



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

OFFICE OF THE  
SECRETARY

PHONE  
(302) 739-9000

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**  
Pursuant to 7 *Del. C.* § 6005

**Order No. 2026-A-0012**

**VIA PERSONAL SERVICE**

**Issued To:**

BioEnergy Development Group, LLC  
Attn: Chuck Joswiak  
Commercial Director  
28338 Enviro Way  
Seaford, DE, 19973

**Registered Agent:**

Corporate Service Company  
251 Little Falls Drive  
Wilmington, DE 19808

This Assessment and Secretary's Order serves to notify BioEnergy Development Group, LLC ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of its permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order ("Order") pursuant to 7 *Del. C.* § 6005(b)(3).

## **BACKGROUND**

Respondent owns and operates a composting operation at the Delmarva BioEnergy Center (hereafter referred to as "the facility") located at 28338 Enviro Way in Seaford. The facility was originally owned and operated by Seaford AgriSoil, LLC, under the terms of Permit: APC-2016/0093-Operation (VOC RACT). Following a change in majority ownership in 2017, the facility's permit was transferred from Seaford AgriSoil, LLC, to Perdue AgriRecycle, LLC, upon issuance of Permit: APC-2016/0093-Operation (Amendment 1)(VOC RACT). A November 21, 2019, request to transfer permits from Perdue AgriRecycle, LLC, to Respondent, was received November 22, 2019. Permit: APC-2016/0093-Operation (Amendment 1)(VOC RACT) was transferred to Respondent on February 6, 2020, upon issuance of Permit: APC-2016/0093-Operation (Amendment 2)(VOC RACT). The composting operation is currently governed by the terms of Permit: APC-2016/0093-Operation (Amendment 3)(VOC RACT), which was issued on June 19, 2020 ("Permit"). The permit allows for the receipt and composting of feedstock materials, specifically poultry litter; hatchery waste; and dissolved air flotation cake and sludge, in limited amounts on a calendar month and rolling 12-month calendar ("R12") basis. The permit also includes R12 emission limits for volatile organic compounds ("VOCs") and ammonia ("NH<sub>3</sub>").

On December 7, 2023, the Department received an email from Respondent indicating it was close to its R12 feedstock receipt limit and questioned whether the Department would allow exceedance of this limit. The Department responded that it could not grant Respondent permission to exceed its permitted limits and advised Respondent to submit an application to amend its Permit to increase the limits, but until such time as an amended permit was issued, it must comply with the current permitted limits. Respondent updated the Department in another email on

December 11, 2023, that it was drawing closer to its permitted feedstock receipt limits and was working with its customers to divert the materials elsewhere and further indicated it had no plans to request a permit amendment to increase the limit.

In a January 12, 2024, email, Respondent indicated that there were months in calendar year 2023, that it had exceeded the permitted monthly feedstock receipt limit. The Department requested information on the tonnage of feedstock received on a monthly and R12 basis for calendar year 2023. After repeated requests, Respondent provided the requested information for both calendar years 2022 and 2023 to the Department in a February 8, 2024, email. The information indicated that the monthly feedstock limit was violated 12 times, specifically June 2022; August through October 2022; February through March 2023; June through November 2023. The R12 feedstock limit was violated for 12 periods, specifically, those ending December 2022 through November 2023. In a separate email sent on February 8, 2024, Respondent stated that it would submit a monthly compliance statement, including the facility's monthly and R12 feedstock receipt data, going forward.

Because of the high quantity of exceedances, in a February 14, 2024, email, the Department requested the data going back to February 2020, when the permit had been transferred from Perdue to Respondent. Respondent provided this information in a February 19, 2024, email. A review of this information revealed an additional 7 violations of the monthly feedstock limit, specifically July 2020; October 2020; December 2020; January 2021; March 2021; and June-July 2021. There were also an additional 10 violations of the R12 limit, specifically the periods ending May 2021 through December 2021; and October through November 2022.

