



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

February 24, 2009

Mr. Roger Hickey, President  
BioRecycling Corporation  
PO Box 982  
Centralia, WA 98531

RE: Agreed Orders, BioRecycling Operations in Mason and Lewis County

Dear Mr. Hickey:

Per our agreement, enclosed are your copies of the agreed order for these facilities:

Agreed Order #6348  
Mason County  
North Ranch Facility  
820 E. Webb Hill Road, Union WA

Agreed Order #6349  
Lewis County  
Receiving & Treatment Facility – 2109 Foron Road, Centralia WA  
Land Application Site - Kalberg Farm Facility, Fisher & Antrim Roads

Please contact me if you have any questions. I can be reached by phone (360) 407-6282 or email [kdor461@ecy.wa.gov](mailto:kdor461@ecy.wa.gov).

Sincerely,

Kyle Dorsey  
Regional Biosolids Coordinator  
Solid Waste & Financial Assistance Program

Enclosures



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

**IN THE MATTER OF AN** ) **AGREED ORDER No. 6438**  
**AGREED ORDER RE:** )  
**BIORECYCLING CORPORATION** )

To: Mr. Roger Hickey  
President  
BioRecycling Corporation  
PO Box 982  
Centralia, WA 98531

RCW 70.95J.040 authorizes the Department of Ecology (Ecology) to issue Administrative Orders requiring compliance whenever it determines there has been a violation of any provision of the state biosolids program.

This is an Agreed Order between BioRecycling Corporation (BioRecycling) and Ecology, for the receiving, treatment, and land application site known as **North Ranch**, located at 820 E. Webb Hill Rd, Union, Washington, in **Mason County**.

BioRecycling agrees to comply with Chapter 70.95J of the Revised Code of Washington, Chapter 173-308 of the Washington Administrative Code, and permits issued there under, by taking certain actions which are described below.

By entering into this Agreed Order (Order), BioRecycling acknowledges that it is waiving any right to appeal this Order under Chapter 43.21B RCW, and waives the ability to contest the violations that give rise to this Order.

**Background:** BioRecycling's and Ecology's determination that violations have occurred is based on the following facts:

BioRecycling operates biosolids receiving, treatment, and land application facilities in **Mason County** for which it submitted permit applications to Ecology in 1999, and again in 2005. It is an obligation under the state biosolids program that all persons who apply non-exceptional quality biosolids to the land must obtain necessary information to determine appropriate management requirements for those biosolids.

One of those most fundamental obligations pertains to determining the agronomic rate of application, and adhering to that determined rate of application. This obligation requires:

- Proper characterization of biosolids which are prepared for land application.
- Proper assessment of crop requirements including intrinsic site factors and management methods which may influence the agronomic rate.
- Evaluation of crop response.
- Proper characterization and analysis of site soils following land application.
- Periodic adjustments to management practices based on information collected.

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BioRecycling has to some extent and at various times failed to meet its regulatory obligations for agronomic management, as described above, at the **North Ranch** land application site. This failure is evidenced by excessive residual soil nitrate as determined by soil sampling results. Ecology recognizes that BioRecycling has in fact invested significant effort and money in sampling and analysis programs. The circumstances contributing to this failure are complex.

BioRecycling still remains as the principally responsible party for assuring compliance of its operations. The actions described below are designed to address matters of non-compliance regarding agronomic rate management.

**I. Corrective Actions.** For the reasons stated above, BioRecycling agrees to take the following actions:

- 1) For the purposes of this Order, the term “field” applies to a discrete unit or parcel of land identified for the **North Ranch** land application site.
- 2) BioRecycling will submit a complete and updated permit application for its **Mason County** operations, including receiving, treatment, and land application sites.
  - a) The purpose of this requirement is to consolidate approved operational changes that have occurred over several years.
  - b) The updated application must fall within the previously approved scope of operations or be subject to further public review.
  - c) BioRecycling will respond in good faith to any Ecology directive or response regarding revision of its application within 14 days of notice, or a later date if agreed to by Ecology.
- 3) A proposed agronomic rate for each field at the **North Ranch** site must be submitted to Ecology 30 days in advance of applying biosolids to the field.
  - a) The first submittal(s) for the field(s) currently being applied are due within 14 days of signing this agreed order. It is recognized that application of biosolids may continue in the interim.
  - b) If Ecology does not respond in the indicated time frame, the rate is considered approved until a response is provided.
  - c) A completed version of the most recent edition of the Cogger-Sullivan spreadsheet must be submitted for each agronomic rate proposal.
  - d) Each proposal must take into consideration the previous year’s experience, including results of soil, surface, and groundwater sampling as applicable.
  - e) Each proposal must take into consideration the effects and method of application, seasonality, crop removal, and grazing.
  - f) Justification or rationale for all considerations and assumptions employed in items c. through e. above, including the projected base agronomic need of the crop, must be stated in a brief cover letter accompanying the proposed rate of application.
- 4) Soil sampling and analysis.
  - a) Soil sampling and analysis elements of the revised permit application must be modeled around University of Idaho guidance Bulletin 704 (revised), by Mahler and Tindall, unless otherwise approved by Ecology.

