



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005

**Order No. 2014-WH-0027**

*Certified Mail/Return Receipt Requested*  
7013 1710 0001 2551 7520

**Issued To:**

Mr. David R. Kelley, President  
Kelley Transport & Refuse, LLC  
11026 Greensboro Road  
Denton, Maryland 21629

**Registered Agent:**

[Listed as, "Resigned Agent Account"  
in Delaware]

Dear Mr. Kelley:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Kelley Transport & Refuse, LLC ("Respondent" or "Kelley") in violation of 7 Del. C. Chapter 60 and 7 DE Admin. Code 1301, *Delaware's Regulations Governing Solid Waste* ("DRGSW"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. § 6005(b)(3).

***BACKGROUND***

Respondent is the President of Kelley's Transport & Refuse, LLC, located in Denton, Maryland. Respondent is a transporter of solid waste, having last operated under Delaware Solid Waste Transport Permit Number DE-SW-1232 (the "permit"). The permit authorized Respondent to transport municipal solid waste and dry waste (as defined in the DRGSW) in, out of, or through the State of Delaware. Respondent's permit expired on December 31, 2010.

*Delaware's Good Nature depends on you!*

On September 23, 2014, a Department representative identified Respondent's vehicle entering DSWA-Northern Solid Waste Management Center (Cherry Island) with a mixed load of solid waste, comprised mainly of construction and demolition waste. Respondent's vehicle was marked with solid waste permit number DE-SW-1232. Respondent's driver advised a Department representative that Respondent normally performs work downstate but due to a new work contract in New Castle County, Respondent transported the waste to DSWA-Northern Solid Waste Management Center. After returning to the office, the Department's representative determined that Respondent's permit to transport solid waste had expired on December 31, 2010 and notified a Department representative of the matter.

On September 24, 2014, the Department referred the matter to the Environmental Crimes Unit ("ECU"). The ECU issued to Respondent a criminal complaint and summons, to appear at the Justice of the Peace Court 11, in New Castle, to answer to the charge of transportation, storage, or collection of solid waste without a permit. On November 24, 2014, Respondent pled no contest to the charge and paid a fine of \$180.

Additionally, a review of the Department's annual report records revealed that Respondent had utilized DSWA Southern Solid Waste Management Center at least once in 2011. During the entire year of 2011, Respondent did not have a solid waste transporter permit with the Department.

In addition to the incidents in 2011 and 2014 where Respondent transported solid waste without a permit, Respondent previously had ongoing permitting issues with the Department since 2006. On July 5, 2006, a transporter permit was issued to Respondent with the expiration date of September 30, 2007. Respondent allowed the permit to expire without attempting to renew it.

On September 19, 2008, Respondent submitted a deficient application to transport solid waste. The deficiencies were not corrected even after Department representatives contacted Respondent to request additional information. On October 3, 2008, Respondent entered DSWA Central (Sandtown) Solid Waste Management Center to dispose of asbestos waste mixed with construction and demolition waste. DSWA Central is not permitted to accept asbestos waste; additionally the waste was generated in Maryland and thus prohibited from disposal at a DSWA facility pursuant to 7 *Del. C.* § 6428, a violation pursued by DSWA. Furthermore, Respondent did not have a lawful solid waste transporter permit at the time of the October 3, 2008 incident. The ECU issued a criminal complaint and summons to Respondent on October 17, 2008, in the amount of \$1,059.50; Respondent pled guilty to these charges. On November 12, 2008, the Department issued a permit to Respondent, along with a letter reiterating permit conditions and past events.

On November 23, 2009, Respondent submitted an application to renew its soon-to-expire permit. The Department issued a renewed permit to Respondent on December 18, 2009, with an expiration date of December 31, 2010. Despite a letter from the Department on December 29, 2010, reminding Respondent of the permit expiration and that transporting without a permit is subject to enforcement, Respondent failed to submit a renewal application.

## ***FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS***

**1. Seven Del. C. § 6003(a)(4) states:**

*"(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity: ...*

*(4) In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or ..."*

**Section 7.1.1 of DRGSW states:**

*"No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations."*

On September 23, 2014, a Department representative observed Respondent entering DSWA-Northern Solid Waste Management Center (Cherry Island) with a mixed load of solid waste. Respondent's truck was marked with Delaware Solid Waste Transporter Permit Number DE-SW-1232; however, the Department representative determined that Respondent's last lawful permit to transport solid waste had expired on December 31, 2010. Transporting solid waste without a permit is a violation of 7 Del. C. § 6003(a)(4) and § 7.1.1 of DRGSW.

