer station, with no indication of the need for post-closure care. The Department has, as a result, officially rendered Respondent’s solid waste permit SW-99/03 void. Accordingly, the Department is assessing Respondent a penalty of \$10,500.00 for the violations in this Amended Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$3,375.00, pursuant to 7 Del. C. §6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit two (2) checks to the Department in the amounts of \$10,500.00 and \$3,375.00 within thirty (30) days from the receipt of this Assessment and Order for the aforementioned penalties and costs. The checks shall be made payable to the “State of Delaware” and shall be directed to: David L. Ormond, Jr., Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, 3<sup>rd</sup> Floor, 102 W. Water Street, Dover, Delaware 19904.

### ***PUBLIC HEARING***

This Amended Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than thirty (30) days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. §6005(b)(3). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Amended Assessment and 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 pursuant to 7 Del. C. §6005. The Department otherwise does not intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

***PRE-PAYMENT***

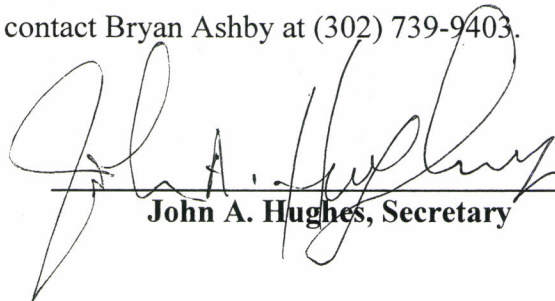
Respondent may prepay the administrative penalty of \$10,500.00 and the Department's estimated costs in the amount of \$3,375.00, in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment, which shall become a final Order.

This Amended Administrative Penalty Assessment and Order supersedes Administrative Penalty Assessment and Order No. 2007-A-0045, signed by the Secretary of the Department on October 16, 2007 and issued to Respondent on October 17, 2007.

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

2/12/08

Date

  
\_\_\_\_\_  
John A. Hughes, Secretary

JAH:DLO:15-23(a)ssb

cc: Jim Werner, Director  
David L. Ormond, Jr., Deputy Attorney General  
Nancy C. Marker, Program Manager II  
Bryan Ashby, Program Manager I  
Dave Perrego, Senior Environmental Compliance Specialist  
Jennifer M. Bothell, Enforcement Coordinator  
Susan S. Baker, Paralegal  
SHWMB File

**WAIVER OF STATUTORY RIGHT TO A HEARING**

Eastern Shore Environmental, Inc. ("ESE") hereby waives its right to a hearing and its opportunity to appeal or contest this Amended Assessment and Order and agrees to the following:

1. ESE will pay the administrative penalty in the amount of \$10,500.00 by sending a check payable to the "State of Delaware", within thirty (30) days of receipt of this Assessment and Order. The check shall be directed to David L. Ormond, Jr., Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, 102 West Water Street – 3<sup>rd</sup> Floor, Dover, Delaware 19904; and

2. ESE will reimburse the Department in the amount of \$ 3,375.00, which represents the Department's estimated costs. The reimbursement shall be paid within thirty (30) days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to David L. Ormond, Jr., Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, 102 West Water Street – 3<sup>rd</sup> Floor, Dover, Delaware 19904.

Eastern Shore Environmental, Inc.

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

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_