

COPY

May 21, 2008

Cedar Grove Composting, Inc.  
Stephen K. Malshuk, General Council  
7343 E. Marginal Way South  
Seattle, WA 98108

Re: Cedar Grove Composting, Inc. – Agency Reg. #25994  
Notice and Order of Civil Penalty No.08-064CP

Dear Mr. Malshuk:

EXECUTIVE DIRECTOR  
Dennis J. McLerran

Thank you for the Settlement Agreement we received May 16, 2008. I have enclosed a conformed copy of the Agreement for your records.

BOARD OF DIRECTORS

The agency will expect to receive your payment toward the unsuspended amount of the penalty (\$40,000.00) by close of business June 15, 2008.

BREMERTON  
Cary Bozeman, Mayor

Payment may be made by sending a check to the agency (please reference the penalty number with your payment) or by credit card by calling Andrea King in the agency's Finance Department at (206) 689-4014.

EVERETT  
Ray Stephanson, Mayor

If you have any questions, please contact Supervising Inspector Rick Hess at (206) 689-4029, or 1-800-552-3565, ext. 4029.

KING COUNTY  
Ron Sims, Executive

Sincerely,

KITSAP COUNTY  
Jan Angel, Commissioner

PIERCE COUNTY  
John Ladenburg, Executive

Jim Nolan  
Director - Compliance

PUBLIC AT LARGE  
Marina Cofer-Wildsmith

JLN/slh

SEATTLE  
Gregory J. Nickels, Mayor

cc: Laurie Halvorson, General Counsel  
Nina Birnbaum, Inspector

SNOHOMISH COUNTY  
Mike Cooper, Councilman

TACOMA  
Jake Fey, Councilman

**PUGET SOUND CLEAN AIR AGENCY**  
a municipal corporation of the state of Washington  
1904 3rd Avenue, Suite 105  
Seattle, Washington 98101

VS

**CEDAR GROVE COMPOSTING, INC.**  
7343 East Marginal Way South  
Seattle, Washington 98108

**SETTLEMENT  
AGREEMENT**

**NOTICE AND ORDER  
OF CIVIL PENALTY  
NO. 08-064CP**

**I. PARTIES**

The parties to this Settlement Agreement are:

- A. The Puget Sound Clean Air Agency (Agency). The Agency is a multi-county regional air quality agency covering the counties of King, Pierce, Snohomish and Kitsap, in the State of Washington. It is a municipal corporation of the State of Washington and established under RCW 70.94, the Washington Clean Air Act.
- B. Cedar Grove Composting, Inc. (Cedar Grove), located at 17825 Cedar Grove Road, Maple Valley, Washington, is a waste management company that receives grass, leaves, yard trimmings and wood waste from private, commercial and municipal customers and processes these materials into commercial compost.

**II. PURPOSE**

The purpose of this Settlement Agreement is to resolve Civil Penalty No. 08-064CP issued by the Agency to Cedar Grove in the total amount of \$177,684.00, and Notices of Violation Nos. 3-004203, 3-004204, 3-004205, 3-004206, 3-004209, 3-004651, 3-004211 and 3-003612 without further litigation.

**III. AGREEMENTS BY THE PARTIES**

The parties agree to the following terms and conditions:

- A. The Agency agrees to suspend \$137,684.00 of the total amount of penalties listed above on the condition that Cedar Grove complies with Sections III.B. and IV of this Settlement Agreement.
- B. By June 15, 2008, Cedar Grove agrees to pay the amount of \$40,000.00 to the Agency.
- C. If Cedar Grove fails to comply with certain terms of this Settlement Agreement, the parties agree to the following:
  - 1. If Cedar Grove fails to complete all the terms and conditions contained in Section IV.A., Tipping Building, Extension, of this Settlement Agreement, Cedar Grove shall pay \$10,000.00 of the suspended portion of Civil Penalty No. 08-064CP, minus credit for documented actual expenditures made towards accomplishing Section IV.A.
  - 2. If Cedar Grove fails to complete all the terms and condition contained in

**SETTLEMENT AGREEMENT**

**RE: NOTICE AND ORDER OF CIVIL PENALTY 08-064CP - 1**

Section IV.B.(6), construction of the Pre-Processing/Sorting and Grinding Building, of this Settlement Agreement, Cedar Grove shall pay \$92,000.00 of the suspended portion of Civil Penalty No. 08-064CP, minus credit for documented actual expenditures made towards accomplishing Section IV.B.(6).

