

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.)
VALLEY MEAT COMPANY, LLC,)
Respondent.)**

No. SWB 12-16 (CO)

**ADMINISTRATIVE ORDER REQUIRING
COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the New Mexico Solid Waste Act ("SWA"), NMSA 1978, §§ 74-9-1 to 74-9-42, the Secretary of the New Mexico Environment Department ("NMED"), acting through his designee, the Director of the Environmental Protection Division, issues this Administrative Compliance Order ("Order") to Valley Meat Company, LLC ("Respondent"), to assess a civil penalty for violations of the SWA and the New Mexico Solid Waste Rules ("SWR"), 20.9.2 – 20.9.10 NMAC, and to compel compliance with the SWA and the SWR.

FINDINGS OF FACT

1. Complainant is an agency of the executive branch of New Mexico state government and is charged with the administration and enforcement of the SWA and the SWR.
2. Respondent is a for-profit New Mexico corporation with its principal address at 3845 Cedarvale Road, Roswell, New Mexico 88203-9020. Respondent owns and operates a livestock slaughter and processing business ("facility") and is engaged in composting the resulting offal, a special waste as defined by the SWA and SWR. Respondent's organizer and registered agent is Ricardo De Los Santos.

3. Respondent is a "person," as defined in the SWA, NMSA 1978, § 74-9-3.I, and 20.9.2.7.P(2) NMAC.

4. Respondent's slaughterhouse, processing and composting operations are located at 3845 Cedarvale Road, Roswell, New Mexico.

5. Pursuant to 20.9.2.7.C(12) NMAC, "compost" means "organic material that has undergone a controlled process of biological decomposition and pathogen reduction, and has been stabilized to a degree that the final product is potentially beneficial to plant growth and can be used as a soil amendment, growing medium amendment or other similar uses."

6. Pursuant to 20.9.2.7.C(13) NMAC, "composting" means "the process by which biological decomposition of organic material is carried out under controlled conditions. The process stabilizes the organic fraction into a material which can be easily and safely stored, handled and used in an environmentally acceptable manner."

7. Pursuant to 20.9.2.7.C(14) NMAC, "composting facility" means "a facility, other than a transformation facility, that is capable of providing biological stabilization of organic material."

8. Pursuant to 20.9.2.7.S(13) NMAC, "special waste" means "solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety," and includes packing house and killing plant offal.

9. Pursuant to 20.9.2.10.A(1) NMAC, no person shall "store, process, or dispose of solid waste except by means approved by the secretary and in accordance with [Environmental Improvement Board] regulations..."

10. Pursuant to 20.9.2.10.A(3) NMAC, no person shall "dispose of any solid waste in a place other than a solid waste facility that meets the requirements of [the SWR]..."

11. Pursuant to 20.9.3.27.A(2) NMAC, the owner or operator of a composting facility that accepts only source separated compostable materials shall file an application for a registration with the NMED at least 30 days prior to any operations and every five years thereafter.

12. Pursuant to 20.9.3.27.A NMAC, “[f]acilities covered by this section [20.9.3.27 NMAC] that do not timely file a complete application for registration are hereby deemed unpermitted solid waste facilities, and the owner or operator may be subject to penalties, permit requirements and nuisance abatement orders.”

13. Respondent’s facility is a composting facility as defined by the SWR.

14. On April 7, 2010, the NMED telephonically informed Respondent of the requirement to register its composting operation and the requirement to send a company representative for training to become a certified compost facility operator. On the same day, a subsequent electronic mail was sent to Respondent providing internet links to the webpage of the Solid Waste Bureau of the NMED (“SWB”) explaining the requirements of the SWR and links to the Composting Facility Registration Form.

May 13, 2010 Inspection

15. On May 13, 2010, a NMED enforcement officer, accompanied by the Chief of the NMED’s Solid Waste Bureau (“SWB”), inspected Respondent’s facility to determine compliance with the SWR.

16. During the May 13, 2010 inspection, the NMED enforcement officer observed and recorded, or otherwise verified that Respondent:

A. Failed to register its composting operation, as a Composting Facility Registration Form had not been provided to the NMED. A copy of the necessary registration form was left with Respondent during the inspection. Respondent agreed to submit the registration form to the NMED’s SWB within two weeks of the inspection;

B. Failed to properly dispose of solid waste, specifically thousands of cubic yards of aged, previously-composted and stockpiled material consisting of bones, hides, and heads mixed with manure, located along the southeast corner of the property. Additionally, the inspection documented an active offal composting operation at a covered, canopy area located adjacent to the old stockpiled material; and

C. Failed to properly compost offal, as evidenced by protruding and/or uncovered animal parts (offal) and entire carcasses in the active composting piles located at the covered, canopy storage area.

December 10, 2010 Inspection

17. On December 10, 2010, a NMED enforcement officer performed a follow up inspection of Respondent's facility to determine compliance with the SWR.