## ***CONCLUSIONS***

Based on the foregoing, the Department has concluded that Kelley Transport & Refuse, LLC has violated the above cited statutory and regulatory provisions.

## ***ASSESSMENT OF PENALTY AND COSTS***

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$10,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$1,500.00, pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$10,000.00 to pay the penalty and one check to the Department in the amount of \$1,500.00 to pay the estimated costs within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: William Kassab, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.

The Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations against Respondent, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees.

### ***PUBLIC HEARING***

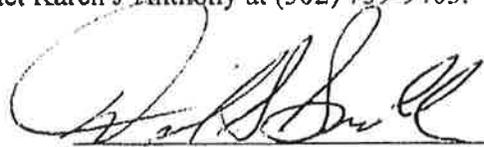
This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). The Department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

### ***PRE-PAYMENT***

Respondent may prepay the administrative penalty of \$10,000.00 and the Department's estimated costs in the amount of \$1,500.00 in the manner described in the assessment section above. 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.

If you have any questions, please contact Karen J'Anthony at (302) 739-9403.

12/31/14  
Date

  
David S. Small, Secretary

Enf/Kelley Transport & Refuse, LLC Adm. Penalty Order

cc: William Kassab, Deputy Attorney General  
Marjorie A. Crofts, WHS Director  
Nancy C. Marker, SHWMS Program Administrator  
Karen G. J'Anthony, SHWMS Program Manager  
Zakary Fisch, Environmental Scientist  
Jenny M. Bothell, Enforcement Coordinator  
Susan S. Baker, Paralegal  
SHWMS File

***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Kelley Transport & Refuse, LLC** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Kelley Transport & Refuse, LLC** will pay the administrative penalty in the amount of \$10,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to William Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **Kelley Transport & Refuse, LLC** will reimburse the Department in the amount of \$1,500.00 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to William Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

**Kelley Transport & Refuse, LLC**

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

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

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

STATE OF DELAWARE  
UNIFORM CRIMINAL COMPLAINT AND SUMMONS

STATE OF DELAWARE COUNTY OF KENT  
CITY OR TOWN OF Camden-Wyoming

OFFENDER

SBI Number: T2990559

The undersigned police officer has just and reasonable cause to believe that on: 08/25/2014

Name: NORTHERN CHESAPEAKE MANAGEMENT represented by: DAVID JOHNATHAN SABO

Address: 11026 GREENSBORO RD, DENTON MD 21629

Date of Birth/Age: /0

Sex:

Race:

Eye Color:

Hair Color:

Height:

Weight:

Social Security No.: 000000000

Employer:

SUMMONS

You are hereby summoned to appear:

DATE/TIME: 09/11/2014 at 09:00 Am

COURT: JUSTICE OF THE PEACE COURT 07

LOCATION: 480 BANK LANE In Dover, DE 19904-0000

OFFENSE

Charge Sequence: 001 Police Complaint Number: 9714001872 Arrest Number: ACS9700087

Charge: Systems Shall Be Operated as Not to Create a Public Health Hazard or Pollution

In Violation of OS DENREC Regulations 0003 1900 M

Location: 114 PRAIRE DOG LA, Camden-Wyoming 19934

TO WIT: NORTHERN CHESAPEAKE MANAGEMENT, on or about the 25th day of AUGUST, 2014, in the County of KENT, State of Delaware. To Wit: did allow waste water to be discharged from a septic tank onto the ground causing a public health hazard located at 114 Prairie Dog Lane, Camden-Wyoming, Kent County Delaware.

See next page for remaining charges.

AFFIDAVIT

OFF PURSE - 09706 - DNREC-ENVIRONMENTAL CRIMES UNIT

Complaint Number: 9714001872

Arrested

(Release by Auth. Official)

sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, AD \_\_\_\_\_.

Judge, Magistrate, Alderman, Commissioner \_\_\_\_\_

Failure to respond to this summons will result in the issuance of a warrant for your arrest and may result in fine or imprisonment or both.

