



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2014-W-0010

RE: Permit Applications of Blessing Greenhouses and Compost Facility *and* Isdell Sanitation and Pumping Service, to wit: (1) Renewal of Blessing Greenhouses and Compost Facility's Distribution and Marketing Permit (DM 1102-S-03), pursuant to 7 DE Admin. Code 7103 §§ 100.0 – 160, *Guidance and Regulations Governing the Land Treatment of Waste*, 7 DE Admin. Code §7201, *Regulations Governing the Control of Water Pollution*; and (2) Modification of Isdell Sanitation and Pumping Service's Agricultural Utilization Permit (AGU 1003-S-05), pursuant to Part V of the aforementioned *Guidance and Regulations Governing the Land Treatment of Waste*, to add additional safeguards and to address concerns of both the Department and the citizens of the State of Delaware

Date of Issuance: June 30, 2014

Effective Date: June 30, 2014

This Order of the Secretary of the Department of Natural Resources and Environmental Control ("Department") considers the permit applications of Blessing Greenhouses and Compost Facility ("Blessing Compost") *and* Isdell Sanitation and Pumping Service ("Isdell Sanitation", "Isdell"), to wit: (1) Blessing Greenhouses and Compost Facility's application to renew its Distribution and Marketing Permit (DM 1102-S-03); and (2) the proposed modification of Isdell Sanitation and Pumping Service's Agricultural Utilization Permit (AGU 1003-S-05). The Applicant's businesses are located on Draper Road, approximately five (5) miles northeast of the city of Milton, Sussex County, Delaware.

Delaware's Good Nature depends on you!

Blessing Compost is a composting operation that collects animal manure, food processing waste, poultry offal, poultry mortalities, hatchery waste, and feathers (and previously sewage sludge), and composts the materials into a compost product. Isdell is a liquid non-hazardous waste management operation that is permitted to land-apply approved wastes at an agronomic rate. The aforementioned permit application matters of both Blessing Compost and Isdell have been reviewed pursuant to the applicable Delaware regulations governing each matter, to wit: *7 DE Admin. Code §7103, Guidance and Regulations Governing the Land Treatment of Wastes*; *7 DE Admin. Code §7201, et seq., Regulations Governing the Control of Water Pollution*; and *7 Del. C., Chapter 60*.

This Order, which details the Department's decisions with regard to the above-referenced issues currently pending with Blessing Compost and Isdell, must be reflective of the Department's efforts over the past several years of working closely with Bruce Blessing (the owner of both Blessing Compost and Isdell) to ensure that these facilities are being continually operated and maintained by the Applicant so as not to adversely impact local surface and/or groundwater supplies, nor cause any additional violations of state or federal drinking water standards, including, but certainly not limited to, non-compliance with the State of Delaware's *Regulations Governing Storm Water Discharges Associated with Industrial Activities*. Accordingly, this Order must *also* be responsive to the documentation entered into the Hearing Record in this matter with regard to past violations of the Applicant, to wit: (1) documented findings of fact with regard to the Applicant's discharge of pollutants, in violation of their National Pollutant Discharge Elimination System ("NPDES") permit and stormwater permit, and additional violations of *7 Del. C. 6003* and *7 DE Admin. Code §7201 et seq. – Regulations Governing the*

Control of Water Pollution, as set forth in the Department's formal Notice of Administrative Penalty Assessment and Order (Sec.'s Order #2010-W-0044), dated December 16, 2010; (2) additional findings of non-compliance and/or uncorrected items from prior Notice of Violation requirements, which led to the Department and Blessing Compost entering into a formal Agreement and Secretary's Order (dated March 19, 2012) to remedy all outstanding compliance items, and to adopt an interim facility management plan with Blessing Compost to achieve said compliance; and (3) a voluminous amount of public comment received by the Department at the time of the April 2012 public hearing from the members of the community surrounding the Blessing Compost and Isdell facilities in Milton, Delaware, concerning water quality, groundwater contamination, stormwater runoff, truck traffic, the amount of compost material on-site, odors, and overall quality of life/public health issues of the homeowners involved. This Order shall serve to summarize the above ongoing matters, and to establish a path forward to achieve regulatory compliance for both Blessing Greenhouses and Compost Facility and Isdell Sanitation and Pumping Service.

Background

The Department's Division of Water, Surface Water Discharges Section ("SWDS"), received an application from Blessing Compost to renew its Distribution and Marketing Permit (DM 1102-S-03) under Part III (B) of *The Guidance and Regulations Governing the Land Treatment of Waste* on May 27, 2011, which was then revised on January 26, 2012. On March 7, 2012 the Department placed its legal notice for the DM draft permit in both the News Journal and the Delaware State News, as well as on the Department's website, indicating that Blessing Greenhouses and Compost Facility

submitted a request to renew its DM permit, and that a public hearing would be held on April 18, 2012 to provide the public an opportunity to comment on the draft permit.