18. During the December 10, 2010 inspection, the NMED enforcement officer observed and recorded, or otherwise verified that Respondent:

A. Failed to register a composting facility, as Respondent failed to submit a registration form, as agreed to by Respondent during the telephonic discussion of April 7, 2010 and during the NMED SWB's May 13, 2010 inspection; and

B. Failed to properly dispose of solid waste – specifically, the previously composted and stockpiled material, as Respondent had not removed any of this material for proper disposal, as discussed during the NMED SWB's May 13, 2010 inspection.

19. On January 4, 2011, the NMED's SWB issued a Notice of Violation ("NOV") to Respondent, documenting Respondent's failure to register a composting facility, the improper composting of a special waste (offal), and the failure to properly dispose of solid waste (previously composted material). The NOV requested voluntary compliance and a response to the NMED, in writing, within ten (10) days of receipt. The response was to include submission of a completed Composting Facility Registration Form and a written abatement plan for the removal and proper disposal of the previously composted material.

20. On January 7, 2011, the NMED's SWB received Respondent's Composting Facility Registration Form.

21. On January 14, 2011, Respondent replied to the NOV, in part, stating that a Composting Facility Registration Form had been submitted and that the improper composting of special waste (offal) had been corrected. Regarding the previously composted material,

Respondent asserted that it would begin processing the material to remove large items of bone and seek a landfill to which the material could be sent for disposal.

April 18, 2012 Inspection

22. On April 18, 2012, a NMED enforcement officer performed a follow up inspection of Respondent's facility to determine compliance with the SWR.

23. During the April 18, 2012 inspection, the NMED enforcement officer observed and recorded, or otherwise verified that Respondent:

A. Failed to register a composting facility, as Respondent's offal composting operations were continuing, and the Compost Facility Registration Form received by the SWB on January 7, 2011 had not been approved and a Certificate of Registration had not been issued; and

B. Failed to properly dispose of solid waste – specifically the previously composted and stockpiled material, as Respondent had not removed any of this material for disposal, as required in the NMED SWB's January 4, 2011 NOV. The NMED enforcement officer provided Respondent with a copy of a letter dated January 31, 2012, in which the operator of the Roswell Municipal Landfill agreed to accept Respondent's previously composted and stockpiled material for disposal. The NMED enforcement officer advised Respondent that this waste needed to be disposed within 30 days.

April 26, 2012 Inspection

24. On April 26, 2012, a NMED enforcement officer conducted a follow-up inspection of Respondent's facility to determine compliance with the SWR.

25. During the April 26, 2012 inspection, the NMED enforcement officer observed and recorded, or otherwise verified that Respondent:

A. Failed to register a composting facility, as Respondent's offal composting operations were continuing, and the Compost Facility Registration Form received by the SWB on January 7, 2011 had not been approved and a Certificate of Registration had not been issued; and

B. Failed to properly dispose of solid waste – specifically the previously composted and stockpiled material, as Respondent had not removed any of this material for disposal, as discussed during the NMED SWB's inspection of April 18, 2012.

26. On April 28, 2012, Respondent began transportation and disposal of the first truckloads of the previously composted and stockpiled material at the Roswell Municipal Landfill. Landfill records available to the NMED indicate that five loads were transported to the landfill on that day, totaling 95.69 tons of waste. Additional loads were transported to the landfill on April 30, 2012 and May 12, 15, 17, 18, 24-26 and 30, 2012. However, upon information and belief, as of the issuance date of this Order, approximately 50% of the previously composted and stockpiled material remains at Respondent's facility and transportation of additional loads of the waste to the landfill have ceased.

27. On June 7, 2012, the NMED denied Respondent's composting facility registration application. Denial of the application was based on insufficient responses to the NMED's requests for additional information relating to Respondent's operations plan, the failure to complete the registration in a timely manner, and Respondent's lack of a consistent effort to assure timely removal of the stockpiles and to find alternatives for disposal of the offal waste generated from the slaughterhouse operation.

CONCLUSIONS OF LAW

28. Paragraphs one (1) through 27 are incorporated herein by reference.

Violation No. 1

Failure to Register a Composting Facility

29. In violation of the SWR, 20.9.3.27.A(2) NMAC, Respondent failed to register its offal composting operation, one instance of violation, occurring on or before October 11, 2010 to on or after December 9, 2010 (a period of 60 days).

Violation No. 2

Failure to Properly Dispose of Solid Waste

30. In violation of the SWA, NMSA 1978, § 74-9-31.A(1)(a), and the SWR, 20.9.2.10.A(1) and (3) NMAC, Respondent failed to properly dispose of several thousand cubic yards of solid waste comprised of previously-composted and stockpiled material that was abandoned upon the ground at Respondent's business property, one instance of violation, occurring on or before February 18, 2012 to on or after April 17, 2012 (a period of 60 days).

