

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Tully Environmental, Inc.	:	Violations of the Solid Waste
d/b/a Natural Soil Products Company	:	Management Act - Municipal
2288 East Center Street	:	Waste Violations
P.O. Box 283	:	
Tremont, Pennsylvania 17981	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 25th day of May 2023, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Tully Environmental, Inc. d/b/a Natural Soil Products Company ("Tully Environmental").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101-6018.1003 ("Solid Waste Management Act"); the Air Pollution Control Act of January 8, 1960, P.L. 2119, *as amended*, 35 P.S. § 4001 *et seq.* ("Air Pollution Control Act"), Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations ("rules and regulations") promulgated thereunder.

B. Tully Environmental is a New York business corporation with an address of 127-50 Northern Blvd., Flushing, New York 11368, and Tully Environmental is a "person" as that term is defined by Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

C. Tully Environmental operates a municipal biosolids composting facility located at 2288 East Center Street in Frailey Township, Schuylkill County ("Facility") pursuant to Solid Waste Permit Number 101628, issued by the Department on April 15, 1997, as amended ("Permit").

D. 25 Pa. Code § 281.201(b) states: "A person or municipality that operates a general composting facility shall comply with the following: (1) The operating requirements of the act, this subchapter and the applicable requirement of Chapter 271 (relating to municipal waste

management – general provisions). (2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.”

E. 25 Pa. Code § 281.217(a) states: “The operator shall control fugitive air contaminants and otherwise prevent and control air pollution under the Air Pollution Control Act (35 P. S. § § 4001—4014), Article III (relating to air resources) and § 281.218 (relating to nuisance minimization and control).”

F. 25 Pa. Code § 281.218(b) states: “The operator shall control and minimize conditions not otherwise prohibited by this subchapter that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.”

G. Part II Section II Condition 7.a of the Permit states: “The operator shall control fugitive dust and otherwise prevent and control air pollution under the Air Pollution Control Act (35 P. S. 4001—4014) and regulations thereunder.”

H. 25 Pa. Code 123.31(b) states: “A person may not permit the emission into the outdoor atmosphere of any malodorous air contaminants from any source, in such a manner that the malodors are detectable outside the property of the person on whose land the source is being operated.”

I. On September 29, 2022, a representative of the Department’s Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Joliett area, including at the complainant’s residence.

J. On September 30, 2022 a representative of the Department’s Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Good Spring area, including at a complainant’s residence.

K. On October 6, 2022, a representative of the Department’s Waste Management Program conducted an odor patrol in response to the multiple complaints being received, and detected an odor attributed to the Facility offsite in the Donaldson area.

L. On October 10, 2022, a representative of the Department’s Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Good Spring and Joliett areas.

M. On October 17, 2022, a representative of the Department’s Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Good Spring area, including at the residences of the complainants. The same odors were also detected near the entrance to the Facility.

N. On October 18, 2022, the Department issued a Notice of Violation to Tully Environmental for the offsite odors detected by the Department on September 29 and 30, and October 6, 10 and 17, 2022, which requested that Tully Environmental submit a response identifying the reasons the violations occurred and how such violations would be prevented from reoccurring.

O. On November 2, 2022, the Department received Tully Environmental's response to the October 18, 2022 Notice of Violation. The response included various measures Tully Environmental planned to take, and were also considering, to address issues with odors.

P. On March 21, 2023, a representative of the Department's Waste Management Program conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Newtown and Donaldson areas, and near the Facility. The same odors were detected onsite at the Facility.

Q. On March 27, 2023, a representative of the Department's Waste Management Program conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Newtown, Tremont, Donaldson and Good Spring areas. Odors were also detected onsite at the Facility.

R. On March 28, 2023, a representative of the Department's Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Joliett area and east of the entrance to the Facility. Malodors attributed to the Facility were detected offsite at complainants' residences.

S. On March 29, 2023, a representative of the Department's Waste Management Program conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Donaldson and Tremont areas, as well as near the Facility.

T. On April 4, 2023, the Department issued a Notice of Violation to Tully Environmental for the offsite odors detected by the Department on March 21, 27, 28 and 29, 2023, including the malodors detected on March 28, 2023, which requested that Tully Environmental submit a response identifying the reasons the violations occurred and how such violations would be prevented from reoccurring.