3. If Cedar Grove fails to complete all the terms and conditions contained in Section IV.B.(4), procurement, purchase, installation and operation of a Slow Speed Shredder, of this Settlement Agreement, Cedar Grove shall pay \$35,000.00 of the suspended portion of Civil Penalty No. 08-064CP, minus credit for documented actual expenditures made towards accomplishing Section IV.B.(4).

#### IV. COMPLIANCE CONDITIONS

The Agency and Cedar Grove agree to the following terms and conditions:

##### A. Tipping Building Extension

1. Within 60 days of signing this Settlement Agreement, Cedar Grove shall expand the size of its current tipping building by constructing an enclosed extension, at least 50' by 100', attached to the existing tipping building to receive all incoming material as required under Order of Approval No. 7638, Condition 3.
2. Cedar Grove shall continuously store and/or handle these materials either inside the tipping building or pre-processing/sorting and grinding building and not expose the material in any way to ambient air until after being processed in the pre-processing/sorting and grinding building.
3. Emissions from the tipping building activities shall be captured and passed through the biofilter. Compliance with this requirement shall be determined by the observation of no visible emissions from the open face of the tipping building during the release of test smoke completed using procedures specified in the approved test plan identified in Condition No. 20 of this Settlement Agreement. Cedar Grove shall have smoke test kits available at the facility, consistent with the approved test procedures. Tests shall be completed as required in this Settlement Agreement, and at any other time as requested by the Agency.

##### B. Pre-Processing/Sorting and Grinding Building

4. Cedar Grove shall purchase, install and commence operating a Slow Speed Shredder in accordance with the following schedule:
  - a) Within 45 days of signing this agreement, complete procurement of a slow speed shredder for use inside the pre-processing/sorting and grinding building.
  - b) Within 60 days of signing this agreement, complete installation of the slow speed shredder.
  - c) Within 90 days of signing this agreement, complete the evaluation of the slow speed shredder and commence operating it.
5. Cedar Grove shall send a written report to the Agency to be received no later than 10 days of completing the evaluation, required by Section IV.B.(4) of the Settlement advising the Agency of the status of compliance with Section IV.B.(4)(c).
  - (a) Should Cedar Grove determine the Slow Speed Shredder does not meet

SETTLEMENT AGREEMENT

RE: NOTICE AND ORDER OF CIVIL PENALTY 08-064CP - 2

performance standards per the purchase agreement with the manufacturer, Cedar Grove shall advise the Agency in the report of the problem, steps being taken resolve the problem and anticipated timeframe for compliance with section IV.B.(4).

- (b) Upon receipt of the written report under section IV.B.(5)(a), the Agency shall evaluate the report to determine if the cause is/was beyond the control of Cedar Grove. Should the Agency agree that the problem is beyond the control of Cedar Grove, the Agency and Cedar Grove shall meet to establish a new compliance schedule for installing a grinder/shredder that can operate within a building.
- 6. Within 90 days of achieving compliance with section IV.B.(4) of this settlement agreement, Cedar Grove shall complete construction of an enclosed building located adjacent to and attached to the tipping building to house the entire pre-processing/sorting and grinding operation.
  - 7. Emissions from the pre-processing/sorting and grinding building activities shall be captured and passed through the biofilter. Compliance with the requirement shall be determined by the observation of no visible emissions from the open face of the screening and grinding building during the release of test smoke completed using procedures specified in the approved test plan identified in Condition No. 20 of this Settlement Agreement. Cedar Grove shall have smoke test kits available at the facility, consistent with the approved test procedures. Tests shall be completed as required in this Settlement Agreement, and at any other time as requested by the Agency.

