UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Philadelphia, Pennsylvania 19103-2029

In the Matter of: Blessing Greenhouses and Compost Facility, Inc. 9372 Draper Road Milford, DE 19963 Respondent	Docket No. CWA-03-2021-0006DN **ADMINISTRATIVE ORDER ON CONSENT**

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency ("EPA") has made the following findings of fact and issues this Administrative Order on Consent ("Consent Order") pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Enforcement & Compliance Assurance Division, Region III.

2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him or her the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the Act, in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he or she shall issue an order requiring such person to comply with such section or requirement.

3. Blessing Greenhouses and Compost Facility, Inc. ("Respondent"), owner of Blessing Greenhouses and Compost Facility, has agreed to the issuance of this Consent Order.

II. STATUTORY AND REGULATORY BACKGROUND

4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States

except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

5. "Pollutant" is defined as "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.

6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

7. An NPDES permit is required for discharges of storm water associated with industrial activity. Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), (c); 40 C.F.R. § 122.21.

8. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), "[f]acilities classified within Standard Industrial Classification . . . 28 (except 283)" are engaged in "industrial activity" within the meaning of Section 402(p) of the Act and 40 C.F.R. § 122.

9. Section 402(b) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may authorize states to issue permits under the NPDES Program.

10. The State of Delaware has been approved by EPA to administer the NPDES permit program in the State of Delaware pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b).

11. The State of Delaware, through the Department of Natural Resources and Environmental Control ("DNREC") incorporated the NPDES Permit program requirements of the CWA, 33 U.S.C. § 1341 in its Regulations Governing Storm Water Discharges Associated with Industrial Activities, 7 Del. Admin. C. § 7201 ("Delaware Stormwater Regulations").

12. Pursuant to the authority of the Act, Delaware issued the NPDES Permit For Storm Water Discharges Associated With Industrial Activity General Permit on July 18, 2012 (hereinafter, the "General Permit"), which requires facilities that discharge storm water to a surface body of the State to comply with Section 9.1 of the Regulations Governing Storm Water Discharges Associated with Industrial Activities. 7 Del. Admin. C. § 7201-9.1.

13. The General Permit authorizes the discharge of stormwater associated with industrial activity in accordance with the provisions of the permit.

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14. Pursuant to 7 Del. Admin. C. § 7201-9.1, "Discharge of Storm Water Associated with Industrial Activities means storm water runoff that exits any system that is used for collecting and conveying storm water that originates from manufacturing, processing, or raw materials storage areas at an industrial facility. . . For the categories of industrial activities identified in § 9.1.1.1, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water."

15. Violations of the regulatory provisions in Section 9.1 of the Regulations Governing Storm Water Discharges Associated with Industrial Activities, 7 Del. Admin. C. § 7201-9.1, constitute violations of the General Permit under the Clean Water Act.

16. A violation of Section 9.1 of the Delaware Stormwater Regulations "is also a violation of the Clean Water Act and may be subject to penalties established under that statute." 7 Del. Admin. C. § 7201-9.1.2.13.

17. Nothing in Section 402 of the CWA "shall be construed to limit the authority of the Administrator to take action pursuant to section 1319." Section 402(i) of the Act, 33 U.S.C. § 1342(i).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. Blessing Greenhouses and Compost Facility ("Facility" or "Site") is located at 9372 Draper Road in Milford, DE 19963. The Facility occupies approximately 32 +/- acres and consists of an office building, greenhouses, scale house, pre-compost storage area, bunker staging area, screen material staging area, drum storage area and two (2) above ground storage tanks. The primary Standard Classification (SIC) Code for the Facility is 4953 (Refuse Systems), NAICS Code 562219 (Other Non-Hazardous Waste Treatment and Disposal).

19. Blessing Greenhouses and Compost Facility, Inc. is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

20. Blessing Greenhouses and Compost Facility, Inc. is, and at all times relevant to this Consent Order was, the owner and operator of the Facility.

21. Blessing Greenhouses and Compost Facility, Inc. engages in industrial activity at the Facility, which includes, but is not limited to, greenhouse operations, compost manufacturing and blending, material handling, material storage, and pesticide application.

22. The Facility discharges stormwater to Slaughter Creek, which drains to Cedar Creek and ultimately the Delaware Bay. Slaughter Creek and Cedar Creek are both waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

23. On November 25, 2015, Blessing Greenhouses and Compost Facility submitted a Notice of Intent to renew its Authorization to Discharge under the NPDES General Storm Water Permit Program, which allows the Facility to discharge storm water to a surface water body of the State in accordance with the Delaware Stormwater Regulations. Blessing Greenhouses and Compost Facility's permit coverage expires on November 24, 2020.