U. On April 6, 2023, a representative of the Department's Emergency Response Team conducted an odor complaint investigation and detected an odor attributed to the Facility offsite in the Good Spring area, including in the vicinity of the Facility. Malodors attributed to the Facility were also detected offsite at the complainants' residences. The same odor was detected onsite at the Facility.

V. On April 15, 2023, a representative of the Department's Emergency Response Team conducted an odor complaint investigation and detected an odor attributed to the Facility offsite in the Donaldson and Good Spring areas.

W. On April 20, 2023, a representative of the Department's Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Tremont, Donaldson and Good Spring areas, including at the Facility entrance. Malodors attributed to the Facility were also detected offsite at complainants' residences.

X. On April 26, 2023, a representative of the Department's Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Good Spring and Donaldson areas, including at the Facility entrance. Malodors attributed to the Facility were detected offsite at the complainants' residences.

Y. On April 28, 2023, the Department received Tully Environmental's response to the April 4, 2023 Notice of Violation. The response identified measures that Tully Environmental planned to take to address odors, including adding additional wood chips to the windrow mix ratio, increasing the frequency of compost windrow turns, ensuring continuous operation of the odor control misting system, and ultimately planning to install and utilize the Gore Biosolids Composting System.

Z. On May 10, 2023, a representative of the Department's Emergency Response Team conducted an odor complaint investigation and detected odors attributed to the Facility offsite in the Donaldson and Tremont areas. Malodors attributed to the Facility were detected offsite at complainants' residences.

AA. On May 11, 2023, representatives of the Department's Waste Management Program and Emergency Response Team conducted odor complaint investigations and detected odors attributed to the Facility offsite in the Newtown and Donaldson areas. Malodors attributed to the Facility were detected offsite at complainants' residences.

BB. The Department determined that on September 29 and 30, October 6, 10 and 17, 2022, March 21, 27, 28 and 29, April 6, 15, 20, and 26, and May 10 and 11, 2023, Tully Environmental failed to control and minimize conditions not otherwise prohibited by this subchapter that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances, in violation of 25 Pa. Code §§ 281.201(b) and 281.218(b).

CC. The Department determined that on March 28, April 6, 20 and 26, and May 10 and 11, 2023, Tully Environmental failed to prevent and control air pollution in accordance with the Air Pollution Control Act, Article III and § 273.218, in violation of 25 Pa. Code §§ 281.201(b) and 281.217(a) and Solid Waste Management Permit No. 101628 Part II Section II Condition 7.a.

DD. The Department determined that on March 28, April 6, 20 and 26, and May 10 and 11, 2023, Tully Environmental permitted the emission into the outdoor atmosphere of a malodorous air contaminant from the facility in such a manner that the malodors were detectable outside the facility where the malodors were generated, in violation of 25 Pa. Code § 123.31(b).

EE. The violations described in Paragraphs I through M, P through S, U through X, and Z through DD constitute unlawful conduct under Section 610 of the Solid Waste Management Act, 35 P.S. § 6018.610, a statutory nuisance under Section 601 of the Solid Waste Management Act, 35 P.S. § 6018.601, and subject Tully Environmental to civil penalty liability under Section 605 of the Solid Waste Management Act, 35 P.S. §§ 6018.605.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Tully Environmental as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 602 of the Solid Waste Management Act, 35 P.S. § 6018.602; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. Tully Environmental agrees that the findings in Paragraphs A through EE are true and correct and, in any matter or proceeding involving Tully Environmental and the Department, Tully Environmental shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action.

a. Upon execution of this Consent Order and Agreement, the daily maximum amount of sewage sludge (Form 43 material) received at the Facility shall be reduced from 450 tons per day to 325 tons per day. If after thirty (30) days the volume reduction and other odor mitigation efforts appear to be effective in reducing offsite odors, Tully Environmental can submit a written request to the Department for approval to increase the daily maximum amount to 350 tons per day. The Department in its sole discretion may agree to approve or determine to deny Tully Environmental's request sought under this Paragraph. The Department's decision will be based on an evaluation of the effectiveness of Tully Environmental's compliance with this Paragraph and the facility's ability to control and minimize offsite odors.

