BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

WILBROS, LLC,	:	
	:	
Petitioner,	:	
	:	
v.	:	**Docket No.:**
	:	**OSAH-BNR-SW-1442274-127-Walker**
ENVIRONMENTAL PROTECTION DIVISION, GEORGIA DEPARTMENT OF NATURAL RESOURCES, and JUDSON TURNER, Director,	:	
	:	
Respondents,	:	
	:	
STEPHENS COUNTY, by and through its Board of Commissioners; CITY COMMISSION OF CITY OF TOCCOA; STEPHENS COUNTY SCHOOL DISTRICT, by and through the Stephens County Board of Education; and CONCERNED CITIZENS OF TOCCOA-STEPHENS COUNTY, LLC,	:	
	:	
Respondents-Intervenors.	:	

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Kevin Westray, Legal Assistant

FINAL DECISION

I. INTRODUCTION

Petitioner Wilbros, LLC (hereinafter "Wilbros"), seeks reversal of Administrative Order No. EPD-SW/WQ-AO-5999 (hereinafter the "AO") issued on January 21, 2014, by Judson Turner, Director, (hereinafter the "Director"), Environmental Protection Division, Georgia Department of Natural Resources, (hereinafter the "Department"). The AO alleges violations of the Georgia Comprehensive Solid Waste Management Act, O.C.G.A § 12-8-20 to 12-8-41 (hereinafter the "Solid Waste Act"); the Georgia Water Control Act, O.C.G.A § 12-5-20 to 12-5-53 (hereinafter the "Water Quality Act") as well as the Rules for Solid Waste Management, Chapter 391-3-4 and the Rules for Water Quality Control, Chapter 391-3-6. A hearing regarding this action took

place during May, August, and December 2014. The parties submitted final filings on December 12, 2014, and the record closed on January 14, 2015. For the following reasons, the Department's action is **AFFIRMED.**

II. BACKGROUND

Wilbros is a commercial recycling and composting operation located in Toccoa, Georgia. (J-3; T-859, 864). Wilbros's operations include recovering organic material from waste products that typically have been disposed of in landfills, incinerators, and land application sites to produce compost. (J-2; T-859, 864). The facility is owned by Joseph Wilbanks. (J-3; T-859, 864).

Certain wastes must be processed prior to composting. (J-4, P-76). The wastewater generated by Wilbros's operations is directed to an onsite wastewater treatment facility, equipped to process up to 75,000 gallons of wastewater per day. (J-2; T-642). On or about November 24, 2009, the Department issued Wilbros National Pollution Discharge Elimination System (hereinafter "NPDES") Permit No. GA0039233. (J-1; T-875).[1] The NPDES Permit authorizes Wilbros to discharge treated wastewater into Eastanollee Creek in accordance with effluent limitations, monitoring requirements, and other conditions as set forth in the Permit. (J-1; T-54-55).

In conjunction with its application for the NPDES Permit, the Department required Wilbros to prepare and submit a Design Development Report (hereinafter "DDR"). (J-2; T-291). Wilbros hired Warren Howe, an engineer with Woodruff and Howe Environmental Engineering, to prepare the DDR. (T-609, 663). The DDR details the operations of the wastewater treatment

[1] References to exhibits include an alphanumeric designation in which the alphabetic prefix indicates the party or parties which listed the exhibits ("J" for Joint Exhibits, "P" for Petitioner's Exhibits, "R" for Respondents' Exhibits, and "RI" for Respondent-Intervenors' Exhibits).

system and specifies the way incoming waste will be treated at the facility. (J-2; T-54, 291, 663). While the NPDES Permit identifies what Wilbros is permitted to discharge, the DDR specifies how waste material will be received and treated prior to discharge. (J-2; T-56). Wilbros is required to adhere to the DDR to ensure that the facility is in compliance with the NPDES Permit. (J-8; T-54, 56, 90, 190, 291-92).

