



Office of the
Secretary

STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Phone: (302) 739-9000
Fax: (302) 739-6242

Re: Perdue AgriRecycle, LLC
28332 Enviro Way
Seaford, DE 19973
Attention: Wayne Stewart
Plant Manager

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of this 29th day of May, 2019 (the “Effective Date”), by and between Perdue AgriRecycle, LLC (“Perdue”), and the State of Delaware Department of Natural Resources and Environmental Control (“DNREC” or the “Department”) (collectively the “Parties”) to resolve certain matters associated with Perdue’s operations at its agricultural waste and residue composting facility in Seaford, Delaware (the “facility”).

WHEREAS, Composting Permit #SW-18/03 (“the Permit”) conditionally authorizes Perdue to operate an agricultural waste and residue composting facility at 28332 Enviro Way in Seaford, Delaware;

WHEREAS, Perdue’s quarterly report for the second quarter of 2018 reflected that sampling and analysis of compost to determine its fitness for sale and distribution was performed in a “piecemeal” fashion, and Perdue was instructed by DNREC that such practices were unacceptable and must be terminated, and that performance and analytical criteria established by the Permit were to be based upon reasonably concurrent analyses of a single composite sample of compost;

WHEREAS, data was missing from two analytical reports submitted by Perdue for the Third Quarter of 2018 generated by AgroLab, Inc. of Harrington, Delaware which listed Chromium VI, fecal bacteria, and *E. Coli* bacteria as analytes with no data listed;

WHEREAS, the AgroLab report communicating the results of metals analyses contained discrepancies regarding chain of custody and date of collection;

WHEREAS, on November 19, 2018, the Department communicated to Perdue, asking for an explanation of the apparent discrepancies, and requesting that the compost batches in question be retained and not sold or distributed;

WHEREAS, on November 29, 2018, AgroLab advised that it was directed by Perdue to re-analyze samples with analytical results exceeding the permit limit;

WHEREAS, AgroLab indicated that it did not issue reports to Perdue with blank lines;

WHEREAS, on December 7, 2018, Martin G. Stewart of Perdue acknowledged that the compost batches in question had been sold or distributed, and were no longer present at the Perdue facility;

WHEREAS, documents received from Perdue on December 10, 2018 reflected that Perdue had obscured laboratory reports for the Third Quarter of 2018 such that analytes that exceeded analytical criteria were not visible;

WHEREAS, the concentrations of Chromium VI in the obscured samples were 24.00 milligrams per kilogram (mg/kg) and 3.60 mg/kg, in excess of the maximum allowed concentration of 0.29 mg/kg;

WHEREAS, the concentration of fecal bacteria in the obscured sample reported to be "NONE" was originally reported by AgroLab as 2,420 most probable number (MPN) of colony forming units (CFU) per gram, in excess of the maximum allowed concentration of 1,000 MPN of CFU per gram;

WHEREAS, a review by the Department of Perdue's reporting for the Fourth Quarter of 2018 revealed additional violations, including chain-of-custody discrepancies and impermissible re-analysis of samples exceeding limits for Chromium VI and failure to report concentrations of 5.40 mg/kg;

WHEREAS, Perdue failed to submit analytical reports in a timely manner for the Fourth Quarter of 2018, in violation of the permit;

WHEREAS, the Parties have agreed that settlement of the matters addressed by this Agreement is in the best interest of the Parties, and that entry of this Agreement is the most appropriate means of resolving the matters addressed herein.

NOW THEREFORE, it is hereby stipulated and agreed as follows:

I. APPLICATION AND SCOPE

1. The provisions of this Agreement shall apply to and be binding upon the Parties and their officers, employees, agents, successors and assigns.

II. VIOLATIONS

2. Perdue, on July 27, 2018, July 30, 2018, and on November 27, 2018, violated Condition II.N.3 of its Permit, by failing to notify DNREC of its failure to meet analytical criteria for Chromium VI and for fecal coliform bacteria.