At the same time that the hearing for renewal of the Blessing Compost DM permit was being scheduled, the Department proposed to modify Isdell Sanitation and Pumping Service's existing Agricultural Utilization Permit (AGU-1003-S-05), under Part V of *The Guidance and Regulations Governing the Land Treatment of Waste*. The modification of Isdell's existing AGU Permit was proposed by the Department to add additional safeguards to Isdell's ongoing operations at its facility, as well as to address numerous concerns of both the Department and the public. As was the case with the aforementioned DM permit renewal matter, on March 7, 2012 the Department placed its legal notice for the proposed AGU permit modification in both the News Journal and the Delaware State News, as well as on the Department's website, and that a public hearing would be held on April 18, 2012 to provide the public an opportunity to comment on the draft modified AGU permit.

Pursuant to the aforementioned public notices, a public hearing was held at the Milton Elementary School located at 512 Federal Street in Milton, Delaware. Approximately sixty (60) people attended the hearing, and many provided comment on the draft permit and permit application. The hearing itself was divided into two parts: Part I was regarding the matter of Blessing Compost's application to renew its DM permit, and Part II concerned the Department's proposed modifications of Isdell's existing AGU permit. The Department received a significant amount of public comment as to both matters at that time.

The Department has the statutory basis and legal authority to act with regard to the above-referenced permit matters of Blessing Compost and Isdell Sanitation, and to make a determination in this matter, pursuant to 7 *Del.C.*, Chapter 60. A voluminous amount of public comment was received by the Department at this hearing, and the same was thoroughly addressed and responded to by the Division of Water in its comprehensive Technical Response Memorandum dated May 25, 2012 (which was then updated with supplemental memoranda on October 9, 2012, and again on January 7, 2014). Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report, dated May 20, 2014 ("Report"), which recommends certain findings, to wit: (1) the issuance of an *Amended* Agreement and Secretary's Order between the Department of Blessing Compost (formally updating and amending the previous Agreement and Secretary's Order dated March 19, 2012 between those parties); and (2) the issuance of an Order approving the modification of Isdell's AGU permit.

Findings and Discussion

As noted above, discussions between the Department and Bruce Blessing have been ongoing with the Department for several years with regard to the operation and maintenance of the Blessing Compost and Isdell facilities. As a result of the public hearing held on April 18, 2012, the Department received a voluminous amount of public comment, as noted in the Report. Following the close of the hearing record with regard to public comment, a thorough review of the same was undertaken by the Department's Division of Water. This comprehensive review subsequently yielded a formal Technical Response Memorandum, dated May 25, 2012, as well as supplemental Memoranda on

this matter dated October 9, 2012 and January 7, 2014, all of which the Hearing Officer then expressly incorporated into her Report. The aforementioned Technical Response Memoranda (“TRM”) encompassed a summary of the public comment contained in the record concerning this matter, organized and grouped according to its subject matter, followed by a thorough and rational discussion of the issue based upon the record developed in this matter. Following the discussion of each subject matter, the Division of Water offered its recommendation as to what the position of the Department should be with respect to each issue. In its responses, the Division of Water also took into account the history of the two facilities, public comment on each permit application, and drew reasoned conclusions based on the information contained within the hearing record.

This Order shall now fully address Blessing Compost’s application to renew its Distribution and Marketing Permit, as well as the proposed modification of Isdell’s Agricultural Utilization Permit, to wit:

**Part I: Blessing Greenhouses and Compost Facility’s Application for
Renewal of its Distribution & Marketing Permit:**

With respect to Blessing Greenhouses and Compost Facility, the Department’s Division of Water, SWDS, states in its TRM of May 25, 2012 that, based upon this facility’s failure to achieve regulatory compliance with Department requirements, including, but not limited to, 7 *DE Admin. Code* §§7103, 100.0 through 160 of *The Guidance and Regulations Governing the Land Treatment of Waste*, 7 *DE Admin. Code* §7201, *The Regulations Governing the Control of Water Pollution*, and that the facility is “...unlikely to achieve compliance for a relatively long period of time (approximately a year or more), the Department...recommends that the DM permit not be renewed at this time...” The SWDS further recommends that Mr. Blessing can reapply for a permit

without any prejudice at any time in the future. While acknowledging that such composting operations should be conducted under an effective DM permit, the TRM further notes that "...Blessing Compost may continue to compost the material currently on-site in accordance with the requirements set forth in the March 19, 2012 Agreement and Secretary's Order, which requires that the facility operate under the previous DM permit, State Permit Number DM1101-S-03".

Since continued composting and source removal is essential for reduction of odors and potential stormwater and groundwater impacts from the facility, the Department's Division of Water, SWDS, continued to support the above conclusions as set forth in its TRM of May 25, 2012 as the appropriate path forward for the Blessing Compost facility. However, on May 18, 2013, Bruce Blessing submitted an email to the Department serving as a notice of intent to withdraw the application for Blessing Compost's DM permit renewal. According to the updated TRM dated January 7, 2014, Mr. Blessing indicated in this email that Blessing Greenhouses will "...reapply at a later date and submit a revised project development report once additional infrastructure is in place".