As a result of the exceedances of the permitted feedstock receipt limits, the Department had concerns about possible exceedances of Respondent's permitted emissions limits for volatile organic compounds ("VOCs") and ammonia ("NH<sub>3</sub>"). These limits are based on a R12 basis. In an email dated February 26, 2024, the Department requested that Respondent submit emission calculations for the time period of February 2020 to date. Respondent provided the emissions data on March 1, 2024, with an explanation that the calculations provided were done as prescribed by the permit as well as by two other methods that it felt were more reflective of their operation. After review, while the Department agreed that the other methods may be more representative of their operation, until a permit amendment was requested and approved, Respondent was required to use the calculation method prescribed by its Permit. Those calculations indicated that the R12 emission limits for both VOC and NH<sub>3</sub> were exceeded for 22 periods between February 2020 and February 2024.

Additionally, the feedstock receipt information submitted for the time period of February 2024 through May 2024 indicated one additional exceedance of the monthly feedstock receipt limit—the month of April 2024. A Notice of Violation dated June 17, 2024, was issued to Respondent on July 1, 2024, for the violations described above.

Respondent continued to report feedstock receipt and emission calculations on a monthly basis. As of February 2025, the monthly feedstock receipt limit was violated in July 2024 and November 2024, however, no additional R12 feedstock receipt limits or emission limits were reported. Respondent has indicated it has no plans to request a permit amendment to increase any of these related limits. Respondent has implemented measures, such as creating an online dashboard for their customers, that shows current status related to feedstock receipt, so they

can make alternative arrangements for their feedstock if Respondent's current capacity cannot accommodate their delivery.

Based on the information provided covering operating periods from 2020 through February 2025, Respondent exceeded the monthly feedstock limit a total of 22 times. The maximum monthly amount exceeded occurred in August 2022 and was 1,113.82 tons above the permit limit. Respondent exceeded the R12 feedstock limit a total of 22 times. The maximum R12 amount exceeded occurred during the period from April 2022 through March 2023 and was 2,187.64 tons above the permit limit. The maximum R12 amount exceeded for VOCs occurred during the period from April 2022 through March 2023 and was 0.915 tons above the Permit limit. The maximum R12 amount exceeded for NH<sub>3</sub> occurred during the period from April 2022 through March 2023 and was 0.704 tons above the limit.

On August 21, 2025, Respondent emailed the Department and indicated that a compliance review of its operating permits ("self-audit") had been conducted by Verdantas, LLC, and that the results would be submitted to the Department within 48 hours. Those results were submitted to the Department on August 22, 2025, and included a spreadsheet with additional information on each compliance issue identified in the self-audit. The violations of the air Permit included active composting using covers that were not in good working condition; recordkeeping; odor monitoring; and failure to develop biofilter and compost pile cover management plans. A Notice of Violation dated October 27, 2025, was issued to Respondent that same day, for the violations associated with the self-audit of the air Permit requirements.

The Department determined that the violation of the Permit condition that prohibits active composting without the installation and operation of compost covers in good working condition merited inclusion in this Order.

The compost covers are used to capture and control emissions of VOCs and NH<sub>3</sub> generated during the active composting phase. The self-audit indicated that the facility conducted active composting with covers that were reportedly not in good working condition for an extended period of time during the winter, spring, and summer of 2025<sup>1</sup>. During its inspection, Verdantas, LLC, observed that while the piles were covered, several of the covers had tears, holes, and/or unsecured straps.

Respondent has since ordered and received, over the course of several shipments due to manufacturing delays, a total of 12 new compost covers. On December 17, 2025, Respondent had a sufficient quantity of new covers to replace the damaged covers identified during the self-audit. The remaining covers serve as a small inventory for use should any covers become damaged in the future.

### ***FINDINGS OF FACT***

1. Respondent owns and operates a composting operation at the Delmarva BioEnergy Center located at 28338 Enviro Way in Seaford since it was acquired from Perdue AgriRecycle, LLC and the permit transfer was completed on February 6, 2020.
2. The composting operation is currently governed by the terms of a permit issued pursuant to 7 DE Admin. Code 1102, Permit: APC-

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<sup>1</sup> The August 22, 2025, self-audit report described the period of violation associated with use of compost covers not in good working condition as "winter, spring and summer 2025." The Department interprets that violation period to begin on January 1, 2025, through August 31, 2025, at the time of the Notice of Violation. However, the violation continued until Respondent received enough new covers to replace the damaged covers which was on December 17, 2025.