C. Deviation Reporting

- 8. Cedar Grove shall prepare monthly compliance deviation reports and send them to the Agency. Reports shall be received by the Agency within 30 days following the end of the calendar month, and the first report is due at the end of the calendar month following the effective date of this Settlement Agreement.
- 9. Each report shall include a statement of compliance identifying each reportable deviation as described in Table A of this Settlement Agreement.
- 10. Each report shall be signed by a responsible official of Cedar Grove certifying that the report is truthful and accurate based on the monitoring and recordkeeping requirements contained in Table A of this Settlement Agreement.
- 11. Cedar Grove shall prepare deviation reports on forms provided by the Agency. All monitoring and recordkeeping logs prepared by Cedar Grove in accordance with this Settlement Agreement shall be approved by the Agency within 10 days of signing this Settlement Agreement. The Agency reserves the right to require Cedar Grove at any time to use a monitoring and reporting format either prepared or approved by the Agency.
- 12. Each day a monthly deviation report is not submitted to the Agency in accordance with this Settlement Agreement constitutes a separate and distinct reportable deviation.
- 13. The Agency reserves the right to take additional enforcement action, including but not limited to, seeking injunctive relief in the Superior Court of King County based on information contained within deviation reports or credible information.

D. Building Ventilation

- 14. Within 30 days of signing this Settlement Agreement, Cedar Grove shall retain the
- SETTLEMENT AGREEMENT

services of a professional ventilation technician to evaluate and make recommendations for the tipping building and pre-processing/sorting and grinding building with respect to compliance with Conditions Nos. 3 and 7 of this Settlement Agreement.

15. Within 45 days of signing this Settlement Agreement, Cedar Grove shall provide a copy of the written ventilation evaluation report prepared by the technician to the Agency.
16. Within 60 days of signing this Settlement Agreement, Cedar Grove shall construct and begin operating a ventilation system(s) exhausting to a biofilter, consistent with the report prepared under Condition No. 15 of this Settlement Agreement, for each of the buildings modified or constructed for compliance with Conditions Nos. 3 and 7 or unless otherwise determined by the Agency.
17. Upon satisfactory completion of Section IV.D of this Settlement Agreement as determined by the Agency, the Agency will take no further enforcement action regarding Notice of Violation No. 3-003612. If Section IV.D is not satisfactorily completed, the Agency retains discretion to take further enforcement action, including issuing civil penalties for the violations cited in Notice of Violation No. 3-003612.
18. At the request of Cedar Grove and by written approval of the Agency, Cedar Grove may request that the timeframes under Section IV.D be modified.

E. Building Ventilation Testing

19. Once each calendar quarter, Cedar Grove shall complete smoke testing for the ventilation systems to demonstrate compliance with Condition Nos. 3 and 7 of this Settlement Agreement. The test shall be completed with the buildings open to the maximum extent possible during operations. Each quarterly test shall be conducted no less than 45 days and no more than 135 days since the last test.
20. Within 30 days of signing this Settlement Agreement, Cedar Grove shall send a test plan for the testing required under Condition No. 19 of this Settlement Agreement to the Agency for review and approval. The Agency will review and approve or deny the test plan. If the Agency approves the test plan, Cedar Grove shall conduct the first test within 30 days of approval by the Agency. If the Agency does not approve the test plan, Cedar Grove shall revise the test plan and resubmit it to the Agency for further review and approval.
21. The first test conducted under Section IV.E of this Settlement Agreement shall satisfy the requirements of Agency Regulation I, Section 3.07 regarding test notification.
22. Each test completed as required by Condition No. 19 of this Settlement Agreement shall be recorded in a digital video format to document the results of the test, maintained on site for 2 years, and made available to the Agency upon request.