CIVIL PENALTY

31. Section 74-9-36.B of the SWA authorizes the assessment of civil penalties of up to Five Thousand Dollars (\$5,000) per day for each violation of the SWA or the SWR. The NMED hereby assesses a civil penalty of Eighty-Six Thousand and Four Hundred Dollars (\$86,400) for Respondent's two (2) violations. The penalty is calculated based on the factors set forth in the NMED's Solid Waste Civil Penalty Assessment Policy and upon such other factors as justice may require. The individual penalty for each violation is:

<u>Violation</u>	<u>Amount</u>
No. 1 Failure to Register a Composting Facility	\$48,000
No. 2 Failure to Properly Dispose of Solid Waste.....	\$38,400

32. Payment shall be made by certified or cashier's check payable to the State of New Mexico and mailed or hand delivered to George W. Akeley Jr. (Chuck), Manager, Enforcement Section, Solid Waste Bureau, NMED, Harold Runnels Building, Room S-2062, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, New Mexico 87502-5469.

SCHEDULE OF COMPLIANCE

33. Based on the foregoing findings and conclusions, and pursuant to the SWA, NMSA 1978, § 74-9-36.A(1), Respondent is hereby ordered to comply with the following schedule of compliance:

- A. Upon Receipt of this Order, Respondent shall cease offal composting operations;

B. No later than fifteen (15) days after the receipt of this Order, Respondent shall contact the NMED to discuss the requirements of this Order;

C. Within thirty (30) days of receipt of this Order, Respondent shall submit to the NMED an abatement plan addressing cleanup and removal of the remaining previously composted and stockpiled material, and the proposed disposition for any on-site offal that is being stored or actively composted at the Facility at the time this Order was issued; and

D. Within forty-five (45) days of receipt of this Order, Respondent shall pay the penalty.

NOTICE

34. For failure to take corrective action and timely comply with the foregoing requirements of this Order, the Secretary of the NMED, pursuant to the SWA, NMSA 1978, § 74-9-36.C, may seek to assess additional civil penalties of not more than Ten Thousand Dollars (\$10,000) for each day of non-compliance with the Order.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

35. Under the SWA, § 74-9-36.G, this Order shall become final unless, no later than thirty (30) days after the Order is served, Respondent submits a written request to the Secretary for a public hearing to: Sally Worthington, Hearing Clerk, Office of the Secretary, NMED, Harold Runnels Building, Room N-2150, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, New Mexico 87502-5469. A copy of this Order must be attached to the Request for Hearing.

36. Pursuant to 20.1.5.200.A(2) NMAC governing the NMED's Adjudicatory Procedures, Respondent's Request for Hearing shall include an Answer.

37. Pursuant to 20.1.5.200.A(2)(a) NMAC, Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted.

38. Pursuant to 20.1.5.200.A(2)(b) NMAC, Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defenses not asserted in the Answer and Request for Hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

39. Pursuant to 20.1.5.200.A(2)(c) NMAC, the Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge true and correct.

40. The public hearing shall be governed by the NMED's Adjudicatory Procedures, 20.1.5 NMAC.

FINALITY OF ORDER

41. This Order shall become final unless Respondent files a Request for Hearing and Answer within thirty (30) days after receipt of this Order. Unless a hearing is requested and an Answer filed in writing, the penalty proposed in this Order shall become due and payable as set forth in the Schedule of Compliance.

SETTLEMENT CONFERENCE

42. Whether or not Respondent submits a Request for Hearing and files an Answer, Respondent may confer with the NMED concerning settlement. The NMED encourages settlement consistent with the provisions and objectives of the SWA and the SWR. Settlement discussions do not extend the thirty (30) day deadline for filing an Answer and Request for Hearing, or alter the deadlines for this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference *pro se* (without legal counsel) or may be represented by legal counsel.

43. Any settlement reached by the parties must be consistent with the SWA and the SWR. Any settlement must be approved by the Secretary of the NMED and shall be a Stipulated Final Order signed by the parties. The Stipulated Final Order must contain all of the requirements of 20.1.5.600 NMAC.

44. To explore the possibility of settlement in this matter, you may contact R. Cook Flynn, General Counsel, Office of General Counsel, New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502-5469, (505) 827-2855.

45. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

TERMINATION

46. This Order shall terminate when Respondent certifies that all the requirements of this Order have been met, and the NMED has approved such certification, or when the Secretary approves a Stipulated Final Order.


for *Butch Longate*
Mary E. Rose, Director (Acting)
Environmental Protection Division
New Mexico Environment Department

8/2/12
Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed via certified mail, return receipt requested, No. 7011 3500 0000 0328 3210, postage prepaid on this 2nd day of August, 2012, to the following person:

Ricardo De Los Santos, Agent
Valley Meat Company, LLC
3845 Cedarvale Road
Roswell, New Mexico 88203


Sara Martinez, Administrative Secretary
Solid Waste Bureau