- 2016/0093-Operation (Amendment 3)(VOC RACT) (hereafter referred to as "Permit"), which was issued on June 19, 2020.
3. The Permit allows for the receipt and composting of feedstock materials, specifically poultry litter; hatchery waste; and dissolved air flotation cake and sludge, in limited amounts on a calendar month and rolling 12-month calendar ("R12") basis. The Permit also includes emission limits for volatile organic compounds ("VOCs") and ammonia ("NH<sub>3</sub>") on a R12 basis.
  4. Between January 12, 2024, and February 2025, Respondent and the Department were in communication regarding exceedances of Respondent's monthly and R12 feedstock receipt limits, which subsequently resulted in violations of R12 VOC and NH<sub>3</sub> emission limits.
  5. Between February 2020 and February 2025, Respondent exceeded the monthly feedstock limit a total of 22 times, specifically, July 2020; October 2020; December 2020; January 2021; March 2021; June-July 2021; June 2022; August through October 2022; February through March 2023; June through November 2023; April 2024; July 2024 and November 2024. The maximum monthly amount exceeded occurred in August 2022 and was 1,113.82 tons above the Permit limit.
  6. Between February 2020 and February 2025, Respondent exceeded the R12 feedstock limit a total of 22 times, specifically, the periods ending May 2021 through December 2021; October 2022 through November 2023. The maximum R12 amount exceeded occurred during the period from April 2022 through March 2023 and was 2,187.64 tons above the Permit limit.

7. Between February 2020 and February 2025, Respondent exceeded the R12 emission limit for VOC and NH<sub>3</sub> for the periods ending May 2021 through December 2021; October 2022 through November 2023. The maximum R12 amount exceeded for VOCs occurred during the period from April 2022 through March 2023 and was 0.915 tons above the permit limit. The maximum R12 amount exceeded for NH<sub>3</sub> occurred during the period from April 2022 through March 2023 and was 0.704 tons above the Permit limit.
8. A Notice of Violation dated June 17, 2024, was issued to Respondent on July 1, 2024, for the violations identified through May 2024.
9. On August 22, 2025, Respondent submitted a report of a self-audit of its air Permit requirements, that identified numerous violations that included active composting using covers that were not in good working condition; recordkeeping; odor monitoring; and failure to develop biofilter and compost pile cover management plans.
10. A Notice of Violation was issued to Respondent on October 27, 2025, for the violations associated with the self-audit of its air Permit requirements.
11. Respondent has since ordered and received 12 compost covers, some of which have replaced damaged covers, and the rest will serve as an inventory to use should any covers become damaged in the future. As of December 17, 2025, there were enough new covers to replace the damaged ones identified in the self-audit.

### **PERMIT REQUIREMENTS**

1. In Condition 2.1 of the Permit, it states:

*"Air contaminant emission levels shall not exceed those specified in 7 DE Admin. Code 1100 and the following:*

#### *Volatile Organic Compound (VOC) Emissions*

*VOC emissions shall not exceed 2.67 tons per twelve (12) month rolling period.*

#### *Ammonia (NH<sub>3</sub>) Emissions*

*NH<sub>3</sub> emissions shall not exceed 9.67 tons per twelve (12) month rolling period."*

2. In Condition 3.1.2 of the Permit, it states:

*"The combined receipt of the feedstock materials listed in Condition 3.1.1 shall be limited to:*

*2,500 tons during any single calendar month; and*

*30,000 tons during any consecutive, twelve (12) calendar month period."*

3. In Condition 3.1.5 of the Permit, it states:

*"Active composting shall not occur unless a polytetrafluoroethylene (PTFE) cover with control efficiencies*

*greater than or equal to 90% for VOCs and 78% for NH<sub>3</sub> is installed, operational, and in good working condition.”*

### **CONCLUSION**

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent is found to be in violation of the monthly feedstock limit set forth in Condition 3.1.2.1 of its Permit, for July 2020; October 2020; December 2020; January 2021; March 2021; June-July 2021; June 2022; August through October 2022; February through March 2023; June through November 2023; April 2024; July 2024 and November 2024.
2. Respondent is found to be in violation of the R12 feedstock limit set forth in Condition 3.1.2.2 of its Permit, for the periods ending May 2021 through December 2021; October 2022 through November 2023.
3. Respondent is found to be in violation of the R12 emission limits for VOC and NH<sub>3</sub> set forth in Condition 2.1 of its Permit, for the periods ending May 2021 through December 2021; October 2022 through November 2023.
4. Respondent is found to be in violation of Condition 3.1.5 of its Permit, for conducting active composting with covers that were not in good working condition beginning January 1, 2025, through December 17, 2025.