I promise to appear in said court at said date and time.

Offender \_\_\_\_\_ Date \_\_\_\_\_

Officer OFF PURSE - 09706 - DNREC-ENVIRONMENTAL CRIMES UNIT Date 08/28/2014

**Additional Charges**

Charge Sequence: 002      Police Complaint Number: 9714001872      Arrest Number: ACS9700087

Charge: **Owner responsible for keeping sewer in proper working condition**

In Violation of OS DENREC Regulations 0003 0130 M

Location: 114 PRAIRE DOG LA , Camden-Wyoming 19934

TO WIT: NORTHERN CHESAPEAKE MANAGEMENT, on or about the 25th day of AUGUST, 2014, in the County of KENT, State of Delaware, To Wit: being the owner of the Hilltop Mobile Home Park, allowed the septic system to discharge waste water from the septic tank onto the ground causing a public health hazard located at 114 Prairie Dog Lane, Camden-Wyoming, Kent County, Delaware.

STATE OF DELAWARE  
UNIFORM CRIMINAL COMPLAINT AND SUMMONS

STATE OF DELAWARE COUNTY OF KENT  
CITY OR TOWN OF Camden-Wyoming

OFFENDER

SBI Number: T2990559

The undersigned police officer has just and reasonable cause to believe that on: **08/25/2014**  
Name: **NORTHERN CHESAPEAKE MANAGEMENT** represented by: **DAVID JOHNATHAN SABO**  
Address: **11026 GREENSBORO RD, DENTON MD 21629**  
Date of Birth/Age: /0 Sex: Height: Race:  
Eye Color: Hair Color: Weight:  
Social Security No.: **000000000** Employer:

SUMMONS

You are hereby summoned to appear:

DATE/TIME: **09/11/2014 at 09:00 Am**  
COURT: **JUSTICE OF THE PEACE COURT 07**  
LOCATION: **480 BANK LANE in Dover, DE 19904-0000**

OFFENSE

Charge Sequence: 001 Police Complaint Number: 9714001882 Arrest Number: ACS9700088  
Charge: **Systems Shall Be Operated as Not to Create a Public Health Hazard or Pollution**  
In Violation of OS DENREC Regulations 0003 1900 M  
Location: 148 LORETTA DR , Camden-Wyoming  
TO WIT: NORTHERN CHESAPEAKE MANAGEMENT, on or about the 25th day of AUGUST, 2014, in the  
County of KENT, State of Delaware, To Wit: did allow waste water to be discharged from a septic tank  
and separate clean out pipe onto the ground causing a public health hazard located at 148 Loretta  
Drive, Camden-Wyoming, Kent County Delaware

See next page for remaining charges.

AFFIDAVIT

OFF PURSE - 09706 - DNREC-ENVIRONMENTAL CRIMES UNIT

Complaint Number: 9714001882 Arrested \_\_\_\_\_  
(Release by Auth. Official)

sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, AD \_\_\_\_\_

Judge, Magistrate, Alderman, Commissioner \_\_\_\_\_

Failure to respond to this summons will result in the issuance of a warrant for your arrest and may result in fine or imprisonment or both.

I promise to appear in said court at said date and time.

Offender \_\_\_\_\_ Date \_\_\_\_\_

Officer OFF PURSE - 09706 - DNREC-ENVIRONMENTAL CRIMES UNIT Date 08/28/2014

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement"), dated June 29<sup>th</sup>, 2015, is entered into between and among the Delaware Department of Natural Resources and Environmental Control (hereinafter "DNREC") and Kelley Transport & Refuse, LLC (hereinafter "Kelley Transport"), collectively referred to herein as the "Parties".