b. Upon execution of this Consent Order and Agreement, the monthly average amount of sewage sludge (Form 43 material) received at the Facility shall be reduced from 400 tons per day to 250 tons per day. If after thirty (30) days the volume reduction and other odor

mitigation efforts appear to be effective in reducing offsite odors, Tully Environmental can submit a written request to the Department for approval to increase the monthly average amount to 275 tons per day. The Department in its sole discretion may agree to approve or determine to deny Tully Environmental's request sought under this Paragraph. The Department's decision will be based on an evaluation of the effectiveness of Tully Environmental's compliance with this Paragraph and the facility's ability to control and minimize offsite odors.

c. Upon execution of this Consent Order and Agreement, Tully Environmental shall utilize the bulking agent (woodchips) at a ratio of 4 woodchips to 1 biosolids, (or greater) to increase the structure and porosity of the biosolids and to encourage effective aeration during the composting process.

d. Upon execution of this Consent Order and Agreement, Tully Environmental shall utilize the onsite weather monitoring station as well as local weather forecasts to make operational determinations that afford, to the greatest extent possible, the reduction for offsite odors.

e. Within fifteen (15) days of execution of this Consent Order and Agreement, Tully Environmental shall submit to the Department an updated Nuisance Minimization and Control Plan to include the measures noted in Paragraphs 3.c and 3.d, above, as well as any additional measures recently taken to address odors.

f. Within thirty (30) days of execution of this Consent Order and Agreement, Tully Environmental shall submit to the Department an evaluation of any potential causes of the recent odor issues. The evaluation shall include, but not be limited to, possible sewage sludge treatment alterations at the point of generation, changes in onsite conditions such as volume increases, the use of the Midwestern Technologies blankets and its influence on the biosolids characteristics, increased windrow turning frequencies, changes to the ratio of wood chips to biosolids, woodchip type (softwood vs. hardwood) and size, early delivery times of incoming biosolids, the effectiveness of the Boss odor suppressant system and the effectiveness of the curtains on the two composting buildings.

g. Within thirty (30) days of execution of this Consent Order and Agreement, Tully Environmental shall submit to the Department an application for modification of the Permit for the installation of the Gore Biosolids Composting System at the Facility.

h. Tully Environmental shall respond to any technical deficiency letters pertaining to the minor permit modification application referenced in Paragraph 3.g, above, within 30 days of receipt.

i. Tully Environmental shall complete installation and commence operation of the Gore Biosolids Composting System at the Facility by October 15, 2023.

j. Tully Environmental shall submit to the Department weekly reports summarizing the amount of sewage sludge and the amount of wood biomass in tons accepted at the Facility for each operating day. The reports shall also summarize the amount of compost product sent off site, as well as the location(s) that received the compost. The reports shall also identify the anticipated location(s) to receive compost during the upcoming week. The reports shall be due by close of business Monday of each week for the previous week, and shall be submitted until the Gore Biosolids Composting System is fully installed and operational. Reports shall be sent by email, as an attachment, to following resource account: ra-epwm-nero@pa.gov.

k. Tully Environmental shall submit to the Department monthly reports summarizing the construction work completed for the Gore Biosolids Composting System. The reports shall be due by close of business on the 10th day of the month for the previous month, and shall be submitted until the Gore Biosolids Composting System is fully installed. Reports shall be sent by email, as an attachment, to following resource account: ra-epwm-nero@pa.gov.

4. Civil Penalty Settlement. Tully Environmental consents to the assessment of a civil penalty of fifty thousand dollars (\$50,000.00), which shall be paid in full upon signing. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs I through M, P through S, U through X, and Z through DD, covering the period from September 29, 2022 to May 11, 2023. The civil penalty payment shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania – Solid Waste Abatement Fund and sent to Pennsylvania Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915, Attn: Roger Bellas, Waste Management Program Manager.