Wilbros also accepts separated solids for composting purposes. (J-4; P-46, P-76).[2] The Department issues Solid Waste Handling Permits to facilities that accept and manage solid waste. (T-57). On February 15, 2011, the Department issued Wilbros Solid Waste Handling Permit (hereinafter "SWHP") 127-004P. (J-3; T-875). The SWHP authorizes Wilbros to receive and process certain types of solid waste under the conditions detailed in the SWHP. (J-3; T-56-57).[3]

In conjunction with its application for the SWHP, Wilbros submitted a Design and Operational Plan (hereinafter "D&O Plan"), containing schematics and a layout of the facility. (J-4). The D&O Plan's Operational Narrative includes a description of the facility's operations and specifies the types of waste that may be accepted and how the waste will be processed. (J-4; T-58-59, 90-91, 431-432.) Warren Howe also drafted the D&O Plan. D&O Plans typically are reviewed by the Department, who will approve the D&O Plan and draft a permit. (J-4; T-429). The Department approved Wilbros's D&O Plan on or about November 9, 2012. (J-3). Condition 1 of the SWHP incorporates the D&O Plan as part of the Permit. (J-3; T-58).

After the Department issued the NPDES Permit and SWHP, it conducted numerous inspections of the facility to ensure that Wilbros remained in compliance with the terms and conditions of the Permits. The inspections took place both as a matter of course and in response

[2] J-4, P-46 and P-76 all contain the D&O's Operational Narrative.
[3] The SWHP last was modified on September 11, 2013. (J-3; T-56-57).

to specific complaints from the surrounding community. Department employees have spent hundreds of hours to ensure that Wilbros is operating in compliance with the Permits. (T-91).

If the Department identifies a permit violation during an inspection, it issues a Notice of Violation (hereinafter "NOV"), which informs the permittee of the violation and seeks corrective action. (T-63-64). After it issues a NOV, the Department may enter into a jointly agreed upon Consent Order with a permittee. (T-66). The purpose of a Consent Order is to "return a facility to compliance." (T-66). The Department also may issue unilateral Administrative Orders to noncompliant facilities. (T-70-71). In the instant case, the Department's inspections have resulted in the issuance of multiple NOVs, Consent Orders, and Administrative Orders to Wilbros. (T-62-78, 91-92). Although Mr. Wilbanks has signed Consent Orders after receiving an NOV, he has disputed the factual findings contained within the NOV. (J-8; T-1161).

On or about January 6, 2014, the Department issued a NOV and a proposed Consent Order to Wilbros.[4] (J-11, T-169). The NOV detailed multiple violations of both the NPDES Permit and the SWHP and also enumerated violations of a prior Consent Order between Wilbros and the Department, dated December 10, 2012. The December 2012 Consent Order required that Wilbros only accept and process waste material in accordance with the approved DDR and D&O Plans. (J-8).[5]

The NOV alleged that Wilbros violated the NPDES Permit by failing to provide documentation regarding engineering drawings or plans, failing to operate the facility in compliance with the DDR, including by offloading waste directly into an anaerobic pond without pretreatment, and failing to construct a permanent diversion for stormwater flows. The NOV

[4] The NOV noted that "since January 1, 2013[,] EPD has received over 700 complaints from citizens of malodorous conditions at the site." (J-11).

[5] Pursuant to the December 2012 Consent Order, Petitioner agreed to "fully comply with its new Design and Operation Plan" and to "implement the new Design Development Report as approved by EPD . . . ." (J-8). The Department required Wilbros to submit a new DDR in part because it had failed to implement the original DDR as drafted by Mr. Howe. (T-707-708).

also alleged that Wilbros violated the SWHP by unloading waste in unapproved areas, storing and processing a volume of materials onsite in excess of the volume permitted, and failing to update its financial assurance information on an annual basis and during the time period required by its D&O plan. (J-11; T-78-79).

The Department's proposed Consent Order accompanying the NOV required Wilbros to pay a fine of $250,000, cease accepting waste material at the facility until provided written authorization by the Department, limit wastewater entering the wastewater treatment facility until given written authorization by the Department, reduce the amount of material in process or storage at the facility to 750 tons or less, and ensure that Wilbros conduct and report all required monitoring to the Department as set forth in the NPDES Permit. (J-11; T-79-81). The proposed Consent Order did not revoke Wilbros's Permits. (J-11). The Department offered Mr. Wilbanks ten days to sign the proposed Consent Order; if he failed to sign the proposed Consent Order, the NOV stated that "[the Department] may pursue additional enforcement action." (J-11).

After receiving the proposed Consent Order, Mr. Wilbanks contacted the Department's Director of Compliance, Dr. Albert Langley, Jr., and requested a meeting. (T-81, 953-955). Mr. Wilbanks regularly communicates with the Department regarding compliance. (T-1417). He believes he has always worked cooperatively with the Department, in part by modifying his operations at the Department's request. (T-1155-1159).