F. Tipping Building, Pre-Processing/Sorting and Grinding Building, Zone 7 Building and Biofilter Review

23. Cedar Grove shall have the operations of the tipping building, pre-processing/sorting and grinding building, zone 7 building and biofilter reviewed and evaluated by an independent third party biannually. The purpose of this evaluation is to review the performance of the emission capture system for these buildings and the biofilter operation. The evaluation shall include, but is not limited to:

SETTLEMENT AGREEMENT

RE: NOTICE AND ORDER OF CIVIL PENALTY 08-064CP - 4

- (a) Operational condition and integrity of the exhaust/capture system
- (b) Operational condition and integrity of the biofiltration system
- (c) Adequacy and effectiveness of the system maintenance program and practices
- (d) Repair history and troubleshooting efforts
- (e) Recommendations for continuous improvement of the integrated system operation

24. Each evaluation shall occur no less than 150 and no more than 210 calendar days since the last evaluation.

25. The first evaluation shall be completed no later than July 1, 2008.

26. Cedar Grove shall submit an evaluation report to the Agency at the same time it submits the monthly report required by Condition No. 8 of this Settlement Agreement.

**G. Operation and Maintenance**

27. Within 30 days of signing this Settlement Agreement, Cedar Grove shall update its facilities Operation and Maintenance Plan (O&M/EMS) to assure compliance with Agency Regulations I, II and III, Agency Orders of Approvals, and the terms and conditions of this Settlement Agreement.

**H. Revised Order of Approval**

28. Within 365 days of signing this Settlement Agreement, Cedar Grove shall submit a complete notice of construction application to the Agency requesting a new order of approval that incorporates all the conditions in the existing orders of approval and the terms and conditions of this Settlement Agreement into one order of approval. The Agency will follow its usual practices and procedures in processing the application.

**V. STIPULATED PENALTIES**

A. For the reasons described below, the Agency may require that Cedar Grove pay a stipulated penalty. For the purposes of this section, "day" refers to calendar days.

B. Stipulated penalties shall accrue, upon written notice to Cedar Grove, for the following reasons and in the following amounts:

- i. Failure to submit a monthly deviation report as required by Section IV.C of this Settlement Agreement - \$1,000.00 per day for each day that the report is late.

- ii. Each reportable deviation in a monthly deviation report as listed in Table A of this Settlement Agreement, unless a reporting exception listed in Table A applies - \$1,000.00 per reportable deviation per monthly deviation report.

C. Upon determination by the Agency that Cedar Grove has failed to meet one or more of the requirements listed in Section V.B above, the Agency shall provide written notice to Cedar Grove of the failure, specifying the provision of this Settlement Agreement that has been violated and the amount of the specific stipulated penalty due. Cedar Grove shall pay the stipulated penalty within thirty (30) days of receipt of the written notice from the Agency unless Cedar Grove provides notice to the Agency within that period that Cedar Grove contests the factual basis for the penalty or the

SETTLEMENT AGREEMENT

RE: NOTICE AND ORDER OF CIVIL PENALTY 08-064CP - 5

interpretation of this Settlement Agreement.

- D. Cedar Grove agrees not to appeal any notice of violation or written notice, either of which is issued under this section, or any stipulated penalty imposed under this section, to the state Pollution Control Hearings Board, pursuant to RCW 43.21B.110.
- E. The stipulated penalties provided for in this Settlement Agreement shall be in addition to any other equitable rights, remedies, or sanctions available to the Agency.

## VI. EFFECT OF SETTLEMENT AGREEMENT

- A. This Settlement Agreement constitutes the full and final resolution of Civil Penalty No. 08-064CP, and Notice of Violation Nos. 3-004203, 3-004204, 3-004205, 3-004206, 3-004209, 3-004651, 3-004211 and 3-003612.
- B. Nothing in this Settlement Agreement precludes the Agency from taking any enforcement action as authorized under the Washington Clean Air Act, Federal Clean Air Act, or regulations adopted there under for violations not covered by this Agreement.

## VII. PARTIES BOUND AND AUTHORITY

This Settlement Agreement applies to and is binding upon the signatories and their successors and assigns. The parties each represent and warrant that they have full power and actual authority to enter into this Settlement Agreement and carry out all actions required of them by this Settlement Agreement.