### **ASSESSMENT OF PENALTY**

Pursuant to 7 *Del. C.* § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$40,000 for each day of violation detailed in this Order<sup>2</sup>. In assessing the administrative penalty, 7 *Del. C.* § 6005(b)(3) instructs the Secretary to consider the following factors: (1) the nature, circumstances, extent, and gravity of the violation, or violations; (2) the ability of the violator to pay; (3) any prior history of such violations; (4) the degree of culpability; (5) the economic benefit or savings (if any) resulting from each violation; and (6) such other matters as justice may require. A brief discussion of these factors is set out below.

Having considered these factors, the Secretary is assessing an administrative penalty of \$23,300.00 for the violations identified in this Assessment and Order.

1. **The Nature, Circumstances, Extent and Gravity of the Violation, or Violations:**

The nature, circumstances, extent, and gravity of the violations are moderately significant. The violations described herein involve exceedances of permitted monthly and R12 feedstock receipt limits, as well as an extended failure to properly maintain compost covers in good working condition, which caused exceedances of the permitted R12 emission limits for VOCs and NH<sub>3</sub>. Violations involving VOCs contribute to Sussex County's marginal non-attainment status for the 2008 primary ozone National Ambient Air Quality Standard. Violations involving NH<sub>3</sub> have the potential to create downwind pollutant concentrations

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<sup>2</sup> Prior to July 16, 2025, the statutory maximum administrative penalty per day authorized by 7 *Del. C.* § 6005(b)(3) was \$10,000.

above levels the Department would approve. VOC and NH<sub>3</sub> emissions exceeded the respective permit limits for the R12 periods ending May 2021 through December 2021 and October 2022 through November 2023.

2. **Respondent's Ability to Pay:**

The record contains no information that the Respondent does not have the ability to pay the administrative penalty assessed.

3. **Prior History of Violations:**

Prior to the violations identified in the June 17, 2024, NOV, Respondent had no prior violations on record. Other violations were previously identified at the facility when it was under different ownership. However, additional violations were reported to the Department in August 2025. As a result, the Respondent's history of noncompliance was taken into account for the penalty amount assessed.

4. **Degree of Culpability:**

The degree of culpability is moderately significant. Respondent is responsible for reading and understanding its permit requirements and operating within those limitations. Respondent did independently report its violations to the Department and propose corrective actions, but additional violations of the monthly feedstock receiving limit have occurred in the time since the violations were first identified and reported. Thus, the Secretary considers the penalty amount assessed appropriate in the view of Respondent's culpability for these violations.

5. **Economic Benefit or Savings Resulting from the Violation(s):**  
Respondent incurred some economic benefit from these violations, including avoidance of permit fees, which were considered in the administrative penalty assessment.
  
6. **Such Other Matters as Justice May Require:**  
Lastly, considering such other matters as justice may require, the Secretary has determined that the penalty assessed is proportional to the violations and calculated so as to deter Respondent and those similarly situated from engaging in future violations.

#### ***SECRETARY'S ORDER ASSESSING ADMINISTRATIVE PENALTY***

Pursuant to 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 \$23,300.00 for the violations identified in this Secretary's Order.

Respondent shall submit a check to the payable to the "State of Delaware" in the amount of \$23,300.00 within thirty (30) days of receipt of this Secretary's Order to: Leslie Reese, Department of Natural Resources and Environmental Control, Office of the Secretary, 89 Kings Highway, Dover, Delaware 19901.