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- b) BioRecycling will continue to obtain soil samples for nitrate nitrogen and other constituents per the approved sampling plan to three feet, in one foot increments until Ecology determines that the rate of application, balanced against residual soil nitrate, indicates that applications comply with agronomic rates.
    - i) It is expected that two consecutive seasons of results with acceptable residual nitrate will be required to confirm compliance on each field where biosolids are applied.
    - ii) Continued sampling to three feet may be required for some fields or samples indefinitely, depending on the outcome of data evaluation.
    - iii) Where site geology frustrates attempts to achieve samples to the required three foot depth, BioRecycling must demonstrate that it has made a good faith effort to employ known, reasonable, and available methods to obtain samples.
  - c) BioRecycling must submit complete analytical results from all sampling events to Ecology within 45 days of the sampling event.
  - d) A report summarizing the previous year's results and identifying any long term trends must be submitted by March 1 of each year, for the preceding calendar year. This can be included with the standard annual report form, but represents a specific obligation beyond the basic annual report.
  - e) If any sample, or the average of any group of samples per depth at a specific field exceeds 20% of the targeted agronomic rate of application, it must be clearly identified and discussed in the annual report.
    - i) BioRecycling must, to the best of its ability, identify the reason for exceeding the target rate, and describe steps to be taken in the following season to correct over-application.
    - ii) This provision does not approve agronomic rates 20% above what is approved, but sets an action level when agronomic rates are exceeded. Ecology may require action whenever an agronomic rate is exceeded.
  - f) Revisions to the sampling and analysis plan as a result of permit review may result in changes to the monitoring program.
- 5) Biosolids sampling.
- a) All product sampling and analysis must be representative of the material which is used, sold, or given away.
  - b) Biosolids must be sampled and analyzed for constituents on a frequency and in accordance with the approved sampling and analysis plan.
  - c) BioRecycling must submit analytical results from all sampling events to Ecology within 45 days of the sampling event.
  - d) A report summarizing the previous year's results and identifying any long term trends must be submitted by March 1 of each year, for the preceding calendar year.
  - e) Revisions to the sampling and analysis plan as a result of permit review may result in changes to the monitoring program.
- 6) Surface and groundwater monitoring.
- a) Monitoring shall continue on a quarterly basis in accordance with the approved sampling and analysis plan.

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- b) BioRecycling must submit analytical results from all sampling events to Ecology within 45 days of the sampling event.
  - c) Revisions to the sampling and analysis plan as a result of permit review may result in changes to the monitoring program.
- 7) Use of Second Party Consultants.
- a) For the duration of this order, unless otherwise approved by Ecology, BioRecycling shall continue the use of second party consultants for the purposes of evaluating environmental compliance with regard to surface water, groundwater, and soils/agronomic rates.
  - b) BioRecycling shall evaluate and respond to Ecology regarding any recommendation of any consultant employed for the purpose of determining or assessing environmental compliance, within 30 days receipt of the consultant's report.
    - i) BioRecycling does not need to concur with a consultant's recommendation, but if not, must clarify why it is not acting on the recommendation.
    - ii) Ecology reserves the right to make determinations regarding consultant recommendations independently.
- 8) Annual and other reports must be submitted separately for each site.
- 9) The terms and conditions of this Order are intended to enhance existing permit conditions. In any case where there is a conflict, the more stringent requirement shall apply, or the requirements of both the Order and permit must be met.

**II. Conduct of the Parties**

- 1) During the completion of the work in 2 through 7 above, BioRecycling and Ecology agree to confer in good faith on matters relating to the design, implementation, and evaluation of these corrective actions.
- 2) On condition that BioRecycling remains in compliance with this Order, Ecology agrees to exercise its enforcement discretion for agronomic rate management through the completion and implementation of this Order, and the revised permit applications and elements thereof, as specified above.

This exercise of enforcement discretion shall not preclude Ecology from taking any action provided under any law to respond to any imminent threat to health or the environment in relation to BioRecycling's operations, or to any violation of law or regulation, known or unknown. Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
- 3) If a dispute arises between the parties regarding any noncompliance with this Order, the parties will attempt to resolve the dispute by informal resolution. Every disagreement is not a dispute. A dispute will be considered to have arisen when one party notifies the other, in writing, that there is a dispute.

If the parties cannot resolve the dispute informally within thirty (30) days of first notification, BioRecycling will deliver to Ecology a written *statement of position*. Within thirty (30) days thereafter, Ecology will respond to BioRecycling with a final decision. The final decision of

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Ecology will be considered binding unless BioRecycling elects to pursue arbitration of the dispute.

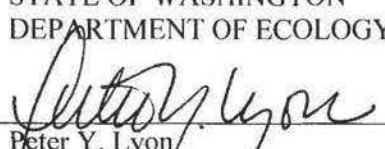
In order to pursue arbitration, BioRecycling must hire an arbitrator approved by Ecology within thirty (30) days of receiving Ecology's final decision. The arbitrator shall determine whether Ecology's final decision is consistent with this Order. In making this determination, the arbitrator shall review this Order, BioRecycling's statement of position, Ecology's final decision and any other applicable evidence including but not limited to rules, permit requirements, and guidelines provided by BioRecycling or Ecology. The arbitrator will uphold Ecology's final decision unless BioRecycling demonstrates by a preponderance of evidence that Ecology's administrative decision is inconsistent with this Order.

**III. Effective Date**

- 1) This Order shall take effect on the date it is executed and signed by Ecology. This Order shall remain in effect until the terms and conditions are incorporated in revised permit approvals for BioRecycling, or until such time as Ecology determines that the conditions of the Order have been satisfied.

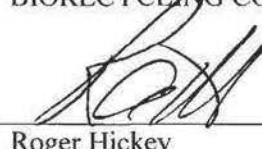
**IN WITNESS WHEREOF, the parties sign this Agreed Order:**

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

  
Peter Y. Lyon  
Regional Section Manager  
Solid Waste and Financial Assistance

2/23/09  
Date

BIORECYCLING CORPORATION

  
Roger Hickey  
President

Feb 20 2009  
Date