### RECITALS

WHEREAS, on December 29, 2014, DNREC denied Kelley Transport's application for a permit to transport solid waste, because of Kelley Transport's alleged history of non-compliance with Delaware Statutes and Regulations concerning the transport of solid waste; and

WHEREAS, on January 5, 2015, DNREC issued Kelley Transport a Notice of Administrative Penalty Assessment and Secretary's Order, Order Number 2014-WH-0027, for \$10,000.00 for allegedly transporting solid waste without a permit on September 23, 2014, in violation of 7 *Del. C.* § 6003(a)(4) and 7 DEL. ADMIN. C. 1301, § 7.1.1 ("Delaware's *Regulations Governing Solid Waste*"), as well as \$1,500.00 for DNREC's costs; and

WHEREAS, on January 20, 2015, Kelley Transport requested an Appeal and Hearing in response to DNREC's decision to deny Kelley Transport's application for a permit to transport solid waste and the imposition of the \$10,000.00 administrative penalty; and

WHEREAS, on February 20, 2015, DNREC's Environmental Crimes Unit issued Kelley Transport a summons for allegedly transporting solid waste without a permit on February 13, 2015, and thereafter, DNREC pursued this matter in Justice of the Peace Court 7; and

WHEREAS, on March 26, 2015, DNREC issued Kelley Transport a Cease and Desist Order, Order Number 2015-WH-0008, requiring Kelley Transport to stop transporting waste in the State of Delaware without a permit, among other requirements, and thereafter, Order Number 2015-WH-0008 expired on April 25, 2015, pursuant to 7 *Del. C.* § 6018; and

WHEREAS, on or about January 2015 and April 2015, DNREC alleged that applications submitted by Kelley Transport for a permit to transport solid waste in 2008, 2009, and 2014, respectively, contained false, inaccurate, and/or incomplete information (specifically, DNREC determined that Kelley Transport failed to disclose its complete environmental record as required by paragraph 15 of the Solid Waste Transporter Permit Application); and

WHEREAS, DNREC and Kelley Transport have negotiated in good faith, and are desirous of seeking an amicable resolution of the issues to avoid the expense, burden, inconvenience, and uncertainty of continuing litigation, and agree to be bound by the terms that follow:

[Space Left Intentionally Blank]

## AGREEMENT

NOW, THEREFORE, in exchange for the mutual considerations set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amicably agree to resolve all known disputes concerning Kelley Transport's alleged improper transport and/or handling of solid waste, stipulating as follows:

### (1) Penalty and Costs for Past Violations:

- (a) Kelley Transport shall pay to DNREC the sums of \$13,500.00 as a penalty and \$1,500.00 as cost reimbursement, in three installments. The first installment of \$3,500.00 in penalty and \$1,500.00 in costs shall be received by DNREC at the time this Agreement is executed. The second installment for \$5,000.00 in penalty shall be received by DNREC at the time Kelley Transport submits its solid waste transporter permit renewal application for permit year 2016, but in no case later than September 1, 2016. The third installment for \$5,000 in penalty shall be received by DNREC at the time Kelley Transport submits its solid waste transporter permit renewal application for permit year 2017, but in no case later than September 1, 2017. In the event Kelley Transport elects not to submit an application seeking renewal of its permit to transport solid waste, any remaining unpaid penalty or costs shall be received by DNREC no later than June 1 of the year for which Kelley Transport's current permit expires.
- (b) These payments shall be made by separate checks, payable to DNREC, and shall be delivered to: DNREC Legal Office, 102 West Water Street, Dover, Delaware 19901, Attn: William J. Kassab, Deputy Attorney General.
- (c) Nothing in this Agreement shall prevent Kelley Transport from making any payments earlier than the dates listed in paragraph (1)(a) above.
- (d) Nothing in this Agreement or any decision by DNREC on any permit or permit renewal application(s) submitted by Kelley Transport shall relieve Kelley Transport of its obligations under this paragraph to pay to DNREC the sums of \$13,500.00 in penalty and \$1,500.00 in costs.

### (2) Penalties for Future Violations:

- (a) **Self-Reporting of Violations:** If Kelley Transport self-reports to DNREC that Kelley Transport or its employee(s), agent(s), or servant(s) in the course of his or her employment or service to Kelley Transport violated any federal, state or local law or regulation concerning the transportation or handling of solid waste, any condition of Kelley Transport's permit, or any provision of this Agreement, DNREC may, in its sole discretion, assess Kelley Transport an Administrative Penalty not to exceed \$5,000.00 for each day of violation. By self-reporting, Kelley Transport agrees to waive its right to request a hearing to challenge the penalty assessment. This provision does not limit DNREC from taking any other

action(s) against Kelley Transport allowed by law, including, but not limited to, revocation of Kelley Transport's permit to transport solid waste. DNREC reserves the right to assess costs in relation to the imposition of any penalty under paragraph (2)(a).

