

News From The Delaware Department of Natural Resources and the Delaware Department of Justice

Delaware Dept. of Justice, representing DNREC Secretary O'Mara, serves Mike Davidson Enterprises, LLC with state's first Chronic Violator Complaint

DOVER (March 21, 2014) – After repeatedly disregarding environmental compliance orders and flouting other regulatory requirements from the Delaware Department of Natural Resources and Environmental Control, Mike Davidson Enterprises, LLC, a resource recovery and recycling facility in Camden, has been served by the Delaware Department of Justice and the Attorney General's Office with the state's first Chronic Violator Complaint. The complaint seeks \$8.3 million in restitution to cover the costs of loading, transportation, and proper disposal of the more than 100,000 tons of material on the premises at Mike Davidson Enterprises, LLC (MDE) and imposes an administrative penalty of up to \$10,000 per day for each violation against MDE as a chronic violator.

The Chronic Violator Complaint was served after MDE continually "demonstrated an unwillingness to comply with a resource recovery permit issued by the Solid and Hazardous Waste Management Section, and engaged in a pattern of willful neglect and reckless disregard" for DNREC's regulatory programs.

"Designating a facility as a chronic violator is an enforcement tool of last resort to be used when all other regulatory authorities have failed to achieve compliance," said DNREC Secretary Collin O'Mara. "The reckless actions of

MDE combined with their willful disregard for our numerous enforcement efforts to protect public health and the environment through all other available options fulfills the definition of a chronic violator. We will work with Attorney General Beau Biden to see this case to conclusion in ensuring that the citizens of Delaware are not left with an environmental and economic burden.”

“Polluters cannot be allowed to treat fines as simply a cost of doing business,” said Atty. Gen. Biden, whose office worked with legislators to update the state’s Chronic Violator law in 2011. “Those who ignore our environmental protection laws and repeatedly illegally pollute our air, water and soil will face significant financial consequences. Protecting our natural resources has a direct impact on Delawareans’ quality of life. The Department of Justice looks forward to working with Secretary O’Mara to hold chronic polluters accountable.”

The chronic violator complaint notes that compliance violations at MDE dating back to January 2010 – just two months after MDE received a resource recovery permit from DNREC – have been totally disregarded by the facility. Fourteen more compliance assessments by DNREC through May 2012 all showed continuing violations at the facility. A cease and desist order issued by Sec. O’Mara in June 2012 required that MDE take immediate action regarding contamination of the site by arsenic and chromium; it too was disregarded.

Two months later, a Secretary’s Order and Notice of Conciliation was issued by DNREC directing MDE to cease distributing its contaminated mulch product, to remove the contaminated mulch from the premises, and to provide assurance that the site was not contaminated by excessive levels of arsenic, chromium, or PCB’s. MDE declined conciliation and requested a hearing before the Environmental Appeals Board – which found in favor of DNREC.

In a Secretary’s Order issued April 29, 2013, Sec. O’Mara

upheld suspension of MDE's resource recovery permit while allowing the company three months to bring the facility into compliance with the permit requirements and applicable law, with the suspension in effect until compliance could be certified by DNREC. MDE was warned, according to the complaint served by the Attorney General's office, that "failure to bring the facility into full compliance within three months could result in substantial daily penalties and commencement of the process to designate" Mike Davidson Enterprises LLC as the state's first chronic violator.

Some three months later, on August 9, 2013, Secretary O'Mara revoked MDE's permit, "due to the complete failure to comply with" DNREC's enforcement actions. Cited in the revocation were MDE's improper storage and failure to dispose of over 100,000 tons of waste; exceeding analytical parameters for Arsenic, Chromium, and PCBs; failure to submit periodic reports as required; storing large quantities of solid waste outside the permitted area; improper acceptance and storage of prohibited waste; and grossly inadequate financial assurance. Sec. O'Mara also observed that approximately 70,000 tons of waste had been illegally added since the notice of violation in May 2012, which detailed the existing violations and the actions required to correct them.

MDE "clearly chose to operate the facility as an unauthorized, mismanaged landfill, not the recycling facility that was intended," Sec. O'Mara noted in the order. MDE continued over time to ignore all orders to remove the waste material and to remediate the site. Showing further disregard, MDE owner Mike Davidson abandoned the Camden facility, leaving massive piles of waste behind. Last month the waste piles caught fire and burned, then smoldered for days.

According to the chronic violator complaint, "Given the revenue generated under (MDE's) plan of operation, there is no indication that any of the violations are attributable to inadequate capitalization or funding. Simply put, (MDE owner

Mike Davidson) has had the resources to run the operation cleanly and according to his own plan and the terms of the permit, but has chosen instead to retain such funds for his own use, rather than make necessary investments in the business. Noncompliance here is not attributable to any inability to modernize or maintain the facility or its mechanical integrity, or to any lack of training or risk management; but rather an intentional refusal to respect the law.”

Delaware’s Chronic Violator Complaint law was modernized by the 146th General Assembly through Senate Bill 92 with House Amendment 1, sponsored by Senator David McBride and Representatives Michael Mulrooney, Quinn Johnson, and Debra Heffernan.