A meeting between Mr. Wilbanks, Dr. Langley, and Department employees Jeff Cown and Jane Hendricks took place on January 9, 2014. (T-81). During the meeting, Dr. Langley informed Mr. Wilbanks that certain terms of the proposed Consent Order were non-negotiable, including the payment of the $250,000 civil penalty, the reduction in the amount of material stored and processed onsite, and the provision that Wilbros cease accepting waste until the

Department determined Wilbros to be in compliance with its Permits. (T-82).

Mr. Wilbanks disputed the allegations in the NOV and brought several sets of plans and a banker's box full of materials to the meeting for the Department's review. (T-955). Dr. Langley declined to examine the written materials, telling Mr. Wilbanks that if he believed that the allegations were incorrect he should respond in writing. (T-81-83). If the Department had erred in formulating the allegations, Dr. Langley stated that it would reconsider them. (T-171). Through counsel, Wilbros requested additional time to respond to the NOV; however, the Department refused to extend the ten-day deadline. Wilbros did not submit a written response to the Department, nor did it agree to sign the proposed Consent Order. (J-12; T-178).

On January 21, 2014, the Department issued the AO that is the subject of this proceeding. (J-12). The AO is divided into four sections. The first section, entitled "Authority," details the applicable statutes, rules and regulations that govern the NPDES and SWHP permits. The next section, entitled "History of Noncompliance," references some, but not all, of the Department's prior Inspection Reports and NOVs and details prior Consent Orders between Wilbros and the Department.[6] (J-12). Specifically, the AO notices Consent Order No. EPD-WQ-5371 executed in March 2012, and Administrative Order No. EDP-WQ-5397 issued July 10, 2012, which resulted in the signing of Consent Order No. EPD-SW/WQ-5418 dated December 10, 2012. (J-6, J-7, J-12; T-71-72).

The "Violations" fall into three general categories: violations of the NPDES Permit, violations of the SWHP, and violations of a December 2012 Consent Order requiring that Wilbros comply with both the DDR and the D&O Plan. Finally, the "Conditions" section of the AO revokes both of Wilbros's Permits. It directs Wilbros to institute a plan to dispose of all

[6] The AO refers to the NOV dated October 18, 2013, (and Respondent's response), inspections performed on November 5 and 14, 2013, and site visits beginning in January 2013 through December 20, 2013. (J-12).

waste located at the facility and to close the facility within a designated time frame. (J-12).

III. FINDINGS OF FACT

The AO details eleven violations. Three of the listed violations involve Wilbros's alleged failure to pretreat incoming liquid waste before discharging it to the onsite wastewater treatment facility. (J-12).

Trucks routinely deliver different types of waste, such as grease trap or septic tank waste, to Wilbros. Some of the received wastes are in a solid form and may be taken directly to the compost operation. (J-4). Wilbros also receives liquid waste. Pursuant to the DDR accompanying the NPDES Permit, Wilbros must remove any solid material from incoming liquid waste prior to sending it to the wastewater treatment facility. (J-2; T-869, 880). This process is known as pretreatment. After solids are removed during pretreatment, residual water is sent to the wastewater treatment facility for processing. (J-2).

The first violation alleged in the AO is that Wilbros violated SWHP condition 5, which provides that all loading and unloading of liquid waste types 2 and 3 shall be confined to the areas shown in the D&O Plan. (J-3, J-12; T-430).[7] The Wilbros facility consists of a compost pad, a compost receiving and mixing building near the compost pad, a stormwater detention pond, a waste receiving building and a wastewater treatment system. (Petition for Administrative Hearing ¶ 3; J-2, J-4). The Department maintains that the D&O Plan only allows incoming trucks to unload liquid waste inside of Wilbros's waste receiving building. Instead of unloading liquid waste inside of the waste receiving building for the required pretreatment, the AO charges that Wilbros unloaded waste directly into an outdoor manhole. The manhole is

[7] SWHP condition 5 states "All loading and unloading of waste shall be confined to areas as shown in the Design and Operational Plan. Litter, liquid runoff, vectors, dust, and odors must be controlled." (J-3). The AO only references the first sentence of condition 5. (J-12; T-430).

across a driveway from the waste receiving building and flows directly to the wastewater treatment facility. (J-12, P-62).