Due to the fact that the Applicant, Blessing Compost, has withdrawn its application for renewal of its DM permit with the Department, this particular permitting issue has now been rendered moot. However, it is imperative that this facility be enabled to continue to move existing product from its facility, under the watchful eye of the Department, to achieve reduction of the amount of compostable and compost material currently stored on-site. Therefore, the Department will now move forward with a formal *amendment* of the March 19, 2012 Agreement and Secretary's Order ("ASO") previously

entered into between the Department and Blessing Compost. This *amended* ASO will serve to govern the ongoing daily actions of Blessing Compost's operations, and help this facility to ultimately come into compliance with requisite state and federal regulations while ensuring that stormwater, groundwater, and overall public health and quality of life for the local community are protected.

It should be noted that many steps must be taken by Blessing Compost before the Department would deem the facility's operations to be in compliance. Compost stockpiles must be reduced to significantly smaller quantities, and the ability for the facility to acquire future compost stockpiles would be limited in size, accordingly, by the size of financial responsibility mechanisms in place, as well as by the facility's infrastructure.

It should *also* be noted that Blessing Compost has historically experienced difficulty in achieving the Interim Compliance Measures as expressly stipulated in the previous ASO dated March 19, 2012. However, as already noted herein, Blessing Compost must possess the legal ability to continue to operation in order to achieve reduction of the amount of compostable and compost material stored on-site. Therefore, the best practical approach to achieve regulatory compliance (in the absence of the DNREC standard permit renewal process) is to modify the initial ASO of March 19, 2012, and replace it with an *amended* ASO, which, upon execution, shall govern Blessing Compost's facility operations from this point forward to achieve and maintain compliance with regard to these regulatory matters.

Part II: Modification of Isdell Sanitation and Pumping Service's Agricultural Utilization Permit:

As previously noted above, the public hearing held on April 18, 2012 also concerned the Department's proposal to modify Isdell's AGU Permit under Part V of *The Guidance and Regulations Governing the Land Treatment of Waste*, to add additional safeguards and to address concerns of both the Department and the public. Again, due to the voluminous amount of public comment received at the hearing, the Department's Division of Water, SWDS, performed an exhaustive review of this file post-hearing, and provided its responses in its TRM forwarded to the Hearing Officer in this matter. Among the issues voiced at the aforementioned hearing were public concern as to groundwater contamination, poor land application processes, odors, and an overall negative impact on the quality of life experienced by the local community as a result of Isdell's ongoing compliance issues.

It should be noted that, while the Department respects the comments received that opined Isdell should not be issued an AGU permit, the hearing was held to receive comment on the modification of the permit, and not a reissuance of the same. The existing AGU permit was issued to Isdell by the Department in 2010 for a period of five (5) years. Given the concerns raised, however, the SWDS recommended in its initial TRM of May 25, 2012 that Isdell's existing AGU permit be modified, as public noticed, with one additional modification: *that the expiration of the AGU permit shall be reduced down to one (1) year from the modification date.*

Subsequent to the recommendations set forth in its TRM of May 25, 2012, however, the Division of Water, SWDS, made an updated recommendation to the

Hearing Officer in its supplemental TRM dated October 9, 2012. At that time, SWDS advised that its previous recommendation of May 2012 had been “overtaken by other events”, and that the Department was now preparing formal notice of its intent to revoke Isdell’s current AGU permit.

Following the SWDS’ October 9, 2012 recommendation, additional time passed as the Department’s Division of Water prepared its modifications to the aforementioned ASO (to govern Blessing Compost’s ongoing operations), as set forth in Part I of this Order. Over the next several months, the Department noted in its supplemental TRM of January 7, 2014 that Isdell made “significant progress in complying with the AGU permit and conducting a more successful agricultural utilization program”, and that Isdell’s nutrient management consultant had been “actively working with the Department to continue improvements in the facility’s agricultural operations” during that time period as well.

The Department has seen Isdell make slow, steady and significant progress with respect to coming into compliance with its aforementioned AGU permit. Isdell’s implementation of a thorough Integrated Pest Management Program (“IPM”), beginning in the spring of 2013, has resulted in significant improvements in vectors and odors. Through this program, Isdell has been enabled to monitor and control insect populations at its permitted land application sites; such methods include, but are not limited to, the following: (1) surface applied waste material being incorporated as soon as possible, not to exceed two hours of application (weather permitting); (2) fly populations being monitored daily, and when a population threshold is exceeded, treatment is performed; (3) method of treatment shall include the use of a tractor-mounted AgTec Crop Sprayer

with a 50 gallon mix tank, which sprays a product consisting of dish soap/surfactant, Warrior II Insecticide, and Perm Up 3.2 EC Insecticide (insecticides are used at the initial onset of population growth, and dish soap is used to maintain populations on a daily basis); (4) treatment logs are maintained, indicating the day and time of treatment, the wind speed and direction at the time of application, and what product was used, along with the amount and rate of application; (5) complaints shall be investigated and recorded, along with all necessary actions taken to remedy such complaints; and (6) records are open for review by the Department.