5. Stipulated Civil Penalties.

a. In the event Tully Environmental fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, Tully Environmental shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty determined as follows:

- (i) For any violation of Paragraphs 3.a. through 3.f., 3.j. or 3.k., two hundred fifty dollars (\$250.00) per day for each violation.
- (ii) For any violation of Paragraphs 3.g, 3.h. or 3.i., five hundred dollars (\$500.00) per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania – Solid Waste Abatement Fund and sent to Pennsylvania Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915, Attn: Roger Bellas, Waste Management Program Manager.

c. Any payment under this paragraph shall neither waive Tully Environmental's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Tully Environmental's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Tully Environmental's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

d. Except for violations of Paragraphs 3.j. and 3.k., stipulated civil penalties shall be due automatically and without notice. No stipulated civil penalty will be owed for violations of Paragraph 3.j. and 3.k. if the violations are corrected within three (3) days of notice from the Department.

6. Additional Remedies.

a. In the event Tully Environmental fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

7. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Tully Environmental reserves the right to challenge any action which the Department may take to require those measures.

8. Liability of Operator. Tully Environmental shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 9.c, Tully Environmental also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. Transfer of Site.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Facility or any part thereof.

b. If Tully Environmental intends to transfer any legal or equitable interest in the Facility which is affected by this Consent Order and Agreement, Tully Environmental shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal

and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Northeast Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate Tully Environmental duties and obligations under this Consent Order and Agreement upon transfer of the Facility. Tully Environmental waives any right that it may have to challenge the Department's decision in this regard.

10. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Mr. Roger Bellas
Waste Management Program Manager
Department of Environmental Protection
2 Public Square
Wilkes-Barre, PA 18701-1915
Phone: 570-826-2511
Fax: 570-826-2357

11. Correspondence with Tully Environmental. All correspondence with Tully Environmental concerning this Consent Order and Agreement shall be addressed to:

Mr. Peter Tully, President and CEO
Tully Environmental, Inc.
127-50 Northern Blvd
Flushing, NY 11368
Phone: 718-446-7000
Email - ptully@tullyconstruction.com
Fax: 718-458-5199

With a copy to:

Matthew Ackerly
Natural Soil Products
2288 East Center Street
P.O. Box 283
Tremont, Pennsylvania 17981
Phone: 570-695-2525
Email - mackerly@tullyenvironmental.com

Tully Environmental shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under

this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

12. Force Majeure.

a. In the event that Tully Environmental is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond Tully Environmental's control and which Tully Environmental, by the exercise of all reasonable diligence, is unable to prevent, then Tully Environmental may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Tully Environmental's control. Tully Environmental's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Tully Environmental shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as an affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Tully Environmental to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. Tully Environmental's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Tully Environmental and other information available to the Department. In any subsequent litigation, Tully Environmental shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

13. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

14. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

15. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

16. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

17. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

18. Decisions Under Consent Order. Tully Environmental waives its rights to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Except as provided in Paragraph 9.c above, the Department agrees that any objection that Tully Environmental may have to any such decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

19. Termination. The obligations of Paragraphs 3.c. through 3.k. shall terminate when the Gore Biosolids Composting System is fully installed and operational at the Facility. The obligations of Paragraphs 3.a. and 3.b. shall terminate at a minimum of thirty (30) days after the Gore Biosolids Composting System is fully installed and operational and all open windrows have been removed and processed from inside the existing buildings.

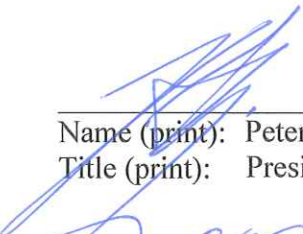
20. Execution of Agreement. This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Tully Environmental certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Tully Environmental; that Tully Environmental consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Tully Environmental hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by Tully

Environmental's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR TULLY ENVIRONMENTAL, INC.
d/b/a NATURAL SOIL PRODUCTS
COMPANY:

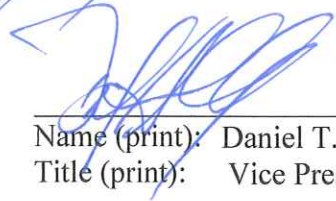
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:




Name (print): Peter K. Tully
Title (print): President & CEO

Roger Bellas

Roger Bellas
Waste Management Program Manager



Name (print): Daniel T. Scully
Title (print): Vice President

WAIVED 

Name (print):
Attorney for Tully Environmental, Inc.
d/b/a Natural Soil Products Company

Lance H. Zeyher

Lance Zeyher
Regional Counsel