In a separate but related violation, the AO charges that Wilbros unloaded waste directly to the wastewater treatment facility's anaerobic basin without the required pretreatment in violation of the December 2012 Consent Order. The December 2012 Consent Order provides that Wilbros "shall implement the new Design Development Report as approved by EPD . . . ." (J-8). The DDR categorizes permitted wastes into types 1-4 based on their oil content and explicitly establishes pretreatment steps which must be followed for each type of liquid waste. (J-2; T-320-321). Pursuant to the DDR, "[n]o waste material will be unloaded from incoming trucks directly into the wastewater treatment facility without some form of pretreatment . . . ." (J-2). Without proper pretreatment of liquid wastes, the wastewater treatment facility cannot function properly. (T-330).

The third allegation related to the failure to unload and pretreat waste as required references the DDR's Project Overview. The Project Overview states that the purpose of Wilbros's business is "recovering valuable organic material from what would previously have been considered waste products . . . . [that had] previously been disposed of in local landfills, incinerators, and land application sites." (J-2). The Department charges that by failing to pretreat waste as required, thereby bypassing oil recovery and dewatering processes, Wilbros did not recover valuable organic materials as required by the DDR. (J-12).

A. Violation of SWHP Condition 5

The D&O Plan's Operational Narrative identifies the types of wastes Wilbros may receive and how it must process these wastes. (J-4, P46, P-76). Pursuant to the D&O Plan, waste types

2 and 3 are not solid waste and require dewatering to remove moisture. (T-820).[8] Dewatering separates the waste into solid and liquid material. After separation, the liquid is directed to the wastewater treatment plant located at the facility. (J-4, P-46, P-62; T-433, 884).

The Department maintains that the D&O Plan only allows the trucks to unload incoming type 2 or type 3 waste (or "liquid waste") inside of Wilbros's waste receiving building. (J-12). Instead of unloading inside of the waste receiving building, the AO charges that Wilbros unloaded incoming liquid waste into an outdoor manhole leading directly to the wastewater processing facility. (J-12).

Wilbros disputes the Department's position that the D&O Plan requires it to unload liquid waste inside of the waste receiving building. Part A, Section I of the D&O Plan's Operational Narrative states that all type 2 and 3 wastes "will be processed/dewatered in the [w]aste [r]eceiving building . . . ."[9] (J-4, P-46, P-76; T-989). Acknowledging that the Plan's provisions mandate that dewatering or processing take place in the waste receiving building, Wilbros maintains that unloading is a distinct process that takes place prior to processing. (J-4; T-184; 578; 581, 582, 584). Although the D&O Plan specifically prohibits unloading anything but solid waste at the compost receiving or mixing building, Wilbros asserts that no other provision in the Plan directly restricts the unloading of liquid waste. (J-4; T-581).

The weight of the evidence demonstrates that the D&O Plan does restrict the unloading of type 2 and 3 waste to inside of the waste receiving building. (J-4; T-822).[10] The D&O Plan's schematics do not provide for an outdoor unloading location for liquid waste. (T-822). Unless

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[8] The facility no longer accepts Type 1 waste. (T-686).

[9] The waste receiving building is also referred to in the D&O plan as the DAF Separation Processing Area and also known as the liquid waste processing building. (J-4, P-46, P-62; T-989, 1005).

[10] Wilbros suggests that, even if Part A Section I of the D&O Plan does confine the unloading of types 2 and 3 waste to the waste receiving building, the D&O Plan's language that "wastes that have not been separated may be further processed ***at*** the onsite Waste Processing Building" would extend the unloading area beyond the interior of the building to include an outdoor manhole across the driveway. (J-4, P-46, P-76; T-184, 701) (emphasis added). The undersigned does not find merit in this contention.

material is brought to Wilbros in a storage tank or vessel, such as a dewatering box, loading outside of the building would necessitate a storage tank or vessel to hold the waste. There are no storage tanks or vessels evident in the D&O Plan. (T-820-24).[11]

The Department presented evidence that Mr. Wilbanks knew that the D&O Plan required that Wilbros only unload waste inside of the waste receiving building prior to the issuance of the AO at issue in this proceeding. Ted Hendrickx is a unit manager for the Department's Wastewater Regulatory Information Unit. (T-186). He has been to Wilbros twelve times since February of 2012. (T-189). On November 5, 2013, Mr. Hendrickx visited Wilbros and observed a drum screen plumbed into the outdoor manhole. (J-15; T-211). A drum screen is akin to a rotating sifter. It allows water to pass through it but will catch some solid material. (T-1126, 1134).