With respect to odor control issues (which have historically been a major complaint/concern of the community), Isdell now implements its odor control initiatives through the use of AG1000, a derivative of EM1. Odors are being monitored on a daily basis, and when odors have exceeded the accepted threshold, AG1000 is applied to the land application site. Additionally, pursuant to Isdell's IPM Program for 2014, Fly Predators®, a natural biological fly control method, will be introduced at the property of Theodore Jones (Fly Predators® are "beneficial insects" which, when released near fly breeding areas such as manure areas that have ongoing moisture that produces house flies, and/or bedding and silage or spoiled feed areas that produce biting stable flies, kill pest fly pupae, yet do not both either people or animals). Of note is the fact that the Department has not received any odor or insect complaints recently, and continued implementation of Isdell's IPM Program appears to be successful.

Given the marked improvement made by Isdell subsequent to October 2012, it is the current recommendation of the Department that the expiration date of Isdell's AGU permit remain June 30, 2015, however, with additional language inserted into the

modified permit (under the Section entitled, "Special Conditions") to help ensure continued compliance, while giving the Department additional flexibility in dealing with any noncompliance, to wit:

The effective period of this permit shall be for six (6) months after the permit modification date. If Department compliance assessments indicate that the permittee complied with the following requirements, no later than four (4) months after the permit modification date, the Department shall provide Isdell Sanitation and Pumping Service written documentation indicating that permit coverage will remain effective through June 30, 2015: (a) the permittee complies with all requirements in State Permit Number AGU 1003-S-05; and (b) the permittee continues to develop and improve land application activities at the land application site.

Pursuant to the additional language being added to the aforementioned modified AGU permit, failure to meet the requirements above will result in the Department notifying Isdell that its AGU permit will be revoked.

With the proposed modifications, the Department will add additional safeguards that will help reduce the impact of land application activities on the surrounding community. Furthermore, additional oversight and enforcement will ensure that the facility complies with Part V of *The Guidance and Regulations Governing the Land Treatment of Waste* and Isdell's AGU permit.

I find that the Department's experts in the Division of Water, SWDS, fully developed the record to support adoption of the above findings, and that these findings are well-supported by the record developed by the Department. Moreover, I adopt the Report to the extent it is consistent with this Order.

By issuance of this Order, the Department will be enabled to assist both Blessing Greenhouses and Compost Facility *and* Isdell Sanitation & Pumping Service to take the steps to not only achieve, but maintain regulatory compliance with regard to these facilities' ongoing daily operations and the requisite state and federal regulations governing such facilities, while ensuring that stormwater, groundwater, and the public health are protected for Delaware and the local community surrounding this operation.

Conclusions

In sum, as more fully described in the reasons and findings above, and in the Report, the following is hereby adopted as a final Order of the Department:

1. The Department has jurisdiction under its statutory authority to issue an Order making its determination in this proceeding;
2. The Department provided adequate public notice of the proceeding, and the public hearing held on these matters, in a manner as required by the law and regulations;
3. The Department held its aforementioned public hearing on April 18, 2012, in order to consider all public comment before making any final decisions;
4. The Department's Hearing Officer's Report, including its recommended record, and the Department's Technical Response Memoranda dated May 25, 2012, October 9, 2012 and January 7, 2014, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
5. With regard to the matter of Blessing Compost's operation, since the Applicant withdrew its application filed with the Department for renewal of its Distribution and Marketing permit, that matter is now moot. However, this facility must

possess the ability to continually move existing finished product from the facility to achieve reduction of the amount of compostable and compost material stored on-site. Therefore, the Department shall modify the initial ASO of March 19, 2012, and replace it with an *Amended* ASO, which, upon execution, shall govern Blessing Compost's facility operations from this point forward to not only achieve, but to maintain compliance with regard to these regulatory matters;

6. Once executed, the aforementioned *Amended* ASO shall govern all regulatory matters involving the operation of Blessing Compost, until such time as either (1) Blessing's complete satisfaction of all compliance requirements delineated in the Amended ASO, or (2) the Department's determination that Blessing is in default of any of the compliance requirements at any time during the term of said Agreement. If the latter occurs, and Blessing should fail/refuse to cure the default, the Department shall take any and all steps necessary to bring Blessing Compost back into regulatory compliance, including, but not limited to, the enforcement of civil penalties against the Applicant, pursuant to 7 *Del.C.* §6005(c);

7. With regard to the matter of Isdell Sanitation and Pumping Service, the Department shall *modify* Isdell's existing AGU permit as follows: Isdell's AGU permit expiration date shall remain June 30, 2015, however, the Department shall add additional language into the modified permit to help ensure continued compliance, while giving the Department additional flexibility in dealing with any noncompliance, to wit:

The effective period of this permit shall be for six (6) months after the permit modification date. If Department compliance assessments indicate that the permittee complied with the following requirements, no later than four (4) months after the permit modification date, the Department shall provide Isdell Sanitation and Pumping

Service written documentation indicating that permit coverage will remain effective through June 30, 2015: (a) the permittee complies with all requirements in State Permit Number AGU 1003-S-05; and (b) the permittee continues to develop and improve land application activities at the land application site.