## VIII. COMPLIANCE WITH OTHER LAWS

Nothing in this Settlement Agreement shall be construed as excusing Cedar Grove from compliance with any applicable federal, state or local statutes, ordinances or regulations, or from compliance with any permit issued to Cedar Grove by any agency. Should the implementation of this Settlement Agreement conflict with the requirements of another governmental agency, Cedar Grove shall make a request of the Agency for an adjustment to the affected timelines of this Settlement Agreement.

## IX. MODIFICATION

This Settlement Agreement may be modified only upon written agreement and amendment by the parties.

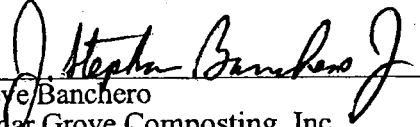
## X. FULL UNDERSTANDING AND INDEPENDENT LEGAL COUNSEL

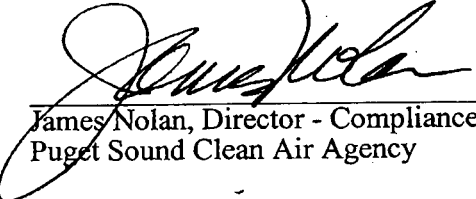
The parties each acknowledge, represent and agree that they have read this Settlement Agreement and that they have been fully advised by their own legal counsel regarding their legal rights with respect thereto.

## XI. EFFECTIVE DATE AND TERMINATION

- A. This Settlement Agreement takes effect when signed by both parties.
- B. This Settlement Agreement terminates when Section III.B. has been complied with, any stipulated penalties due under Section V have been paid in full, and the Agency has issued an order of approval to Cedar Grove as a result of the notice of construction application submitted in accordance with Section IV.H of this Settlement Agreement.

Dated this 20<sup>th</sup> day of May, 2008.

  
Steve Banchemo  
Cedar Grove Composting, Inc.

  
James Nolan, Director - Compliance  
Puget Sound Clean Air Agency

SETTLEMENT AGREEMENT

RE: NOTICE AND ORDER OF CIVIL PENALTY 08-064CP - 7



Table A

Deviation No.	Reportable Deviation	Monitoring	Recordkeeping	Reporting Exception
1	Compliance with Order of Approval No. 7638, Condition 3.	Cedar Grove shall monitor each material load received to determine if the load complies with Order of Approval No. 7638, Condition 3.	Cedar Grove shall record and make entry onto a daily log, whether each material load received was deposited inside or outside the tipping building. Each entry shall be initialed by the Cedar Grove employee conducting the monitoring. Each deviation from Order of Approval No. 7638, Condition 3 shall include the time and date of the deviation, customer name, vehicle description (including license plate number), and description of material deposited outside the tipping building.	None
2	Compliance with Order of Approval No. 8913 Condition 4.	Cedar Grove shall conduct one daily visual inspection of the entire Gore cover system to determine if the Gore cover is secured to the ground by use of a weighted device to capture odorous emissions.	Cedar Grove shall record the date and start time of each daily inspection in a daily log, and whether the Gore cover system is secured to the ground by use of a weighted device. Each entry shall be initialed by the Cedar Grove employee conducting the monitoring. If the Gore system cover is observed to be not secured to the ground by use of a weighted device, Cedar Grove shall record the date and time of discovery and date and time the Gore System cover was secured to the ground by use of a weighted device.	If the Gore system cover is secured to the ground by a weighted device within 60 minutes of discovery, this shall not be a reportable deviation.
3	No visible holes/tears in the Gore cover system.	Cedar Grove shall conduct one daily inspection of the entire Gore cover system in use to determine if any Gore cover material has any visible holes or tears.	Cedar Grove shall record the date and start time of each daily inspection in a daily log, and whether any holes or tears in the Gore cover system were observed. Each entry shall be initialed by the Cedar Grove employee conducting the monitoring. If the Gore system cover is observed to have visible holes or tears, Cedar Grove shall record the date and time of discovery and date and time repairs were completed.	If the holes or tears are completely repaired or corrected by the end of the next operational day* after discovery, this shall not be a reportable deviation.
4	Maintenance of material handling equipment.	Cedar Grove shall conduct one daily inspection of the entire material handling system (e.g. conveyor transfer points, air handling system, conveyor covers, access doors, air handling ducting/piping) to determine if the material handling system is damaged and/or not being maintained in good working order.	Cedar Grove shall record the date and start time of each daily inspection in a daily log, and whether any part of the material handling system is damaged and/or not being maintained in good working order. Each entry shall be initialed by the Cedar Grove employee conducting the monitoring. If the material handling system is determined to be damaged and/or not maintained in good working order, Cedar Grove shall record the date and time of discovery and date and time of repair.	If the damaged material handling equipment or equipment not maintained in good working order is repaired (or associated processing equipment shut down until corrected) within 180 minutes of discovery, this shall not be a reportable deviation.