3. Perdue, on or before December 7, 2018, failed to properly dispose of compost that did not meet the analytical criteria for fecal coliform and Chromium VI, in violation of Permit Condition II.N.5.

4. Perdue, on or before December 7, 2018, improperly sold or distributed as finished compost material that failed to satisfy the performance and analytical criteria of the Permit, in violation of Condition IV.B and Condition V.B.

5. Perdue failed to submit analytical reports in a timely manner in violation of Condition II.O.1 of its Permit.

6. Perdue obscured analytical results and failed to report compost not meeting performance or analytical requirements, detailing parameters not met and location sent to for disposal, in violation of Permit Condition II.O.1.f.

7. Perdue knowingly engaged in improper solid waste handling and disposal practices in violation of Permit Condition III.A and Section 1.0 of the Regulations Governing Solid Waste, by permitting waste, in the form of unfinished compost, containing excessive fecal bacteria and Chromium VI to be sold or distributed for the purpose of land application.

III. ADMINISTRATIVE PENALTY

8. In full and final resolution of all claims available to DNREC or the State of Delaware concerning the matters addressed or claims asserted in the Secretary's Order, Perdue agrees to pay one hundred seventy-five thousand dollars (\$175,000.00) in penalty assessment and \$4,429.00 for DNREC cost recovery. Perdue shall submit to DNREC payment of the penalty in full within sixty (60) days of the Effective Date of this Agreement.

9. The payment by Perdue to DNREC pursuant to Paragraph 2 of this Agreement shall be made to DNREC by corporate check, payable to the State of Delaware, and mailed to the following address:

Ralph K. Durstein III
Deputy Attorney General
Delaware Office of the Attorney General
Environmental Unit - Third Floor
102 W. Water Street
Dover, Delaware 19904

IV. EFFECT OF SETTLEMENT

10. Perdue's satisfaction of the payment obligations under Paragraphs 2 and 3 above shall resolve all civil, administrative and/or criminal liability of Perdue to DNREC or the State of Delaware for the matters addressed herein, including without limitation the alleged factual findings or violations identified, claims asserted and relief sought in or through the Permit.

11. This settlement is conditioned on Perdue's future compliance with the terms of its permit and the specific conditions set forth in Section VI below, paragraphs 22 through 46.

V. GENERAL PROVISIONS

12. Perdue agrees to the resolution of the Claims without any admission as to any matter of fact or law other than as specifically set forth herein. Perdue expressly denies any allegation by DNREC that Perdue undertook to misrepresent to DNREC information concerning testing and sampling. Perdue admits that incorrect factual information regarding sampling and testing was transmitted by Perdue to DNREC, and that Perdue subsequently unilaterally submitted corrected information upon identifying the factual mistake.

13. This Agreement shall be governed by, and interpreted under, the laws of the State of Delaware.

14. Nothing in this Agreement shall relieve Perdue of its obligation to comply with all applicable federal, state, and local laws and regulations. Other than as expressly provided for in Section IV above, nothing contained in this Agreement shall be construed to prevent, alter, or limit DNREC's ability to seek or obtain other remedies or sanctions available under federal, state, or local statutes or regulations, in response to any violation by Perdue of applicable statutes and regulations, nor to limit any claims, rights or defenses otherwise available to Perdue, including with respect to any such alleged violations.

15. This Agreement does not limit or affect the rights of Perdue, the State of Delaware, or DNREC against any person or entity not party to this Agreement.

16. This Agreement shall not be considered to create rights in, or grant any cause of action to, any third party not a party to this Agreement, nor does it limit the rights of any person or entity not party to this Agreement against Perdue, except as otherwise provided by law.

17. This Agreement shall be binding upon the Parties to this action, and their successors and assigns. The undersigned representative of each Party to this Agreement is authorized by the Party whom he or she represents to enter into the terms of this Agreement and bind that Party to them.

18. This Agreement shall be effective when duly and fully executed on behalf of the Parties to this Agreement. It may be executed in counterparts.

