



Petitioner denied any violation had occurred and challenged this Notice of Violation by letter dated October 10, 2008.

Without any trial of the facts or law in a contested case hearing and without any admission of liability on the part of Wallace Farm, Wallace Farm represents that it intends to do the following:

1. Relocate its Large, Type III compost facility currently located at 14410 Eastfield Road, Huntersville, North Carolina to another county within the State of North Carolina.
2. If and when it receives a renewal of its current permit as a Large, Type III compost facility at its present location, Wallace Farm represents that it does not intend to seek a renewal of that Large, Type III compost facility permit at its present location upon the permit's five (5) year expiration.

In addition, without any trial of the facts or law in a contested case hearing and without any admission of liability on the part of Wallace Farm, the Division and Wallace Farm have reached the following Settlement Agreement in these matters:

- 1) Wallace Farm denies the allegations made in these three (3) matters and makes no admission as to the correctness or accuracy of the allegations and denies any violation of its Permit.
- 2) Although the allegations made in these three (3) matters have not been proven in a court of law, the Division reaffirms its position regarding the allegations in these three (3) matters.
- 3) The Division of Waste Management agrees to hold the administrative penalty of \$10,500 in abeyance if the following conditions delineated below are met and said conditions are integrated into Wallace Farm's Operation and Maintenance Manual as an addendum within thirty (30) days of the execution of this Agreement. Upon confirmation of the following conditions being met and integrated into Wallace Farm's Operation and Maintenance Manual as an addendum upon the allotted times identified, the Division shall reduce the \$10,500 administrative penalty to \$0. Upon confirmation that the following conditions are not met upon the time schedule identified and not integrated into Wallace Farm's Operation and Maintenance Manual as an addendum within thirty (30) days, then and in that event, Wallace Farm, Inc. shall pay the entire amount of the \$10,500 administrative penalty within ten (10) days of that confirmation.
  - a) Wallace Farm shall not turn any compost windrow that has been in existence less than six (6) weeks unless it has two operators on site, one operating its compost windrow turner and the second its custom spreader. Both operators shall work in tandem so that the top surface and the upper half of each side surface of compost

windrows being turned are evenly covered with a 3"-6" layer of finished compost of carbonaceous material within ninety (90) minutes of completion of the turning.

- b) Each newly created compost windrow shall be evenly covered on the top surface and the upper half of each side surface with a 3"-6" layer of finished compost or carbonaceous material within three (3) hours of its creation.
  
- c) Wallace Farm eliminated a feedstock (a feedstock ranked as potentially a factor in affecting odor at its property boundary) from its composting process in February, 2009 and shall permanently eliminate said feedstock from its composting operation.
  
- d) The obligations of Wallace Farm set forth in paragraph 3(a) and (b) hereof shall be suspended during the occurrence of a "Force Majeure." For purposes hereof, the term Force Majeure shall mean tornadoes, sudden lightening storm, other Acts of God, and other events not reasonably within Wallace Farm's control or anticipation. Wallace Farm shall promptly notify the Division upon the occurrence of an event of Force Majeure, shall use reasonable efforts to rectify the event of Force Majeure, including termination of any turning of windrows and shall promptly notify the Division upon the conclusion of such period of Force Majeure.
  
- e) In the event of a mechanical failure of the spreader during placement of cover as set forth in paragraph 3(a) and (b) hereof, Wallace Farm shall immediately terminate windrow turning and shall use its best effort to utilize substitute equipment for cover placement.
  
- f) Upon the request of DENR, based upon field observations, Wallace Farm shall consult with DENR and shall eliminate another feedstock within sixty (60) days from the date of the consultation. After a full cycle of composting has elapsed (60-90 days) following the date of the elimination of the second feedstock, DENR and Wallace Farm shall assess odors at the property boundary. If the elimination of this feedstock results in an improvement of odor conditions at the property boundary, then this feedstock shall be permanently eliminated from the Wallace Farm composting process. If the elimination of this feedstock does not result in an improvement of odor conditions at the property boundary, then this feedstock may be reintroduced into the composting process. If and in the event that this feedstock is reintroduced and field observations warrant, then Wallace Farm shall eliminate another feedstock, following the same procedure delineated herein until a determination is made as to whether any particular feedstock should be eliminated because of it being a factor in affecting odor at the property boundary. If Wallace Farms shall have identified four feedstocks through this process, then the parties shall enter into negotiations in good faith to determine whether

elimination of further feedstocks will affect odor at the property boundary, provided however that DENR agrees that it shall not seek to require Wallace Farms to eliminate any feedstock that could be accepted at a Type I facility.

