



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

CF

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

March 11, 2015

Mr. Wilfred Francis  
564 Fisher Road  
Dartmouth, Massachusetts 02747

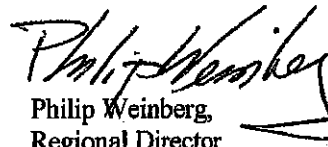
RE: **ADMINISTRATIVE CONSENT ORDER  
WITH PENALTY** and Notice of  
**Non-Compliance ACOP-SE-14-4005**

Dear Mr. Francis.:

In connection with the referenced matter, enclosed is your copy of the fully executed Administrative Consent Order w/ Penalty and Notice of Non-Compliance # **ACOP-SE-14-4005**. The Consent Order contains a schedule of actions and deadlines which, if not adhered to, could render you liable for stipulated and/or suspended penalties as described therein. The terms and conditions of the Consent Order now apply and are binding.

If you have any questions regarding this matter, you may contact Mark Dakers at the letterhead address or by calling (508) 946-2847.

Very truly yours,

  
Philip Weinberg,  
Regional Director  
Southeast Regional Office

PW/MD/CF/tr

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Enclosure

CERTIFIED MAIL# 7013 1090 0000 9295 2761

ec: Dartmouth Health Department  
[cmichaud@town.dartmouth.ma.us](mailto:cmichaud@town.dartmouth.ma.us)

DEP-Boston- BAS

ec: DEP-SERO  
ATTN: Lisa Ramos, Regional Enforcement Office  
Lee MacEachern  
Laura Black  
Mark Dakers  
Maria Pinaud

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of: \_\_\_\_\_ )  
 )  
 )  
**Wilfred Francis** )  
\_\_\_\_\_ )

File No.: ACOP- SE-14-4005  
Program ID #:551235

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, MA.

2. Wilfred Francis ("Respondent") is an Individual who resides at 564 Fisher Road, Dartmouth, Massachusetts 02747.

**II. STATEMENT OF FACTS AND LAW**

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Management Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent is a Massachusetts Resident.

5. The following facts and allegations have led MassDEP to issue this Consent Order:

A. On September 19, 2013, MassDEP inspected 564 Fisher Road in Dartmouth and observed one windrow of compost. The Respondent indicated that he was an agricultural operation to the inspectors.

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- B. On September 19, 2013, MassDEP contacted Massachusetts Department of Agricultural Resources ("MDAR") and confirmed that 564 Fisher Road was not registered with MDAR to operate a composting site..
- C. On December 11, 2013, MassDEP issued NON-SE-13-4013 to the Respondent violation of 310 CMR 16.03(2)(c)(1) for not registering with MDAR.
- D. On September 29, 2014, MassDEP inspected 564 Fisher Road in response to odor complaints along Fisher Road in Dartmouth. Inspectors observed and photographed one windrow on the property with fresh material (crab shells). Respondent indicated that he was taking material from off-site. No odor problems were observed during this inspection.
- E. Based on MassDEP's investigations, Respondent is not considered an agricultural operation by MDAR and he is not registered with MDAR. Respondent does not have a solid waste general permit for composting operations, and is in violation of 310 CMR 16.01(8)(a)1.
- F. Mr. Francis failed to submit a General Permit Application for composting activities at 564 Fisher Road, Dartmouth, in violation of 310 CMR 16.01(8)(a)1.
- G. On March 2, 2015, the Respondent submitted a General Permit Application for composting.

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

Immediately, upon the effective date of this Consent Order, Respondent shall assess and implement measures as necessary to prevent the emissions of offensive odors and/or nuisance conditions and/or the unpermitted discharge of pollutants to the environment.

9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

MassDEP  
Solid Waste Management Section  
20 Riverside Drive  
Lakeville, MA 02347

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

12. Respondent shall pay to the Commonwealth the sum of four hundred thirty dollars (\$430.00) within thirty (30) days of the effective date of this Consent Order as a civil administrative penalty for the violations identified in Part II above.

Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. In addition to the penalty set forth in this Consent Order, if any (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of one hundred dollars (\$100.00) per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment.

If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

If payment is made by electronic funds transfer, Respondent must complete the attached form "Electronic Funds Transfer Request" and, within ten (10) days of the effective date of this Consent Order, submit it to Director, BAS Division of Fiscal Management via Facsimile at the MassDEP Revenue Fax Number 617-292-5824 or via mail to:

Department of Environmental Protection  
Attn: Revenue Unit  
1 Winter Street, 4th Floor  
Boston, MA 02108

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and

attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

21. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

22. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 564 Fisher Road in Dartmouth for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

23. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

25. This Consent Order shall become effective on the date that it is executed by MassDEP.

**Consented To:**

By: Wilfred Francis  
Wilfred Francis  
564 Fisher Road, Dartmouth, MA 02747

Date: \_\_\_\_\_

**Issued By:**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: Philip Weinberg  
Philip Weinberg  
Regional Director  
MassDEP  
20 Riverside Drive, Lakeville MA 02347

Date: 3/11/15  
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(Respondent Letterhead required)

Department of Environmental Protection  
Attn: Revenue Unit  
1 Winter Street, 4th Floor  
Boston, MA 02108

RE: Electronic Funds Transfer Request  
[Respondent fills in Enforcement Document Number, e.g. ACOP-CE-11-3A006]

Director, BAS Division of Fiscal Management:

In order to complete a wire transfer for payment of the penalty assessed under (list enforcement number here), (put Respondent name here) requests the following information:

DEP's legal address,  
DEP's Federal Tax Identification Number,  
The name and address of DEP's bank,  
DEP's account name and number, and  
The ABA/routing number for DEP's account.

Please mail or fax this information to:  
Respondent's contact name:  
Address:

Fax number:

Sincerely,

Signed:  
Print name:  
Title:  
Work number:

Date: