



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

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

**Notice of Administrative Penalty Assessment  
and Secretary's Order**

Issued Pursuant to *7 Del. C. § 6005*

**ORDER NO. 2016-WH-0020**

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

**Issued To:**

Waste Management of Delaware, Inc.  
c/o Kurt Pilarski, Senior District Manager  
300 Harvey Drive  
Wilmington, Delaware 19804

**Registered Agent:**

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

This Assessment and Order serves to notify Waste Management of Delaware, Inc. ("Respondent" or "Waste Management") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of *7 Del. C. Chapter 60*. Accordingly, the Department is issuing this Administrative Penalty Assessment and Secretary's Order, pursuant to *7 Del. C. § 6005(b)(3)*.

**BACKGROUND**

The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of the improper, inadequate, or unsound management of solid wastes. Laws and regulations pertaining to the collection, storage, transportation, treatment, and disposal of solid wastes have been established to assure the safe and adequate management of solid wastes within the State of Delaware, pursuant to *7 Del. C. Chapter 60*.

Respondent is licensed to transport solid waste, operating under Delaware Solid Waste Transporter Permit No. DE-SW-0097 and DE-SW-0359. Respondent owns and operates businesses located at 300 Harvey Drive in Wilmington, Delaware and 226 South Railroad

Avenue in Georgetown, Delaware, and as such, provides solid waste collection services to residential and commercial customers in the State of Delaware.

On April 8, 2014 and on May 21, 2014, the Department's representative(s) observed Respondent providing curbside trash collection services, to single-family residences, in the Hedgerow Hollow Mobile Home Park, in Smyrna, Delaware. The representative(s) also observed, however, that the only recycling service provided for the entire community was one recycling dumpster, a violation of Delaware *7 Del. C. § 6053*. To document and correct this violation, the Department issued Respondent Notice of Violation ("NOV") # 14-SW-03 on June 20, 2014.

On August 8, 2014 and on September 18, 2014, the Department's representative(s) observed Respondent providing trash collection services to the multi-family residences of Georgetown Manor Apartments, in New Castle, Delaware. Respondent provides trash collection services to the community via approximately 20 dumpsters, spread in 13 locations. Respondent, however, has failed to provide the community with single-stream<sup>1</sup> recyclables collection, as required by *7 Del. C. § 6053*. To document and correct this violation, the Department issued Respondent NOV # 14-SW-31, dated October 1, 2014, on October 9, 2014.

It is important to note that on multiple occasions between mid-April and mid-October 2014, Department staff had phone conversations and exchanged e-mails with Mr. Kurt Pilarski and other upper management employees of Waste Management regarding the violations documented in NOV # 14-SW-03 and NOV # 14-SW-31. As a result, Mr. Pilarski and Waste Management employees expressed their understanding of the violations and their confidence in Waste Management's ability to achieve and maintain compliance with *7 Del. C. § 6053*.

On March 5, 2015 and again on October 1, 2015, a resident of the Village of Rocky Run, in Wilmington, Delaware, observed a Waste Management driver and his co-worker commingling waste and recyclables from a minimum of 6 homes in his community into the same compartment of Respondent's truck. The Department's representative(s) were able to confirm this incident by viewing video footage that the resident recorded from the October 1, 2015 incident.

On September 22, 2015 and on October 6, 2015, the Department received complaints from residents in the single family neighborhood of McNicol Place, in Lewes, Delaware, about their recyclables being dumped into the same truck compartment as their trash. As a result, the Department's representative(s) conducted a compliance assessment at McNicol Place, on October 6, 2015 and again on October 20, 2015. The Department's representative(s) observed a Waste Management truck driver (Truck # 264974), collecting both residential trash and recycling from several residences and combining it into one truck compartment.

---

<sup>1</sup> 'Single stream' means a system in which all fibers (including but not limited to paper, cardboard, etc.) and containers (including but not limited to plastic, glass, and metal) are commingled for collection into one container instead of being sorted into separate commodities and multiple containers, *7 Del C § 6052(13)*.

On October 29, 2015, the Department received a phone call from a resident of the Bayside Community (“Bayside”), in Selbyville, Delaware. The resident called to report that Respondent, the waste hauler contracted to service Bayside, was providing curbside trash collection service to the single-family residences within the community, but Respondent had not delivered recycling containers and was not providing curbside recycling service to the community, as required by 7 *Del. C.* § 6053. The resident said that their family and other residents have to transport their recyclables to a group of recycling dumpsters located on Sand Cove Road. The Sand Cove Road recycling dumpsters were the only location, in the entire Bayside Community, where recycling was available according to the resident.

Accordingly, on November 2, 2015, the Department’s representative(s) conducted a compliance assessment at Bayside Community and photographed their observations. The Department’s representative(s) observed a Waste Management driver providing curbside trash collection service to the single family residences at Bayside. The Department’s representative(s) further observed the group of recycling dumpsters as described by the Bayside resident, on Sand Cove Road. The Department’s representative(s), however, did not observe any recycling containers at any of the single-family residences at Bayside, as required by 7 *Del. C.* § 6053.

To document and correct the violations occurring in calendar year 2015, the Department issued Respondent NOV # 16-SW-03, dated January 19, 2016, on January 27, 2016.