As a result of his observation, Mr. Hendrickx and Mr. Wilbanks "had a very specific discussion about why the drum screen was sitting outside and had they moved their waste receiving area outside." (T-211). Mr. Wilbanks told Mr. Hendrickx that he was not receiving waste outside of the waste receiving building, explaining that Wilbros was just using the drum screen to screen solids when washing out trucks. (T-211).[12]

Despite what Mr. Wilbanks told Mr. Hendrickx on November 5, 2013, he later conceded at the hearing that Wilbros had unloaded liquid waste outside of the waste receiving building through the drum screen and into the outdoor manhole. (J-22; T-211, 558, 979-980, 988). However, Wilbros maintains that even if the D&O Plan limits the unloading of waste to the waste receiving building, any unloading that took place outside of the building was not in violation of the SWHP because it was of limited duration, directly related to an isolated incident,

[11] Warren Howe, Petitioner's engineer who authored the D&O Plan on Petitioner's behalf, agreed that the D&O Plan's "original design is [that liquid waste] be unloaded inside" the waste receiving building. (T-821).

[12] Mr. Hendrickx also has observed that during his visits more often than not "equipment is not working, maybe the clarifier was not operating; water flowing between the basins like it was not supposed to be; aeration units not on . . . . I don't believe I've been up there for a visit when every phase of it, from pretreatment to discharge, has been operational." (T-217).

and was explained to and condoned by the Department.

Wilbros claims that it was unable to utilize the interior of the waste receiving building for a period of time because it was evicting its tenant located inside the building, Fuels From Waste, LLC ("FFW"). (T-979-980, 988, 1424). In 2012, FFW began operations at Wilbros's facility. Wilbros was to supply FFW with approximately ten truckloads a day of waste materials consisting of an average of twelve percent oil. FFW would then process the waste through a drum screen and centrifuge to produce an oil product to be sold as biofuel. (T-1695-1697). At the hearing, Mr. Wilbanks reported that he had spoken to Dr. Langley to tell him that Wilbros would have to unload waste outside of the waste receiving building while it was evicting FFW. In response, Mr. Wilbanks stated that Dr. Langley told him he was doing the "right thing." (T-1012-1013, 1421-1422).

Regarding the duration of the outdoor unloading, Mr. Wilbanks initially testified that liquid waste was unloaded outside of the waste receiving building for "about a week I think. I looked back at my records and it looked like from the 7th to the 14th [of November 2013]." (T-988).[13] He maintained that by the evening of the 14th we were able to "[get back in the building] to offload waste." (T-996). On his next day of testimony, Mr. Wilbanks reiterated that Wilbros had unloaded outside "about the second week of November;" he agreed that it was about "seven days or something like that." (T-1008). On the third day of testimony, Mr. Wilbanks again attested that the outside loading area was only used during the week of November 7-14, 2013, further adding that "the only time we unloaded – we unloaded grease trap waste in that location through a screen." (T-1349). Later that day, he again agreed that any outdoor unloading took place from November 7 through November 14, 2013. (T-1423-1424).

[13] The AO specifically references November 14, 2013, as the date a Department employee observed that Petitioner had unloaded waste to the outdoor manhole. (J-12).

On his fourth day of testimony, and only after receiving proposed exhibits from Respondents-Intervenors, Mr. Wilbanks admitted that the time period during which Wilbros was unloading and processing outside of the waste receiving building lasted "for approximately five weeks" from "October 10th or 11th to November 15th." (T-1521, 1527). Hence, the period of time that Wilbros unloaded liquid waste outside of the waste receiving building was significantly longer than Mr. Wilbanks had originally indicated, including November 5, 2013, the date that he had the conversation with Mr. Hendrickx denying that he was unloading waste outside of the waste receiving building.[14]

Not only was the time period for the outdoor unloading not of "limited duration," Wilbros did not have good cause to unload liquid waste outside of the building. First, the evidence demonstrates that the eviction proceedings did not prevent Wilbros from unloading waste inside of the waste receiving building. Peter Burley, chief executive officer of FFW, credibly testified that Wilbros always had access to the interior of the waste receiving building and that there was no need for Wilbros to receive, unload or dispose of waste outside of the building at any time. (T-1707-1708). If Wilbros took measures to turn off power inside the waste receiving building in order to evict FFW, that was an action it took of its own accord. Further, Wilbros could have declined to accept incoming waste during the eviction period. Additionally, on occasion Wilbros did unload incoming waste inside of the waste receiving building during this time period. Wayne Fowler, a truck driver who regularly delivered to the facility for four years, testified that he always unloaded material inside the building, even during the FFW eviction period. (T-1582-1583).