Pursuant to the additional language being added to the aforementioned modified AGU permit, failure to meet the requirements above will result in the Department notifying Isdell that its AGU permit will be revoked.

8. By modification of Isdell's existing AGU permit, the Department will add additional safeguards that will help reduce the impact of land application activities on the surrounding community. Furthermore, additional oversight and enforcement will ensure that the facility complies with Part V of *The Guidance and Regulations Governing the Land Treatment of Waste* and Isdell's AGU permit.

9. The above actions of the Department will enable Blessing Greenhouses and Compost Facility and Isdell Sanitation & Pumping Service to take the necessary steps to not only achieve, but maintain regulatory compliance with regard to these facilities' ongoing daily operations and the requisite state and federal regulations governing such facilities, while ensuring that stormwater, groundwater, and the public health are protected for Delaware and the local community surrounding this operation;

10. The Department shall provide notice of the above actions as required by law and regulation, and otherwise as the Department determines is appropriate.



Collin P. O'Mara
Secretary

MEMORANDUM

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Permit Applications of Blessing Greenhouses and Compost Facility *and* Isdell Sanitation and Pumping Service, to wit: (1) Renewal of Blessing Greenhouses and Compost Facility's Distribution and Marketing Permit (DM 1102-S-03), pursuant to 7 *DE Admin. Code* 7103 §§ 100.0 – 160, *Guidance and Regulations Governing the Land Treatment of Waste*, 7 DE Admin. Code §7201, *Regulations Governing the Control of Water Pollution*; and (2) Modification of Isdell Sanitation and Pumping Service's Agricultural Utilization Permit (AGU 1003-S-05), pursuant to Part V of the aforementioned *Guidance and Regulations Governing the Land Treatment of Waste*, to add additional safeguards and to address concerns of both the Department and the citizens of the State of Delaware

DATE: May 20, 2014

I. Background and Procedural History:

This Report makes recommendations to the Secretary of the Department of Natural Resources and Environmental Control ("Department") with regard to the permit applications of Blessing Greenhouses and Compost Facility ("Blessing Compost") *and* Isdell Sanitation and Pumping Service ("Isdell Sanitation", "Isdell"), to wit: (1) Blessing Greenhouses and Compost Facility's application to renew its Distribution and Marketing Permit (DM 1102-S-03); and (2) the proposed modification of Isdell Sanitation and Pumping Service's Agricultural Utilization Permit (AGU 1003-S-05). The Applicant's businesses are located on Draper Road, approximately five (5) miles northeast of the city of Milton, Sussex County, Delaware.

Blessing Compost is a composting operation that collects animal manure, food processing waste, poultry offal, poultry mortalities, hatchery waste, and feathers (and previously sewage sludge), and composts the materials into a compost product. Isdell is a liquid non-hazardous waste management operation that is permitted to land-apply approved wastes at an agronomic rate. It should be noted that Bruce Blessing is the owner of both Blessing Compost and Isdell Sanitation. The aforementioned permit application matters of both Blessing Compost and Isdell have been reviewed pursuant to the applicable Delaware regulations governing each matter, to wit: *7 DE Admin. Code §7103, Guidance and Regulations Governing the Land Treatment of Wastes*; *7 DE Admin. Code §7201, et seq., Regulations Governing the Control of Water Pollution*; and *7 Del. C., Chapter 60*.

The Department's Division of Water, Surface Water Discharges Section ("SWDS"), received an application from Blessing Compost to renew its Distribution and Marketing Permit (DM 1102-S-03) under Part III (B) of *The Guidance and Regulations Governing the Land Treatment of Waste* on May 27, 2011, which was then revised on January 26, 2012. On March 7, 2012 the Department placed its legal notice for the DM draft permit in both the News Journal and the Delaware State News, as well as on the Department's website, indicating that Blessing Greenhouses and Compost Facility submitted a request to renew its DM permit, and that a public hearing would be held on April 18, 2012 to provide the public an opportunity to comment on the draft permit.

At the same time that the hearing for renewal of the Blessing Compost DM permit was being scheduled, the Department proposed to modify Isdell Sanitation and Pumping Service's existing Agricultural Utilization Permit (AGU-1003-S-05), under Part V of *The*

Guidance and Regulations Governing the Land Treatment of Waste. The modification of Isdell's existing AGU Permit was proposed by the Department to add additional safeguards to Isdell's ongoing operations at its facility, as well as to address numerous concerns of both the Department and the public. As was the case with the aforementioned DM permit renewal matter, on March 7, 2012 the Department placed its legal notice for the proposed AGU permit modification in both the News Journal and the Delaware State News, as well as on the Department's website, and that a public hearing would be held on April 18, 2012 to provide the public an opportunity to comment on the draft modified permit.

Pursuant to the aforementioned public notices, a public hearing was held at the Milton Elementary School located at 512 Federal Street in Milton, Delaware. Approximately sixty (60) people attended the hearing, and many provided comment on the draft permit and permit application. The hearing itself was divided into two parts: Part I was regarding the matter of Blessing Compost's application to renew its DM permit, and Part II concerned the Department's proposed modifications of Isdell's existing AGU permit. The Department received a significant amount of public comment as to both matters at that time.