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

This Secretary's Order affects Respondent's legal rights and is effective and final upon receipt by Respondent. Pursuant to 7 *Del. C.* § 6008, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20

days of the receipt of the Secretary's Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* § 6005(b)(3), request a public hearing on the Secretary's Order, within 30 days of receipt of the Order. A public hearing pursuant to 7 *Del. C.* § 6005(b)(3) would be conducted pursuant to 7 *Del. C.* § 6006, and the Secretary's Order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* § 6008, by any person substantially affected.

Respondent is further advised that the above assessed administrative penalty shall be due and owing within 30 days of Respondent's receipt of this Assessment and Order. In the event of nonpayment of the administrative penalty assessed above, and after Respondent has exhausted all legal appeals, if any, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty and/or costs shall not be subject to review pursuant to 7 *Del. C.* § 6005(b)(3).

To request a public hearing pursuant to 7 *Del. C.* § 6005(b)(3), 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 pursuant to 7 *Del. C.* § 6008, you must file your written statement of appeal and submit a check, made payable to: "Environmental Appeals Board," for the \$50.00 filing fee, 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

For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at 7 DE Admin. Code 105.

The Department, to the extent necessary, reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking civil penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking civil 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 administrative penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1). Nothing in this document shall be deemed to estop, or in any way preclude, any additional enforcement action for these and any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

### **COST RECOVERY**

Pursuant to 7 *Del. C.* § 6005(c), Respondent is liable for all expenses incurred by the Department in abating the violations detailed in this

Secretary's Order. "Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary." (7 *Del. C.* § 6005(c)(1)).

Respondent is liable for \$9,729.16 in costs, which costs the Department has incurred to date in abating the violations detailed in this Secretary's Order. The Department has attached to this Secretary's Order a detailed billing of expenses detailing these costs. Respondent shall remit a check payable to the "State of Delaware" in the amount of \$9,729.16 within thirty (30) days of receipt of this Secretary's Order, to: Leslie Reese, Department of Natural Resources and Environmental Control, Office of the Secretary, 89 Kings Highway, Dover, Delaware 19901.

In the event that Respondent appeals this Secretary's Order pursuant to 7 *Del. C.* § 6008 or requests a public hearing pursuant to 7 *Del. C.* § 6005(b)(3), or in the event Respondent fails to comply with this Secretary's Order, the Department will rescind the detailed billing attached to this Secretary's Order. The Department will issue Respondent a new detailed billing and Cost Recovery Order following exhaustion of Respondent's appeal rights that will include all additional recoverable costs incurred by the Department. Respondent is further advised that Respondent may challenge the Department's final detailed billing in accordance with 7 *Del. C.* § 6005(c)(2).

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

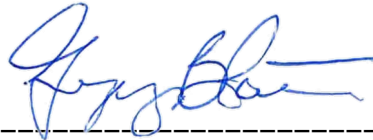
Respondent may prepay the administrative penalty of \$23,300.00 and the Department's costs in the amount of \$9,729.16, in the manner described in the attached "Waiver of Statutory Right to a Hearing." By doing so, Respondent waives its right to a hearing and the opportunity to

appeal or contest this Secretary's Order and the Department's Cost Recovery.

If you have any questions, please contact, or have your attorney contact, Valerie S. Edge, Deputy Attorney General, at (302) 739-4636.

June 20, 2026

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Date



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Gregory Patterson, Secretary  
Department of Natural Resources  
and Environmental Control

cc: Valerie S. Edge, Deputy Attorney General  
Angela Marconi, P.E., Director  
Amy Mann, P.E., Section Administrator  
James H. Gil, P.E., Program Manager  
Jordan Matthews, Engineer  
Dawn Minor, Paralegal

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**WAIVER OF STATUTORY RIGHT TO A HEARING**

**BioEnergy Development Group, 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. **BioEnergy Development Group, LLC** will pay the administrative penalty in the amount of \$23,300.00 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 Leslie Reese, Department of Natural Resources and Environmental Control, Office of the Secretary, 89 Kings Highway, Dover, Delaware 19901; and
2. **BioEnergy Development Group, LLC** will pay the Department's costs in the amount of \$9,729.16 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 Leslie Reese, Department of Natural Resources and Environmental Control, Office of the Secretary, 89 Kings Highway, Dover, Delaware 19901; and

**BioEnergy Development Group, LLC**

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

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

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