**i. Process for Self-Reporting:**

1. If Kelley elects to self-report a violation, Kelley may set forth in writing the date, time, location and individual(s) involved in the violation(s), the facts and circumstances surrounding the violation, any facts Kelley believes mitigate or aggravate the severity of the violation, and Kelley may recommend a penalty between zero (\$0.00) and \$5,000.00 which Kelley considers to be reasonable in light of the violation(s).
2. Kelley may, within twenty (20) days following receipt of DNREC's penalty order imposed for a violation self-reported by Kelley, request, in writing, that DNREC reconsider the penalty amount, and such writing shall set forth all arguments that Kelley can make as to why DNREC should reduce the penalty. DNREC, in its sole discretion, may reduce the penalty or keep the penalty the same; however, DNREC shall not increase the penalty in response to Kelley's written request for reconsideration.

(b) **Discovered Violations:** If DNREC discovers through its own investigation or observation that Kelley Transport or its employee(s), agent(s), or servant(s) in the course of his or her employment or service to Kelley Transport violated any federal, state or local law or regulation concerning the transportation or handling of solid waste, any condition of Kelley Transport's permit, or any provision of this Agreement, then DNREC may, in its sole discretion, assess Kelley Transport an Administrative Penalty not to exceed \$10,000.00 for each day of violation. This provision does not limit DNREC from taking any other action(s) against Kelley Transport allowed by law, including, but not limited to, revocation of Kelley Transport's permit to transport solid waste. DNREC reserves the right to assess costs in relation to the imposition of any penalty under paragraph (2)(b).

(3) Issuance of Probationary Permit:

- (a) DNREC agrees, upon satisfactory completion in DNREC's sole discretion of a permit application or permit renewal application, to issue Kelley Transport a permit to transport solid waste for a one (1) year term. DNREC shall only issue Kelley Transport permits to transport solid waste for one (1) year terms until Kelley Transport achieves five (5) consecutive years of compliance with this Agreement and all applicable federal, state or local laws or regulations concerning the transportation or handling of solid waste, from issuance of Kelley Transport's first permit following execution of this Agreement. DNREC, in its sole

discretion, shall determine whether Kelley Transport has achieved five (5) consecutive years of compliance under this Agreement and whether Kelley Transport may be granted a permit for a term greater than one (1) year, or whether Kelley Transport's probationary period shall be extended for a fixed period, not to exceed the Term of this Agreement set forth in paragraph (5).

(b) Upon approval of an application or renewal application to transport solid waste submitted by Kelley Transport, DNREC shall issue to Kelley Transport an original sealed permit for each vehicle Kelley Transport intends to use to transport solid waste within the State of Delaware. Kelley Transport must keep an original sealed permit in each vehicle used to transport solid waste in the State of Delaware and any operator of the vehicle must be able to present the original sealed permit upon lawful request.

- i. Permits generated by photocopy or other means of reproduction shall not be considered valid permits. Kelley Transport may request additional original sealed permits from DNREC upon written request documenting the need for an additional original sealed permit(s) for a vehicle(s) or upon written documentation averring that a previously issued original sealed permit was destroyed.

(c) Deadlines for Permit Renewal Applications:

- i. Kelley Transport shall provide written notice to DNREC within 120 Days prior to when its current permit is to expire of whether it intends to submit a permit renewal application or whether it intends to allow its permit to expire and stop transporting solid waste in the State of Delaware.
- ii. If Kelley Transport intends to renew its permit, Kelley Transport, as provided for in the Delaware *Regulations Governing Solid Waste*, shall submit its complete renewal application 90 days prior to when its current permit expires. If DNREC approves Kelley Transport's permit renewal application, DNREC shall issue Kelley Transport original sealed permits, as provided in paragraph (3)(b) of this Agreement. Upon receipt of its original sealed permits, Kelley Transport shall provide written documentation to DNREC that Kelley Transport has destroyed or returned all of its expired original sealed permits.
- iii. If Kelley Transport does **not** intend to renew its permit and allows its permit to expire, Kelley Transport must deliver to DNREC within twenty-one (21) days of its permit expiration all of its original sealed permits, and provide written documentation to DNREC's satisfaction that Kelley Transport has removed all permit decals or markings from its vehicles and containers.