19. This Agreement may be modified only by the written consent of the Parties.

20. This Agreement is entered into notwithstanding any other agreement between the Parties and constitutes the entire agreement and settlement between the Parties. This Agreement supersedes any prior provisions or agreements, to the extent there is an irreconcilable conflict.

21. To the extent of any irreconcilable conflict between this Agreement and the requirements of federal and state law, the latter controls.

VI. FUTURE OBLIGATIONS

22. Perdue shall provide all future submittals of records, reports, and documentation in original format as received from contractors and ensure that submitted records, reports, and documentation are accurate and representative of actual conditions.

23. Perdue shall not distribute or attempt to distribute, for compensation or otherwise, any incompletely-composted wastes which fail to satisfy the established performance and analytical criteria, as required by the Permit.

24. The terms “incompletely-composted wastes” or “unsatisfactory compost” also includes any topsoil manufactured at Perdue’s facility utilizing unsatisfactory “compost” which failed to satisfy the referenced performance and analytical criteria. To have satisfied the performance and analytical criteria, the compost must have been sampled only once for laboratory analysis, been subjected to only one reasonably concurrent analytical run per analytical method (without sufficient laboratory QC data to justify re-analysis), and have satisfied the limits established by Perdue’s composting permit.

25. Perdue shall prepare and submit to the Department a corrective action plan for reporting and quality control for the Department’s review and approval within 15 days of the effective date of this settlement agreement.

26. The Department acknowledges that Perdue has committed effort and resources to further this settlement and in partial satisfaction of some of its provisions. Perdue shall submit a formal comprehensive report or plan to the Department documenting corrective actions that have been and will be implemented to ensure accurate reporting and quality control.

27. The plan shall detail the methods to be implemented to correct and prevent inaccurate records and reports, and the distribution of incompletely-composted wastes for land application as a soil amendment. The plan shall also address the manner in which Perdue will ensure that the Perdue facility and product are protective of human health and the environment. The plan shall include specific benchmarks and the dates by which said benchmarks will be met, as well specify the personnel responsible for accomplishing each benchmark.

28. Perdue shall prepare and submit to the Department a corrective action plan locating, investigating, and remediating land-applied incompletely-composted waste for the Department’s review and approval within 15 days of the effective date of this settlement agreement.

29. The plan shall detail the location where all incompletely-composted wastes sourced from the Perdue's composting facility and failing to meet the performance and analytical criteria established by the Perdue's composting permit were distributed and ultimately land applied. In other words, the plan shall specify where all unsatisfactory "compost" is currently located.

30. Perdue may, at its discretion, propose an alternate strategy of mitigating concerns regarding impacts to lands to which Perdue's unsatisfactory "compost" was applied. Upon receipt of an alternate proposal, the Department will review the proposal, notify Perdue as to the acceptability of the proposed alternate strategy, and provide feedback as to requirements associated with the successful completion of the proposed alternative

31. In this case, the terms "incompletely-composted wastes" or "unsatisfactory compost" also include any topsoil manufactured at the Perdue facility utilizing unsatisfactory "compost" which failed to satisfy the referenced performance and analytical criteria. To have satisfied the performance and analytical criteria, the compost must have been sampled only once for laboratory analysis, been subjected to only one reasonably concurrent analytical run per analytical method (without sufficient laboratory QC data to justify re-analysis), and have satisfied the limits established by the Perdue's composting permit.

32. The plan shall also detail the methodology which will be applied to investigate and determine to what extent, if any, the land-applied, incompletely-composted wastes sourced from the Perdue facility have degraded the quality of the land to which it was applied. Further, the plan shall detail the manner in which Perdue will remediate any lands where Perdue's incompletely-composted wastes were land applied and which the investigation indicates an impairment of environmental quality.

33. Perdue shall be responsible for the full cost of locating, investigating, and remedying all lands to which inappropriately distributed incompletely-composted wastes were applied.

34. All investigation and remediation will be performed to the satisfaction of the Department.

35. The Department acknowledges that Perdue has committed effort and resources to further this settlement and in partial satisfaction of some of its provisions. Perdue shall submit a formal comprehensive report or plan to the Department documenting the efforts undertaken and those which are to be implemented to mitigate concerns of impacts to lands to which Perdue's unsatisfactory "compost" was applied.