The Department has the statutory basis and legal authority to act with regard to the above-referenced permit matters of Blessing Compost and Isdell Sanitation, and to make a determination in this matter, pursuant to 7 *Del.C.*, Chapter 60. Again, a voluminous amount of public comment was received by the Department at this hearing, and the same was thoroughly addressed and responded to by the Division of Water in its comprehensive Technical Response Memorandum dated May 25, 2012 (which was then

updated with supplemental memoranda on October 9, 2012, and again on January 7, 2014). Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on April 19, 2012, responsible Department staff from the Division of Water, SWDS offered the Department's exhibits in this matter as follows: seventeen (17) exhibits pertaining to Blessing Compost's application for DM permit renewal, and nine (9) exhibits pertaining to the Department's proposal to modify Isdell's existing AGU permit. Accordingly, this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits were numerous documentations of noncompliance on the part of both Blessing Compost and Isdell Sanitation, including, but certainly not limited to, (1) documented findings of fact with regard to Blessing Compost's discharge of pollutants, in violation of their National Pollutant Discharge Elimination System ("NPDES") permit and stormwater permit, and additional violations of 7 *Del. C.* 6003 and 7 *DE Admin. Code* §7201 *et seq.* – *Regulations Governing the Control of Water Pollution*, as set forth in the Department's formal Notice of Administrative Penalty Assessment and Order (Sec.'s Order #2010-W-0044), dated December 16, 2010; and (2) additional findings of non-compliance and/or uncorrected items from prior Notice of Violation requirements, which led to the Department and Blessing Compost entering into a formal Agreement and Secretary's Order (dated March 19, 2012), which was done in an attempt by the Department to remedy all outstanding compliance items, and to adopt an interim facility management plan with Blessing Compost to achieve said compliance.

For the benefit of the record developed in this matter, and for both parts of the aforementioned public hearing, Rob Underwood (who, at that time, was the Program Manager in charge of the NPDES permitting program) offered introductory comments to those in attendance at said hearing, then identified each set of Department exhibits to be entered into the hearing record. At the conclusion of Mr. Underwood's comments, Brian Churchill (Environmental Scientist with the Department's Division of Water, SWDS) offered a brief presentation with regard to the background of each facility, which included both Blessing Compost and Isdell Sanitation's history of regulatory compliance, and the issues surrounding each permit pending at that time with the Department. Following Mr. Churchill's remarks during each part of the hearing, the floor was opened up for comment on these permitting matters from those in attendance.

It should be noted that a voluminous amount of public comment was received by the Department at the time of the April 18, 2012 public hearing from the members of the community surrounding the Blessing Compost and Isdell facilities in Milton, Delaware. These comments concerned the impacts that the operations of both Blessing Compost and Isdell have had upon local water quality, groundwater contamination, stormwater runoff, truck traffic, the amount of compost material on-site, odors, and the overall quality of life/public health issues of the homeowners involved. Given the level of concern voiced by those in attendance at the hearing that night, this Hearing Officer held the record open for an additional thirty (30) days to allow the inclusion of additional public comment into the hearing record generated in this matter. Thus, in addition to the Department's exhibits which were entered into the record as noted above, this hearing record also consists of a formal verbatim court reporter's transcript generated from the

aforementioned public hearing of April 18, 2012, along with all of the public comment received in this matter by the Department, both at the time of the hearing and during the post-hearing phase of these permitting matters.

Following the close of hearing record with respect to public comment, a thorough review of the same was undertaken by the Department's Division of Water, SWDS. This comprehensive review subsequently yielded a formal Technical Response Memorandum, dated May 25, 2012, as well as supplemental Memoranda on this matter dated October 9, 2012 and January 7, 2014, all of which are being expressly incorporated into this Hearing Officer's Report. The aforementioned Technical Response Memoranda ("TRM") encompassed a summary of the public comment contained in the record concerning this matter, organized and grouped according to its subject matter, followed by a thorough and rational discussion of the issue based upon the record developed in this matter. Following the discussion of each subject matter, the SWDS offered its recommendation as to what the position of the Department should be with respect to each issue. These responses also took into account the history of the two facilities, public comment on each permit application, and drew reasoned conclusions based on the information contained within the hearing record.

With respect to Blessing Greenhouses and Compost Facility, the Department's TRM of May 25, 2012 states that, based upon this facility's failure to achieve regulatory compliance with Department requirements, including, but not limited to, *7 DE Admin. Code* §§7103, 100.0 through 160 of *The Guidance and Regulations Governing the Land Treatment of Waste*, *7 DE Admin. Code* §7201, *The Regulations Governing the Control of Water Pollution*, and that the facility is "...unlikely to achieve compliance for a

relatively long period of time (approximately a year or more), the Department....recommends that the DM permit not be renewed at this time...” The SWDS further recommends that Mr. Blessing can reapply for a permit without any prejudice at any time in the future. While acknowledging that such composting operations should be conducted under an effective DM permit, the TRM further notes that “...Blessing Compost may continue to compost the material currently on-site in accordance with the requirements set forth in the March 19, 2012 Agreement and Secretary’s Order, which requires that the facility operate under the previous DM permit, State Permit Number DM1101-S-03”.

