



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

March 21, 2023

Via Certified Mail: # 7017 2400 0000 0746 ~~6779~~ s/b 6778

Jason M. Feagans, President and Registered Agent
Blackwood Solutions, Inc.
699 East Dillman Road
Bloomington, Indiana 47401
Email: jason@bwoodsolutions.com

Dear Mr. Feagans:

Re: Adoption of Agreed Order and Resolution of Case Letter
Commissioner, Indiana Department of Environmental Management
v.
Blackwood Solutions, Inc.
Case No. 2021-27924-S
Spencer, Owen County

The Agreed Order pertaining to the case referenced above has been approved for adoption by the Indiana Department of Environmental Management. A copy of the finalized agreement is enclosed for your records. Enforcement staff conducted a record review on March 17, 2023 and has determined that Blackwood Solutions, Inc. has achieved compliance with the terms of the the attached Agreed Order.

Thank you for your cooperation in resolving this matter. If you have any questions, please contact Linda McClure at (317) 233-5954 or via email at lmccclure@idem.IN.gov.

Sincerely,

Jennifer Reno, Chief
Land Enforcement Section
Compliance Branch
Office of Land Quality

Enclosure

cc: Owen County Health Department
Scott Alexander, Taft Law, salexander@taftlaw.com
Corey Webb, IDEM, OLQ Deputy Assistant Commissioner
Lindsey Hummel, IDEM, OLQ Solid Waste Permitting
Tim Hotz, IDEM, Solid Waste Compliance
IDEM Virtual Cabinet



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STATE OF INDIANA)	SS:	BEFORE THE INDIANA DEPARTMENT OF
)		
COUNTY OF MARION)		ENVIRONMENTAL MANAGEMENT
COMMISSIONER OF THE DEPARTMENT)		
OF ENVIRONMENTAL MANAGEMENT,)		
)		
)	Complainant,	
)		
)	v.	Case No. 2021-27924-S
)		
BLACKWOOD SOLUTIONS, LLC,)		
)		
)	Respondent.	

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (“IC”) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent’s entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (“Complainant”) of the Indiana Department of Environmental Management (“IDEM”), a department of the State of Indiana created by IC 13-13-1-1.
2. Respondent is Blackwood Solutions, LLC, which owns and operates the facility, located at 2333 South SR 43, in Spencer, Owen County, Indiana (“Site”).
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, on July 21, 2021, IDEM issued a Notice of Violation (“NOV”) via certified mail to:

Jason M. Feagans, President and Registered Agent
Blackwood Solutions, Inc.
699 East Dillman Road
Bloomington, Indiana 47401

Email: jason@bwoodsolutions.com

By Certificate of Conversion effective May 23, 2022, Blackwood Solutions, Inc. became Black Solutions, LLC.

By Certificate of Amendment also effective May 23, 2022, Black Solutions, LLC became Blackwood Solutions, LLC.

5. Respondent processes treated wood.
6. During an investigation including an inspection on March 23, 2021, conducted by a representative of IDEM, the following violation was found:
 - a. Pursuant to 329 IAC 11-9-1(a), unless excluded in 329 IAC 11-3, any person who constructs or operates a solid waste processing facility as defined under 329 IAC 11-2-43 shall have a solid waste processing facility permit under this article.

As noted during the inspection, Respondent was processing treated wood in the form of decommissioned telephone/utility poles, a solid waste, without a Solid Waste Processing Permit. Respondent has been in operation since 2016.
7. On April 14, 2020, telephone/utility pole wood samples were submitted for Toxicity Characteristic Leaching Procedure ("TCLP") testing with the results indicating the sampled telephone/utility poles were non-hazardous.
8. A Solid Waste Processing Facility Permit Application was submitted on November 18, 2021 and subsequently withdrawn after IC 13-11-2-205 (definition of solid waste) was revised effective on July 1, 2022. Respondent proposed and IDEM concurred that the telephone/utility pole material is exempt from the definition of solid waste per IC 13-11-2-205(a)(5).
9. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is approved by Complainant or Complainant's delegate and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with the statutes and rules listed in the findings of fact above.
3. Immediately upon the Effective Date, as required by IC 13-11-2-205(a)(5)(C), Respondent shall ensure that the telephone/utility pole material is used so the material does not become a solid waste. Please see the "*New Rule Definition of Solid Waste 2022*" Fact Sheet, Attachment A, for recommended best practices.

4. Signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent.
5. This Agreed Order shall apply to and be binding upon Respondent and all successors and assigns. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners, successors, or assigns before ownership rights are transferred.
6. No change in ownership, corporate, or partnership status of Respondent shall in any way alter the Respondent's status or responsibilities under this Agreed Order.
7. Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
8. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
9. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of the obligation to comply with the requirements of any applicable permits or any applicable Federal or State laws or regulations.
10. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
11. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the violations specified in the NOV.
12. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the U.S. Environmental Protection Agency (U.S. EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the U.S. EPA or any other agency or entity.
13. This Agreed Order shall remain in effect until IDEM issues a Resolution of Case letter to Respondent.

TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: Jennifer Reno
Jennifer Reno, Chief
Land Enforcement Section
Compliance Branch
Office of Land Quality

Date: 2/7/2023

RESPONDENT:

By: [Signature]
Printed: JASON FEAGANS
Title: CEO

Date: 3/9/23

COUNSEL FOR RESPONDENT:

By: [Signature]
Printed: SCOTT R. ALEXANDER
Date: 3/9/23

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 17th DAY OF March, 2023

For the Commissioner:

[Signature]
Peggy Dorsey
Assistant Commissioner
Office of Land Quality

FACT SHEET



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

New Rule Definition of Solid Waste 2022

Office of Land Quality

317-234-6923 • 800-451-6027

www.idem.IN.gov

100 N. Senate Ave., Indianapolis, IN 46204

Purpose:

The definition of solid waste in Indiana Code (IC) 13-11-2-205 was revised in the 2022 legislative session, and the new definition became effective July 1, 2022. This fact sheet explains how the amended definition applies to materials that would otherwise be considered a solid waste.

The new definition provides that a discarded material is not a solid waste if that material is:

- determined under 40 CFR 262.11 to be nonhazardous, or is exempted or excluded from regulation as a hazardous waste under 40 CFR 261; and
- the material is used by a manufacturer as an ingredient in or a component of a product, or as a commodity in a process that results in a product.

Discarded material that is considered a solid waste under this definition is regulated in accordance with the following:

- spent lead acid batteries regulated under IC 13-20-16 and 329 IAC 3.1-11.1;
- salvaged from mobile homes regulated under 329 IAC 11.6;
- alternative fuels regulated under 329 IAC 11.7;
- used oil regulated under 329 IAC 13;
- waste tires regulated under IC 13-20-14 and 329 IAC 15;
- electronic waste regulated under 329 IAC 16;
- legitimate use of iron and steelmaking slags, as described in 329 IAC 11-3-1(11);
- legitimate use of foundry sand, as described in 329 IAC 11-3-1(12);
- engineered wood waste burned as a fuel, as described in 329 IAC 11-3-1(20); and
- coal combustion residuals regulated under 40 CFR 3 257 Subpart D, IC 13-19-3, and 329 IAC 10.

Please also note that waste regulated under the Toxic Substance Control Act such as Polychlorinated Biphenyls (PCBs) still needs to be in compliance with those regulations and may not be suitable for use under this statute.

In addition, land application and biomass facilities will still require registrations.

Management

While discarded material going for use under the exemption in IC 13-11-2-205 is not considered a waste, it may become a waste if not managed appropriately. The exclusion under IC 13-11-2-205 states that the material "is used", so a facility planning to use a material under the exclusion must take steps to ensure that all the material "is used". If more than 10% of material accepted by a facility will not be used, IDEM recommends contacting the Solid Waste Permits Section at (317) 232-4473 to determine if a solid waste processing facility permit may be needed.

A person and/or a facility planning to use a material must store the material as a valuable commodity instead of as a waste. Storage should:

- be on a surface that allows all the material placed on it to be picked up and placed into the process (e.g. on an impervious pad or inside a building).
- minimize any movement of the material by wind or water.

- ensure that no material escapes the use property.
- be for a limited amount of time (e.g., less than six months). Please be aware that failure to sell/use an end product may result in it being classified as a solid waste.

Material that does not meet the above storage methods may be considered disposed of and therefore a waste. Additional guidance on appropriate storage methods can be found in the Storage of Type III Foundry Sands Prior to Legitimate Use Non-rule Policy Document (Waste -0027-NPD) located at www.idem.IN.gov/files/hrpd_waste-0027.pdf.

In addition to the above storage methods, IDEM recommends that records be maintained to demonstrate that the material is being used. The records should include the volume of material accepted, the volume of materials sent for use/sold as a commodity/sent for recycling, and the volume of material sent for disposal.

If you have any questions about if your material meets the exemption listed in IC 13-11-2-205, please contact IDEM's Solid Waste Permits Section at 317-232-4473.

BATES, DONNA

From: Jason Feagans <jason@bwoodsolutions.com>
Sent: Tuesday, March 21, 2023 1:46 PM
To: BATES, DONNA
Cc: SAlexander@taftlaw.com; WEBB, COREY; Hummel, Lindsey; HOTZ, TIM; McClure, Linda (IDEM)
Subject: Re: Copy of Adoption of Agreed Order and Close Out Letter. Case No. 2021-27924-S. Blackwood Solutions, Inc.

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Received. Thank you.

Jason Feagans
Blackwood Solutions
812-272-8458

On Mar 21, 2023, at 12:51 PM, BATES, DONNA <DBATES@idem.in.gov> wrote:

Dear Interested Parties:

Please find the attached copy of Adoption of Agreed Order and Close Out Letter pertaining to Blackwood Solutions, Inc. Once you have received this email would you please respond back to me (via e-mail) that you have received the document for our records.

Thank you.

<image001.png> **Donna Bates**
Administrative Assistant
<image003.png>
(317) 233-5529 •
dbates@idem.IN.gov |
www.idem.IN.gov
<image004.png>
|
<image005.png>

<Blackwood.AAO..pdf>

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

60-02L (1833) d/sales 27924-S
 JASON M FLAGANS PRES & REG AGENT
 BLACKWOOD SOLUTIONS INC
 699 EAST DILLMAN RD
 BLOOMINGTON IN 47401

A. Signature

X Waiver

- Agent
- Address

B. Received by (Printed Name)

on file

C. Date of Delivery

3/23/03

- D. Is delivery address different from item 1?** Yes
 If YES, enter delivery address below: No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

- 4. Restricted Delivery? (Extra Fee)** Yes

2. 7017 2400 0000 0746 6778