24. On November 5, 2018, representatives of EPA Region III ("the Inspection Team") conducted an inspection at the Site (hereinafter, "the Inspection").

25. During the Inspection, the Inspection Team reviewed Respondent's General Permit, Storm Water Plan ("SWP"), sampling procedures, operations and the current site conditions.

26. At the time of the Inspection, the Facility representative identified the most recent SWP as being from 2016 ("2016 SWP").

27. On July 23, 2020, DNREC approved the Facility's revised SWP.

28. The Inspection Team prepared an inspection report from the Inspection ("the Inspection Report"), which includes observations regarding Respondent's compliance with the requirements of the General Permit.

29. EPA sent a copy of the Inspection Report to the Respondent on February 13, 2019. Mr. Blessing responded to the Inspection Report by email on February 28, 2019.

30. On January 8, 2020 the EPA sent Mr. Blessings a Show Cause Letter describing the alleged violations found during the November 5, 2018 Inspection and providing Mr. Blessings with the opportunity to provide the Agency with additional information.

31. On January 27, 2020, Mr. Blessings responded to the EPA's January 8, 2019 Show Cause Letter, and indicated that the facility's SWP was being updated, as well as provided information regarding planned site improvements.

32. On August 12, 2020, the Respondent provided a revised SWP, dated August 10, 2020, as well as an updated facility map and stormwater collection calculations.

33. Based on the November 5, 2018 Inspection and review and consideration of the revised August 10, 2020 SWP, EPA has identified the following violations of the General Permit, and Section 301, 33 U.S.C. § 1311 of the CWA.

Count I: Failure to Amend the SWP

34. The allegations contained in paragraphs 1-33 of this Consent Order are incorporated by reference herein as though fully set forth at length.

35. Persons "[w]ho engage in industrial activities identified in § 9.1.1.3.1.2, excluding those facilities classified as Industrial Activity Codes HZ and LF, shall develop and continually implement a SWP. The SWP shall identify potential sources of pollutants, which may reasonably be expected to affect the quality of storm water discharges associated with industrial activities from a facility. In addition, the SWP shall describe and ensure the implementation of practices and programs which are used to reduce or eliminate the pollutants in storm water discharges associated with industrial activity at a facility and to assure compliance with the terms and conditions of this Subsection." 7 Del. Admin. C. § 7201-9.1.5.1.1.

36. The SWP must, "describe all activities and potential sources of pollutants that may reasonably be expected to add pollutants to storm water discharges", including outdoor storage areas. 7 Del. Admin. C. § 7201-9.1.5.7.2.1.

37. Persons covered by [Subsection 9.1] shall amend the SWP whenever . . . there is a change in the design, construction, operation or maintenance of activities associated with industrial activities conducted at the facility, which has a significant effect on the potential for the discharge of pollutants to the waters of the State..." 7 Del. Admin. C. § 7201-9.1.5.4.

38. The 2016 SWP identified food processing waste from the poultry industry as a source of pollutants on the Site; however, at the time of the Inspection, a Facility representative indicated that the Site has not accepted poultry waste in several years. The revised August 10, 2020 SWP indicates that "poultry Dissolved Air Filtration (DAF)" material is a source of pollutants on site, along with other organic material including eggshells, horse manure, and biosolids. A complete list of pollutants is provided on Page 57 to 59 of the revised August 10, 2020 SWP. The revised August 10, 2020 SWP also indicates that no new poultry waste is being accepted until new facility modifications have been built, as indicated on Page 12 of the revised SWP.

39. In the Facility's January 27, 2020 response to the January 8, 2020 EPA Show Cause letter, the Facility indicated that, at the time of the Inspection, Outfall #2, identified in the 2016 SWP, did not exist. The revised August 10, 2020 SWP indicates that Outfall #2, as indicated in previous iterations of the SWP, was not a true outfall and has since been removed from the SWP.

40. In the Facility's January 27, 2020 response to the January 8, 2020 EPA Show Cause letter, the Facility indicated that the 50,000-gallon concrete pit, identified in the 2016 SWP, did not exist and the SWP was incorrectly describing the controls in that area. In the revised August 10, 2020 SWP, this concrete vault is identified as a stormwater collection area and referred to as the "concrete vault" and is indicated as still in use.

41. Respondent's failure to amend its SWP, as described in paragraphs 38-40 above, to reflect a change in the design, construction, operation or maintenance of activities at the Facility is a violation of 7 Del. Admin. C. § 7201-9.1.5.4 and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count II: Failure to Include All Markings, Delineations and Designations in the SWP Map

42. The allegations contained in paragraphs 1-42 of this Consent Order are incorporated by reference herein as though fully set forth at length.

43. A SWP must contain a map of the Facility. "All markings, delineations and designations on the map shall be clearly identifiable. A narrative description of the markings, delineations and designations shall accompany the facility map. The map shall identify . . . any structural storm water controls (i.e. detention basins, secondary containment, storm diversions)." The map shall also identify "the areas where Industrial Materials are stored, handled or used in processes and the types of Industrial Materials associated with each areas." 7 Del. Admin. C. § 7201-9.1.5.7.2.2.

44. At the time of the Inspection, the Facility map did not clearly define areas on the Site where stormwater was being collected as depressions and did not describe the dimensions, storage capacities, or maintenance of these structures. These areas include a depression by the office, a depression west of the pre-compost pile, a depression in proximity to Outfall #1, a depression by greenhouse #6, a depression near the western stockpiles, a depression surrounding a pile in proximity to the scale house, depressions near the dirt pile on the north perimeter of the Site, depressions on the north and west perimeter of the Site, and a depression on the southeast corner of the finished compost pile. In the Respondent's August 12, 2020 correspondence to EPA, the Respondent provided an updated Facility map that contained additional information regarding stormwater collection areas, and updated storage pile areas.

45. At the time of the Inspection, Respondent failed to label the individual piles or descriptions of the contents of each pile in the 2016 SWP narrative or the map.

46. Respondent's failure to include all markings, delineations and designations on the SWP map, as described in paragraphs 44-45 above, is a violation of 7 Del. Admin. C. § 7201-9.1.5.7 and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342

Count III: Failure to Operate and Maintain Stormwater Management Devices in Compliance with the SWP

47. The allegations contained in paragraphs 1-46 of this Consent Order are incorporated by reference herein as though fully set forth at length.

48. "Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Storm Water Plan." 7 Del. Admin. C. § 7201-9.1.2.3.

49. The SWP shall describe "storm water management controls appropriate for a facility and implementation of such controls. The appropriateness for implementing controls listed in the SWP must reflect identified potential sources of pollutants at the facility." 7 Del. Admin. C. § 7201-9.1.5.7.3.

50. "The SWP shall include a program that identifies qualified facility personnel to conduct inspections and maintenance of storm water management devices (structural controls) as well as inspections, testing, maintaining and repairing facility equipment and systems to avoid breakdowns and failures that may result in the exposure of industrial materials to storm water. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained on-site." 7 Del. Admin. C. § 7201- 9.1.5.7.3.2.

51. "Where practicable, industrial materials and activities should be protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt or runoff." 7 Del. Admin. C. § 7201-9.1.5.7.3.4.

52. The 2016 SWP, Section 2.2.2, stated that "the compost is stored on a concrete pad. . . impounded by three (3) walls prior to sale or other use."

53. The 2016 SWP, Section 2.3.1, stated that "...The concrete pit has a capacity of 50,000 gallons, functions as a sump from which product contaminated water may be pumped and land applied. This practice prevents material from finding a potential alternate route off of the site. It is inspected after each rain event and pumped out as needed."

54. The 2016 SWP identified five sumps as collecting storm water on Site that are later pumped from them and land applied.

55. At the time of the Inspection, there were multiple instances of compost material that had breached the concrete walls surrounding the pre-compost and final compost piles. These spillages of materials were documented in Photographs 5, 6, 17, 18, and 19 of the Inspection Report.

56. At the time of the Inspection, the area northeast of the greenhouses, which the 2016 SWP indicated as draining to sump #2, demonstrated signs of flooding with stormwater being collected in an area with direct contact to the pre-compost material pile as documented in Photograph 2 of the Inspection Report.

57. At the time of the Inspection, the Inspection Team observed water collecting in the finished compost pile, which did not appear to be draining toward the collection area denoted in the center of the 2016 SWP map.