Since continued composting and source removal is essential for reduction of odors and potential stormwater and groundwater impacts from the facility, the SWDS continued to support the above conclusions as set forth in its TRM of May 25, 2012 as the appropriate path forward for the Blessing Compost facility. However, on May 18, 2013, Bruce Blessing submitted an email to the Department serving as a notice of intent to withdraw the application for Blessing Compost’s DM permit renewal. According to the updated TRM dated January 7, 2014, Mr. Blessing indicated in this email that Blessing Greenhouses will “...reapply at a later date and submit a revised project development report once additional infrastructure is in place”.

Thus, due to the fact that the Applicant, Blessing Compost, has now withdrawn the application to renew its DM permit with the Department, this particular permitting issue has now been rendered moot. Alternatively, the Department’s Division of Water, Surface Water Discharges Section, now plans to move forward with a formal *amendment* of the March 19, 2012 Agreement and Secretary’s Order (“ASO”) previously entered into

between the Department and Blessing Compost. This *amended* ASO will serve to govern the ongoing daily actions of Blessing Compost's operations, and help this facility to ultimately come into compliance with requisite state and federal regulations while ensuring that stormwater, groundwater, and overall public health and quality of life for the local community are protected.

It should be noted that many steps must be taken by Blessing Compost before the Department would deem the facility's operations to be in compliance. Compost stockpiles must be reduced to significantly smaller quantities, and the ability for the facility to acquire future compost stockpiles would be limited in size, accordingly, by the size of financial responsibility mechanisms in place, as well as by the facility's infrastructure.

It should *also* be noted that Blessing Compost has historically experienced difficulty in achieving the Interim Compliance Measures as expressly stipulated in the previous ASO dated March 19, 2012. However, Blessing Compost must possess the legal ability to continually move finished product from its facility in order to achieve reduction of the amount of compostable and compost material stored on-site. Therefore, the best practical approach to achieve regulatory compliance (in the absence of the DNREC standard permit renewal process) is to modify the initial ASO of March 19, 2012, and replace it with an *amended* ASO, which, upon execution, shall govern Blessing Compost's facility operations from this point forward to achieve compliance with regard to these regulatory matters.

As previously noted above, the public hearing held on April 18, 2012 also concerned the Department's proposal to modify Isdell's AGU Permit under Part V of *The*

Guidance and Regulations Governing the Land Treatment of Waste, to add additional safeguards and to address concerns of both the Department and the public. Again, due to the voluminous amount of public comment received at the hearing, the Department's Division of Water, SWDS, performed an exhaustive review of this file post-hearing, and provided its responses in its TRM forwarded to the Hearing Officer in this matter. Among the issues voiced at the aforementioned hearing were public concern as to groundwater contamination, poor land application processes, odors, and an overall negative impact on the quality of life experienced by the local community as a result of Isdell's ongoing compliance issues.

It should be noted that, while the Department respects the comments received that opined Isdell should not be issued an AGU permit, the purpose of this public hearing was held to receive comment on the proposed modification of the AGU permit, and not a reissuance of the same. The existing AGU permit was issued to Isdell by the Department in 2010 for a period of five (5) years. Given the concerns raised, however, the SWDS recommended in its aforementioned TRM of May 25, 2012 that Isdell's existing AGU permit be modified, as public noticed, with one additional modification: *that the expiration of the AGU permit shall be reduced down to one (1) year from the modification date.*

Subsequent to the recommendations set forth in its TRM of May 25, 2012, however, the Division of Water, SWDS, made an updated recommendation to the Hearing Officer in its supplemental TRM dated October 9, 2012. At that time, SWDS advised that its previous recommendation of May 2012 had been "overtaken by other

events”, and that the Department was now preparing formal notice of its intent to revoke Isdell’s current AGU permit.

Following the SWDS’ October 9, 2012 recommendation, additional time passed as the Department’s Division of Water prepared its modifications to the aforementioned ASO (to govern Blessing Compost’s ongoing operations), as previously set forth herein. Over the next several months, the Department noted that Isdell had made “significant progress in complying with the AGU permit and conducting a more successful agricultural utilization program”, and that Isdell’s nutrient management consultant had been “actively working with the Department to continue improvements in the facility’s agricultural operations” during that time period as well.