36. Perdue shall not distribute or utilize any compost without submission of the final batch analysis and the Department's written approval prior to distribution or utilization. Approval will be granted on a batch-by-batch basis. The Department's approval to distribute and utilize finished compost will continue to be required on an ongoing basis until the Department issues written authorization to the contrary.

37. Perdue shall select and utilize only (an) analytical laboratory(ies) with the ability to issue reports that conform to the United States Environmental Protection Agency's (U.S. EPA) Level IV Reporting standard to include a case narrative, chain-of-custody, and all appropriate quality assurance/quality control (QA/QC) protocols and data.

38. Perdue shall submit samples for analysis for fecal coliform in accordance with Condition II.N. of Composting Permit #SW-18/03. The Department will no longer accept results for fecal bacteria and *E.Coli* bacteria 0157H7 as a proxy for fecal coliform. The Department will accept results generated by the Colilert testing methodology, as long as such methodology is noted on the laboratory analytical report.

39. Perdue shall submit to the Department for its review and approval within 15 days of the effective date of this settlement agreement, the name, qualifications, and associated information (address, phone number, contact name, etc.) of an independent third party to collect samples of finished compost for analysis to determine satisfaction of the established performance and analytical criteria, and to review and submit analytical data.

40. Upon receipt of the Department's approval, Perdue shall contract with the approved independent third party to provide such services as described above.

41. Perdue shall prepare and submit to the Department, within 15 days of the effective date of this settlement agreement, a complete list of all final samples of compost collected since December 31, 2017, the date of collection of each sample, and all laboratories, contracted and subcontracted, to whom each sample was submitted. Final samples shall be those collected and analyzed for the sole purpose of complying with the requirements of Condition II.N. of Composting Permit #SW-18/03. Final samples do not include those collected and analyzed to provide process monitoring and control or those of composting wastes considered work-in-progress (WIP).

42. Perdue shall provide contact information for each laboratory listed to include, but not limited to, contact name, contact phone number, contact electronic mail address, and laboratory address.

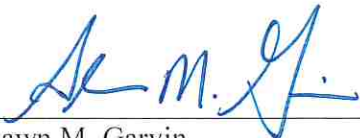
43. Perdue shall direct all laboratories to whom Perdue has submitted samples for analysis in the past to release and submit all historical reports associated with the Perdue's past samples and analytical results directly to the Department.

44. Perdue shall direct all laboratories to whom Perdue has recently submitted, is submitting, and will submit samples for analysis to release and submit directly to the Department all reports associated with Perdue's samples and analytical results concurrently with the laboratory's submittal of results to Perdue.

45. Perdue shall prepare and submit to the Department upon the Department's request a list of customers and clients to whom Perdue sold or distributed, whether paid or unpaid, specific batches of compost identified or determined to be unsatisfactory with regard to analytical and performance criteria established via Table 1 of Composting Permit #SW-18/03. The list shall include, but is not limited to, customer / client name, customer / client address, customer / client telephone number, customer / client electronic mail address, the quantity of the specified batch of compost each customer / client received, and the date each customer / client received compost from the specified compost batch. Perdue shall also provide contact information for each client and/or customer listed to include, but not limited to, contact name, contact phone number, contact electronic mail address, and contact address.


46. Perdue shall adhere and conform to all conditions set forth in Composting Permit #SW-18/03.

FOR THE STATE OF DELAWARE

By: 
Shawn M. Garvin
Secretary
Department of Natural Resources and
Environmental Control

Date: 5/29/19

Approved as to form:


By: 
Ralph K. Durstein III
Deputy Attorney General
Office of the Attorney General

Date: 5/29/19

FOR PERDUE AGRIRECYCLE, LLC

By: 
Richard L. Willey
President

Date: 5/24/19

By: 
Herbert D. Frerichs, Jr.
Attorney for Perdue AgriRecycle

Date: 5-24-19