(4) Permit Revocation or Denial:

- (a) DNREC retains the sole discretion to **revoke** Kelley Transport's permit if DNREC learns through any means, including self-reporting, that Kelley Transport or its employee(s), agent(s), or servant(s) in the course of his or her employment or service to Kelley Transport violated any condition of Kelley Transport's permit, this Agreement, or any federal, state or local law or regulation concerning the transportation or handling of solid waste.
- (b) DNREC retains the sole discretion to **deny** Kelley Transport a permit if DNREC learns through any means, including self-reporting, that Kelley Transport or its employee(s), agent(s), or servant(s) in the course of his or her employment or service to Kelley Transport violated any condition of Kelley Transport's permit, this Agreement, or any federal, state or local law or regulation concerning the transportation or handling of solid waste.
- (c) If DNREC revokes or denies Kelley Transport a permit to transport solid waste, Kelley Transport shall be barred for a period of three (3) years from the date of the permit revocation or denial from applying for a new permit to transport solid waste within the State of Delaware. If this Agreement shall expire pursuant to paragraph (5) below, during any time Kelley Transport is barred from re-applying for a permit, and Kelley Transport wishes to obtain a permit following expiration of the time period whereby Kelley Transport is barred from applying for a permit, then Kelley Transport shall submit a complete application for a permit in accordance with all applicable federal, state and local laws and regulations.
- (d) Nothing in this Agreement shall be construed to limit DNREC's right to pursue any other available remedy or course of action provided by law for any violation by Kelley Transport or its employee(s), agent(s), or servant(s) in the course of his or her employment or service to Kelley Transport of any permit condition, this Agreement, or any federal, state or local law or regulation concerning the transportation or handling of solid waste.

(5) Term: This Agreement shall terminate either:

- (a) Upon completion of five (5) consecutive years of Kelley Transport satisfactorily holding and maintaining its solid waste transporter permit in compliance with this Agreement and without a violation by Kelley Transport or its employee(s), agent(s), or servant(s) in the course of his or her employment or service to Kelley Transport of this Agreement, its permit(s), or any federal, state or local law or regulation concerning the transportation or handling of solid waste, as determined in DNREC's sole discretion. If DNREC, in its sole discretion, determines that Kelly Transport violated this Agreement, its permit, or any federal, state or local law or regulation concerning the transportation or handling of solid waste, DNREC may hold Kelley Transport in breach of this Agreement, revoke Kelley Transport's permit, and assess Kelley Transport an Administrative Penalty; or

DNREC may extend the term of this Agreement until Kelley Transport achieves five (5) consecutive years of satisfactorily holding and maintaining its solid waste transporter permit in compliance with this Agreement, its permit, and all federal, state or local laws or regulations concerning the transportation or handling of solid waste.

(b) Or ten (10) years from the date of execution of this Agreement. In no event shall DNREC extend this agreement beyond ten (10) years from the date of execution.

(6) **Release:** In exchange for Kelley Transport's payment of the penalty and costs addressed in paragraph (1) and compliance with this Agreement, DNREC agrees to release Kelley Transport from liability for violation(s) of 7 *Del. C.* § 6003(a)(4) relating to the improper transportation of solid waste and for violation(s) of the Delaware *Regulations Governing Solid Waste* which are known to DNREC as of the date of execution of this Agreement by the Parties, including, without limitation, the violations alleged in Secretary's Order Number 2014-WH-0027. Additionally, DNREC agrees to leave as dismissed in Justice of the Peace Court 7, the charges arising from Kelley Transport's February 13, 2015, violation for transporting solid waste without a permit. DNREC agrees to not bring any further action(s) related to Kelley Transport's past violations, including, but not limited to submitting false, inaccurate, or incomplete permit applications in 2008, 2009, and 2014; transporting solid waste without a permit on September 23, 2014; and transporting solid waste without a permit on February 13, 2015.

(a) Nothing in this release or this Agreement shall be construed to limit or affect DNREC's right or ability to bring any action allowable by law against Kelley Transport or its owner(s), operator(s), employee(s), agent(s), or servant(s) for any violation(s) unrelated to those alleged violations for which liability has been specifically released by this Agreement.