### **FINDINGS OF VIOLATION**

**1. Seven *Del. C.* §§6053(1)(a) and (2)(a) state in part:**

*“(1) Effective no later than September 15, 2011 ...all persons providing solid waste collection services in the state shall also provide:*

*a. Single-stream curbside recycling collection services to all of their Delaware single-family residential customers, including delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers use such that recycling is encouraged and disposal of recyclables is discouraged....”*

*“(2) Effective no later than January 1, 2013 ...all persons providing solid waste collection services in the state shall also provide:*

*a. Single-stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complex’s waste disposal containers....”*

Respondent failed to provide the required single-stream recycling collection services, including delivery of a container, on the following dates, to the following residences:

- ▶ April 8, 2014 and on May 21, 2014, at the Hedgerow Hollow Mobile Home Park (single-family residences<sup>2</sup>);
- ▶ August 8, 2014 and on September 18, 2014, at Georgetown Manor Apartments (multi-family residences);
- ▶ November 2, 2015, at the Bayside Community (single-family residences).

These incidents represent five (5) violations of 7 Del. C. §§ 6053(1)(a) and (2)(a).

**2. Seven Del. C. § 6053(7) states in part:**

*“(7) Persons engaging in the collection, transportation, processing, or marketing of source separated recyclable materials shall conduct such activities in a manner that the source separated recyclable materials enter the marketplace and are otherwise not disposed via a landfill or by incineration.”*

Respondent commingled waste and recyclable materials and by doing so, failed to collect source separated<sup>3</sup> recyclable materials in a manner to ensure that the source separated recyclable materials enter the marketplace and are otherwise not disposed via a landfill or by incineration, on the following dates, at the following residences:

- ▶ October 1, 2015, at the Village of Rocky Run, in Wilmington, Delaware;
- ▶ September 22, 2015 and on October 6, 2015, at the McNicol Place neighborhood, in Lewes, Delaware.

These incidents represent three (3) violations of 7 Del. C. § 6053(7).

**CONCLUSIONS**

Based on the foregoing, the Department has concluded that Respondent has violated the above cited statutory provisions, despite the Department’s efforts to work with Respondent to achieve compliance.

**ORDER**

---

<sup>2</sup> Single-family, as defined by 7 Del. C. § 6052(12), encompasses “manufactured homes.” The Manufactured Home Owners and Community Owners Act likewise defines “Manufactured home” as “a factory-built, single-family dwelling.” 25 Del. C. § 7003(11).

<sup>3</sup> "Source-separated" means recyclable materials, including single stream recyclables, are segregated at the point of generation and kept apart from the waste stream by the generator thereof for the purpose of collection and recycling, 7 Del C § 6052(14).

Within 20 (twenty) days of receipt of this Assessment and Order, and in full compliance with all applicable laws, it is hereby ordered that Respondent shall:

1. Provide single stream curbside recycling collection services to all of its Delaware single-family residential customers, including delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers' use, such that recycling is encouraged and disposal of recyclables is discouraged, and the recyclables collection service shall be provided at a frequency of not less than once every other week.
2. Provide Single-stream recycling collection services to all of its Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers, for the complex being served, and ideally in the same proximity as the complex's waste disposal containers (local governments may require multi-family complex owners to provide their own recyclable collection containers consistent with local requirements).
3. Collect source separated recyclable materials from customers in such a manner that the source separated recyclable materials are not commingled with trash. The collected recyclable materials shall enter the marketplace and otherwise not be disposed via a landfill or by incineration.

#### **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 \$40,000.00, 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 \$3,660.76, pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation and abatement of the noted violations.

Respondent shall submit one check to the Department in the amount of \$40,000.00, to pay the penalty and one check in the amount of \$3,660.76, to pay the Department's 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 J. 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 take additional enforcement actions regarding these and other violations by Waste Management, including but not limited to one or more of the following: an action under the authority vested in the Secretary by 7 *Del. C.* Chapter 60 and 7 *Del. Admin. C.* 1301-4.1.3.2 or 1301-4.1.4 to suspend or terminate Waste Management's solid waste transporter permit for the State of Delaware, an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

### **PUBLIC HEARING AND APPEAL RIGHTS**

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

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

If no hearing is requested and no appeal is filed, the administrative penalty of \$40,000.00 and costs in the amount of \$3,660.76 shall be due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting two (2) checks payable to the State of Delaware in the amounts of \$40,000.00 and \$3,660.76 and mail to: William J. Kassab, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

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

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

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

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

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

Date:

4/22/16



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

xc: William J. Kassab, Deputy Attorney General  
Marjorie A. Crofts, Director, WHS  
Nancy C. Marker, Program Administrator, SHWMS  
William D. Miller, III, Environmental Program Manager, SHWMS  
Don Long, Planner, SHWMS  
Susan S. Baker, Paralegal, SHWMS  
Jennifer M. Bothell, Enforcement Coordinator  
Jeff Shanks, Waste Management of Delaware, Inc.  
SHWMS File

## WAIVER OF STATUTORY RIGHT TO A HEARING

Waste Management of Delaware, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. Waste Management of Delaware, Inc. will pay the administrative penalty in the amount of \$40,000.00 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 J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. Waste Management of Delaware, Inc. will reimburse the Department in the amount of \$3,660.76, which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

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

By: \_\_\_\_\_  
Kurt Pilarski, Senior District Manager