5	Visible emissions of fugitive dust/ operation of dust control equipment.	<p>Cedar Grove shall conduct one daily inspection of its entire facility to observe any visible emissions of fugitive dust. If visible emission are observed, Cedar Grove shall determine if precautions are being taken to minimize the fugitive dust.</p> <p>Furthermore, Cedar Grove shall conduct two daily inspections to determine if its dust control equipment (e.g. water spray bars, water truck) is being operated in good working order.</p>	Cedar Grove shall record the date and start time of each daily inspection in a daily log, and whether any visible dust is observed, precautions are being taken to minimize fugitive dust, and dust control equipment is being operated in good working order. Each entry shall be initialed by the Cedar Grove employee conducting the monitoring. If visible emissions of fugitive dust are observed without precautions taken and/or dust control equipment is not being operated in good working order, Cedar Grove shall record the date and time of discovery and date and time precautions were taken and/or repairs completed.	<p>Any visible fugitive dust event where precautions are taken to minimize dust emissions within 20 minutes of discovery (or associated processing/heavy equipment shut down until corrected), this shall not be a reportable deviation.</p> <p>If any dust control equipment that is not operating in good working order is corrected within 60 minutes of discovery (or the source of dust shut down until corrected), this shall not be a reportable deviation.</p>
6	Operate/ maintain biofilters in good working order	Cedar Grove shall conduct one daily visual inspection of each biofilter to determine if the biofilters are channeling, rifting, short circuiting or not being maintained or operated in good working order.	Cedar Grove shall record the date and start time of each daily inspection in a daily log, and whether any biofilter is channeling, rifting, short circuiting or not being maintained or operated in good working order. Each entry shall be initialed by the Cedar Grove employee conducting the monitoring. If any biofilter is determined to be channeling, rifting, short circuiting or not being maintained or operated in good working order, Cedar Grove shall record the date and time of discovery and date and time of repair.	If any biofilter that is channeling, rifting, short circuiting or not being maintained or operated in good working order is corrected by the end of the next day after discovery, this shall not be a reportable deviation.
7	Building ventilation testing	Once each calendar quarter, Cedar Grove shall conduct ventilation testing to determine compliance with Condition No. 22 of this Settlement Agreement. Each test shall follow the test plan procedure approved under Condition No. 23 of this Settlement Agreement	Cedar Grove shall record the date and start time of each ventilation test in a monthly log, and the test results (pass or fail). Each entry shall be initialed by the Cedar Grove employee conducting or observing the test.	If no processing of material occurs in the building immediately following a failed test, the failed test shall not be a reportable deviation.

8	Any deviation from the monitoring and recordkeeping requirements in Table A, including any monthly deviation report submitted after the due date.		Cedar Grove shall maintain all monitoring and recordkeeping records required under this Settlement Agreement at the Maple Valley facility, including all deviations reports, and make them available to the Agency upon request. All documents required under this Settlement Agreement shall be kept for a period of two years.	None.
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- \* An operational day is defined as any day during which compostable waste material, actively composting material, or finished compost is handled onsite for any portion of the day.