58. At the time of the Inspection, the 50,000-gallon concrete pit area appeared over-saturated in stormwater, as was the area on the opposite side of the pre-compost pile. The Inspection occurred during a rain event and the Inspection Team observed that it did not appear that the area had the capacity to hold all of the stormwater on site to prevent "...material from finding a potential alternate route off site..." The stormwater being collected was in direct contact to the pre-compost material pile as documented in Photographs 6 and 7 of the Inspection Report.

59. At the time of the Inspection, an unidentified pile and a lime pile were present in proximity to the pre-compost pile and in direct contact with stormwater as documented in Photographs 3 and 4 of the Inspection Report.

60. As evidenced by the absence of inspection logs in the Facility's records, the 50,000-gallon concrete pit area was not inspected after each rain event, as required in the 2016 SWP.

61. Respondent's failure to operate and maintain all stormwater management devices in compliance with the 2016 SWP, as described in paragraphs 55-60 above, is a violation of 7 Del. Admin. C. § 7201-9.1.2.3, 7 Del. Admin. C. § 7201-9.1.5.7.3.4, and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

IV. ORDER

AND NOW, Pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

62. Within sixty (60) days of the effective date of the Consent Order, the Respondent will provide to EPA the most recent version of the SWP, as of the effective date of the Consent Order, which contains, in addition to all of the requirements of the General Permit, a Facility map located within the SWP, including all of the requirements identified in 7 Del. Admin. C. § 7201-9.1.5.7.2.2. Respondent shall submit the amended SWP to DNREC for approval, in accordance with 7 Del. Admin. C. § 7201- 9.2.5.4.2.

63. Within thirty (30) days of DNREC's approval of the amended SWP, Respondent shall submit a copy of the approval to EPA.

64. By December 31, 2020, Respondent shall remove all compost material staged in Bunker No. 1 (A).

65. By May 31, 2021, Respondent shall remove all compost material staged in Bunker No. 2 (B).

66. Within sixty (60) days of the effective date of the Consent Order, the Respondent shall provide to EPA a Corrective Action Plan ("CAP") to address the remaining industrial material stored on the Site to ensure the following:

    a. At such time that composting activities resume at the Site, all compost and pre-compost material piles will be stored indoors or with full coverage overhead; and

    b. All non-compost material piles will have additional stormwater management devices, collection areas, or BMPs installed to minimize the migration of materials during stormwater event.

67. The CAP submitted to EPA shall include timelines of construction for the modification to or addition of the material coverage, site stormwater management devices, collection areas, and BMPs. Timelines shall, at a minimum, include a completion date of the work.

68. EPA will review the CAP and make a determination of completeness, based on the requirements described in Paragraph 66, above. Upon a determination of completeness, in writing by EPA, Respondent will implement the CAP in full in accordance with the timelines provided pursuant to Paragraph 67, unless otherwise modified, as described in paragraph 69, below.

69. If, due to circumstances beyond the control of the Respondent, the CAP submitted to EPA pursuant to paragraphs 66 above, needs to be modified, Respondent shall submit to EPA for review such modification(s), in writing, with an explanation of the reason for each modification. Upon acceptance by EPA in writing, the proposed modification(s) will be incorporated into the original CAP submitted pursuant to paragraph 66 above.

70. Respondent shall submit a notice to EPA within 30 days of completion of all of the milestones in the CAP.

71. This Consent Order shall terminate after EPA has made a determination that all milestones identified in the CAP have been completed in full. Upon completion of the CAP Respondent may request EPA to make the determination for termination.

72. All documents required to be submitted by this Consent Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
Signed _____
Title _____

73. Any submission or communication relating to this Consent Order shall be submitted (via electronic transmission) to:

Michael Greenwald (3ED32)
Enforcement and Compliance Assurance Division
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Greenwald.michael@epa.gov

VI. GENERAL PROVISIONS

74. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251-1388, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

75. This Consent Order does not constitute a waiver or modification of the terms or conditions of the Respondent's General Permit. Compliance with the terms and conditions of this Consent Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit.

76. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

77. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

78. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Order and to execute and legally bind the party.

79. The provisions of this Consent Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.

80. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Order are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

81. Respondent may assert a business confidentiality claim covering part or all of the information which this Consent Order requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.

VII. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 12/7/20

KAREN MELVIN

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Date: 2020.12.07 10:38:34 -05'00'

Karen Melvin
Director, Enforcement
& Compliance Assurance Division
U.S. EPA Region III

AGREED TO:

For Blessing Greenhouses and Compost Facility, Inc.

Date: 10-24-2010

Bruce Blessing

Owner

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