(7) **No Admission of Guilt:** By entering into this Agreement, Kelley Transport does not admit to any wrongdoing, and specifically retains and reserves the right(s) to contest any and all past, present, or future alleged violations. DNREC retains and reserves the right(s) to consider all past, present, or future alleged violations in any future permitting or enforcement decisions.

(8) **Expenses, Costs, Attorneys Fees and Interest:** With the exception of DNREC's costs as provided for in paragraph (1), the Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with this Agreement. Kelley Transport shall pay interest for any late payment due under this Agreement at the statutory rate pursuant to 6 *Del. C.* § 2301.

(9) **Dispute Resolution:** If either party believes the other party has not complied with the terms of this Agreement, it shall notify the other party in writing of the alleged breach of this Agreement. Within thirty (30) days of receipt by one party of the other party's writing notifying of the alleged breach, the Parties shall enter into negotiations to resolve the dispute. After thirty (30) days of the date of receipt by one party of the other party's written notice of the alleged breach, either party is free to seek any and all applicable relief concerning the alleged breach and this Agreement.

(10) Binding on Successors: It is the intention of the Parties that this Agreement shall be binding upon and enforced against the Parties and their successors, heirs, executors, administrators and assigns.

(11) Severability: In the event that any provision (section, paragraph, or portions thereof) of this Agreement shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect or impair the remaining provision(s) (sections, paragraphs, or portions thereof) of this Agreement, and to this end, the provisions of this Agreement are hereby declared to be severable.

(12) Authorship: No provision(s) or paragraph(s) of this Agreement shall be construed based on the authorship.

(13) Executed in Counterparts: This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document.

(14) Compliance with Law: Nothing in this Agreement shall relieve Kelley Transport of its obligation to comply with all applicable federal, state or local law or regulation concerning the transportation or handling of solid waste.

(15) Good Faith: The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, provided that nothing in this Agreement shall be construed to restrict DNREC's regulatory and permitting judgment and discretion, and nothing in this Agreement shall be construed to require DNREC to pay or appropriate any monies or expend any funds.

(16) Notices: Any notices with regards to this Agreement shall be sent to:

(a) Department of Natural Resources and Environmental Control, Attn: Solid and Hazardous Waste Management Section, 89 Kings Highway, Dover, Delaware 19901. With a copy sent to: Delaware Department of Justice, Attn: William J. Kassab, 102 West Water Street, Dover, Delaware 19901.

(b) Kelley Transport & Refuse, LLC, Attn: David Kelley, 11026 Greensboro Road, Denton, Maryland 21629. With a copy sent to: Baird Mandalas Brockstedt, LLC, Attn: John Paradee, 6 South State Street, Dover, Delaware 19901.

(17) Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Any legal action brought by either party to enforce any provision of this Agreement shall be brought in the appropriate Delaware State Court located in Kent County.

(18) Authorization: By their signatures below, the persons signing this Agreement on behalf of Kelley Transport and DNREC acknowledge that they are fully authorized to enter into this Agreement and to bind their respective entities to the terms and conditions of this Agreement.

(19) Effective Date: The effective date of this Agreement is the first date on which the Parties have all signed this Agreement.

(20) Entire Understanding: This Agreement constitutes the entire agreement and settlement between the Parties. The Parties acknowledge that this Agreement may not be amended except in writing executed by both Parties.

(21) No Third Party Rights: The Parties to this Agreement expressly intend that this Agreement shall create no right(s) in any person or entity not a party to this Agreement.

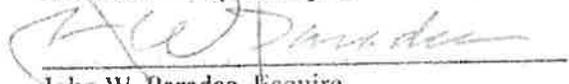
(22) Section Headings: Sections headings contained in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement:

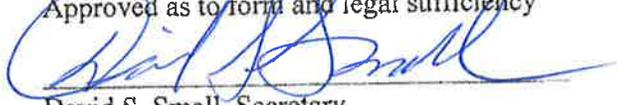
Dated: 6/23/15

  
David R. Kelley  
President Kelley Transport & Refuse, LLC

Dated: 6/24/15

  
John W. Paradee, Esquire  
Attorney for Kelley Transport & Refuse, LLC  
Approved as to form and legal sufficiency

Dated: 6/29/15

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

Dated: 6/25/2015

  
William J. Kassab  
Deputy Attorney General  
Approved as to form and legal sufficiency