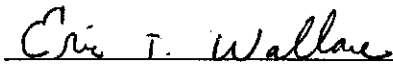
- g) Wallace Farm shall obtain an oxygen meter within thirty (30) days following the execution of this Agreement and shall begin monitoring oxygen levels within the compost windrows within sixty (60) days of the execution of this Agreement.
  - h) Wallace Farm shall advise Mecklenburg County and DENR authorities by email at least one (1) hour prior to the turning of each of its compost windrows. Such emails shall be deemed delivered when sent by Wallace Farms to the following addresses: Teresa Bradford at [Teresa.bradford@ncdenr.gov](mailto:Teresa.bradford@ncdenr.gov) and Joe Hack at [joe.hack@mecklenburgcountync.gov](mailto:joe.hack@mecklenburgcountync.gov).
  - i) Wallace Farm shall ensure that moisture levels in the compost windrows are maintained in the 40-60% range for newly created compost windrows and compost windrows within PFRP. Wallace Farm shall test for moisture with a hand squeeze test when it records temperatures and shall record the results of the moisture test at the time it records the temperatures.
  - j) Wallace Farm shall pay to the Division the investigative costs of \$1,003.53 within ten (10) days of the execution of this Agreement.
  - k) Wallace Farm retains all rights to apply for and operate a large Type I composting facility at its current location beyond the expiration or termination of its current Permit for operation of a Large Type III composting facility and the Renewal Permit. In addition, Wallace Farm retains all rights to conduct any other operations at its current facility for which no permit from the Division is required.
  - l) While its application for a renewal of its current Permit is pending, and until a Renewal Permit is issued, Wallace Farm agrees to accept no more than 100,000 tons of material for composting in any one year reporting period.
- 4) The Division agrees to consider the two Notices of Violation and the Compliance Order with Administrative Penalty closed upon confirmation of the above conditions of paragraph 3 being met and integrated into Wallace Farm's Operation and Maintenance Manual within the allotted time frames.
- 5) The Division agrees that it will not delay its review of Wallace Farm's application for renewal of its Permit, or any other permit, license or certification, on the basis of these three (3) matters; and further, the Division's decision regarding Wallace Farm's renewal permit, either its approval, denial, or modification, will be issued as expeditiously as possible following any public hearing and comment period.

- 6) The Division reaffirms its position that a Notice of Violation is not a proper basis for a contested case pursuant to N.C. Gen. Stat. § 150B-22 and makes no admission as to the correctness and accuracy of the Court's Order dated March 3, 2009 denying the Division's Motion to Dismiss.
- 7) Nothing in this Agreement shall restrict the right of the Division to inspect or take enforcement action against Wallace Farm for any new, subsequent, or repeated violation of Article 9 of Chapter 130A of the North Carolina General Statutes, or the State's Solid Waste Management Rules, codified at 15A N.C.A.C. Subchapter 13B, or the right of Wallace Farm to contest any subsequent enforcement action based on allegations of new, subsequent or repeated violations, to the extent such right is provided by law.
- 8) For purposes of Article 3A of Chapter 105 of the North Carolina General Statutes, the Division hereby notifies Wallace Farm, Inc., that it will find that the facts cited in the Compliance Order with Administrative Penalty constitute a "violation" and will report the violation to the North Carolina Department of Revenue. Wallace Farm denies there has been any violation and expressly incorporates paragraph 1 of the Settlement Agreement on page 2 hereinabove set forth.
- 9) The Parties agree that each shall bear its own costs related to any disputes covered by this Agreement.
- 10) This Agreement shall be binding upon the parties and is entered into knowingly, intelligently, and voluntarily. The consideration for the promises contained herein, and this Agreement contains the whole agreement between the parties as to the matters covered herein.
- 11) This Agreement is binding upon the parties and their successors and assigns. Petitioner agrees to file Notices of Dismissal of Petitioner's Contested Cases in the Office of Administrative Hearings within ten (10) days of being notified that the Division has confirmed that the conditions have been met and that the penalty held in abeyance has been reduced to \$0.
- 12) The Parties agree to cooperate fully in executing any and all supplementary documents and in taking all additional actions that may be necessary to give full force and effect to the terms of this Agreement.
- 13) Each provision of this Agreement is intended to be severable, and if any provision is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained therein.


- 14) This Agreement shall be binding upon the Parties upon execution by the undersigned. The Agreement becomes effective on the last date of the signatures of the undersigned.
- 15) The undersigned representative of Wallace Farm hereby acknowledges that he has read this Agreement, conferred with his attorney, fully understands the contents of the Agreement, consents to the settlement of claims on the terms set forth herein, and does so in reliance upon his own judgment and advice of his attorney and not in reliance on any other representations or promises of the Division, its representatives, or its attorneys.

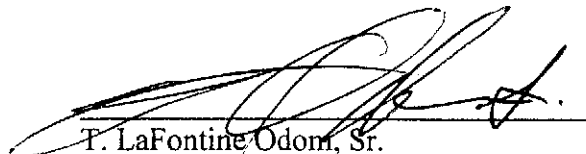
Entered and effective this the 22<sup>nd</sup> day of June, 2009.

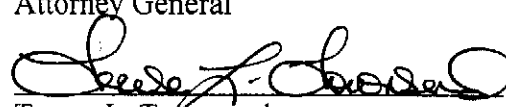
FOR THE PETITIONER WALLACE FARM,  
INC.

  
Eric Wallace, Vice-President  
Wallace Farm, Inc.

FOR THE RESPONDENT NC, THE  
DIVISION OF WASTE MANAGEMENT

  
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