The Department has seen Isdell make slow, steady and significant progress with respect to coming into compliance with its aforementioned AGU permit. Isdell’s implementation of a thorough Integrated Pest Management Program (“IPM”), beginning in the spring of 2013, has resulted in significant improvements in vectors and odors. Through this program, Isdell has been enabled to monitor and control insect populations at its permitted land application sites; such methods include, but are not limited to, the following: (1) surface applied waste material being incorporated as soon as possible, not to exceed two hours of application (weather permitting); (2) fly populations being monitored daily, and when a population threshold is exceeded, treatment is performed; (3) method of treatment shall include the use of a tractor-mounted AgTec Crop Sprayer with a 50 gallon mix tank, which sprays a product consisting of dish soap/surfactant, Warrior II Insecticide, and Perm Up 3.2 EC Insecticide (insecticides are used at the initial onset of population growth, and dish soap is used to maintain populations on a daily

basis); (4) treatment logs are maintained, indicating the day and time of treatment, the wind speed and direction at the time of application, and what product was used, along with the amount and rate of application; (5) complaints shall be investigated and recorded, along with all necessary actions taken to remedy such complaints; and (6) records are open for review by the Department.

With respect to odor control issues (which have historically been a major complaint/concern of the community), Isdell now implements its odor control initiatives through the use of AG1000, a derivative of EM1. Odors are being monitored on a daily basis, and when odors have exceeded the accepted threshold, AG1000 is applied to the land application site. Additionally, pursuant to Isdell's IPM Program for 2014, Fly Predators®, a natural biological fly control method, will be introduced at the property of Theodore Jones (Fly Predators® are "beneficial insects" which, when released near fly breeding areas such as manure areas that have ongoing moisture that produces house flies, and/or bedding and silage or spoiled feed areas that produce biting stable flies, kill pest fly pupae, yet do not both either people or animals). Of note is the fact that the Department has not received any odor or insect complaints recently, and continued implementation of Isdell's IPM Program appears to be successful.

Given the marked improvement made by Isdell subsequent to October 2012, it is the current recommendation of the Department's Division of Water, SWDS (pursuant to its supplemental TRM of January 7, 2014), that the expiration date of Isdell's AGU permit remain June 30, 2015, however, with additional language inserted into the modified permit (under the Section entitled, "Special Conditions") to help ensure

continued compliance, while giving the Department additional flexibility in dealing with any noncompliance, to wit:

The effective period of this permit shall be for six (6) months after the permit modification date. If Department compliance assessments indicate that the permittee complied with the following requirements, no later than four (4) months after the permit modification date, the Department shall provide Isdell Sanitation and Pumping Service written documentation indicating that permit coverage will remain effective through June 30, 2015: (a) the permittee complies with all requirements in State Permit Number AGU 1003-S-05; and (b) the permittee continues to develop and improve land application activities at the land application site.

Pursuant to the additional language being added to the aforementioned modified AGU permit, failure to meet the requirements above will result in the Department notifying Isdell that its AGU permit will be revoked.

With the proposed modifications, the Department will add additional safeguards that will help reduce the impact of land application activities on the surrounding community. Furthermore, additional oversight and enforcement will ensure that the facility complies with Part V of *The Guidance and Regulations Governing the Land Treatment of Waste* and Isdell's AGU permit.

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this permitting matter (and the exhaustive steps taken by the Department to continually work closely with Mr. Blessing and his facilities in attempts to achieve regulatory compliance), the Department's TRMs of May 25, 2012, October 9, 2012, and January 7, 2014 are all attached hereto as Appendix "A", and the same are expressly incorporated into this Hearing Officer's Report. It should be noted that the Department adhered to all appropriate Delaware statutes and the Department's permitting

process in this matter, and that the Department has met the required public notice obligations regarding the same. It should also be noted that the Department has provided this Hearing Officer with the proposed *Amended* ASO and the proposed *modification* of Isdell's existing AGU permit, and the same are attached hereto.

III. Conclusions and Recommendations:

Based on the record developed in this matter, I find that the proposed *Amended* ASO and the proposed *modification* of Isdell's existing AGU permit are both consistent with the Department's regulations concerning such matters, and that the same will enable the Department to effectively regulate both Blessing Compost and Isdell's operations to protect the environment and public health. Furthermore, I find that both the proposed *Amended* ASO and the proposed *modification* of Isdell's existing AGU permit are factually accurate, and conclude that the same are legally consistent with the requisite state and federal regulations. Consequently, I recommend that the proposed *Amended* ASO and the proposed *modification* of Isdell's existing AGU permit, with its reasonable terms and conditions, be adopted by the Secretary in a final Order. The hearing record and the Department's experts provide ample support for an Order approving the issuance of both the *Amended* ASO for Blessing Compost and the *modified* AGU for Isdell.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority to issue an Order making its determination in this proceeding;
2. The Department provided adequate public notice of the proceeding, and the public hearing held on these matters, in a manner as required by the law and regulations;

3. The Department held its aforementioned public hearing on April 18, 2012, in order to consider all public comment before making any final decisions;

4. The Department's Technical Response Memoranda dated May 25, 2012, October 9, 2012 and January 7, 2014, as set forth in Appendix A, are all expressly incorporated into the hearing record and this Report;

5. I recommend that the attached Order be adopted, thereby approving the issuance of both the *Amended* ASO for Blessing Compost and the *modified* AGU for Isdell; and that

6. The Department shall provide notice of the above actions as required by law and regulation, and otherwise as the Department determines is appropriate.

/s/ Lisa A. Vest
LISA A. VEST
Public Hearing Officer