[14] The evidence suggests that despite his initial testimony Mr. Wilbanks was well aware that liquid waste had been unloaded to the outdoor manhole for more than one week. James Raymond is an environmental specialist with the Department. (T-543). He has been to the Wilbros facility between twenty-five and thirty times. (T-545). On November 14, 2013, Mr. Wilbanks told him that "they had not been processing or separating anything for a month or so inside [the waste receiving building]." (T-569-570).

Finally, the Department did not ratify Wilbros's conduct. Dr. Langley agreed that Mr. Wilbanks had told him about the eviction but did not recall Mr. Wilbanks telling him that waste would have to be unloaded outside of the waste receiving building during this time. (T-126-127). Even if Mr. Wilbanks had told Dr. Langley that he would be unloading waste outside of the waste receiving building, Dr. Langley did not have the authority to allow Wilbros to violate the NPDES Permit, or D&O Plan, albeit temporarily. (T-126-127, 175).

B. Violations of December 2012 Consent Order Requiring DDR Compliance

The AO also alleges two related violations, both in contravention of the December 2012 Consent Order mandating adherence to the DDR. The Department charges that Wilbros unloaded waste directly to the wastewater treatment facility's anaerobic basin without the required pretreatment, and that by bypassing oil recovery and dewatering processes, Wilbros did not recover valuable materials contained in the incoming waste. (J-12).

The DDR specifies that incoming waste "will be dewatered as indicated in Table 4 (of the DDR). In addition, the incoming waste stream may be processed in a gravity separation tank or centrifuge for free oil removal." (J-2). Table 4 authorizes dewatering of type 1 waste via a centrifuge, type 2 waste via use of a belt press, and type 3 waste via use of a dewatering box. (J-2). Pursuant to the DDR, "[n]o waste materials will be unloaded from incoming trucks directly into the wastewater treatment facility without some form of pretreatment as described above." (J-2).[15]

After pretreatment, wastewater flows into the wastewater treatment facility through an "H" flume, by which Wilbros monitors the flow rate into the system. (T-89, 896-897). From the H

[15] Petitioner argues that it is not bound to abide by any pretreatment directives in the DDR because the December 2012 Consent Order only specifies that Wilbros "implement the new Design Development Report . . . that fully describes how the wastewater treatment plant will be operated . . . ." (J-8). In fact the Consent Order does not only mandate that Petitioner adhere to the DDR as it relates to the operation of the wastewater treatment plant, but makes explicit that Petitioner must "implement the new Design Development Report as approved by EPD . . . ." (J-8).

flume, wastewater moves into the anaerobic basin referred to in the violation. (T-897). The water then travels to the aerobic basin and is pumped to a clarifier. (T-903, 906-907). After the clarifier the water flows to a sand filter, a chlorine contact chamber, and then into constructed wetlands. (T-908-911). Finally, water is discharged through a discharge flume and monitored for effluents. (T-626-628, 912). As discussed, Mr. Wilbanks acknowledged at the hearing that Wilbros unloaded liquid waste directly into an outdoor manhole for a period of five weeks. Waste unloaded into the manhole outside the waste receiving building would go directly to the anaerobic pond, in violation of the DDR. (T-770-771, 786-788, 854).

Wilbros suggests that unloading waste directly into the manhole without pretreatment would not necessarily violate the DDR if effluent limits were met, and "we didn't exceed the limits set forth in the DDR." (T-1442, 1532-1535). Mr. Wilbanks initially testified that any material that had been unloaded to the manhole already had been pretreated, affirming that only "decanted" material received from a supplier called Valley Proteins had been unloaded into the manhole. (T-1430). "Decanted" waste referred to waste that had undergone "some gravity separation to remove the fat, oil and grease." (T-1009-1010).

Ultimately, Mr. Wilbanks acknowledged that liquid waste from suppliers other than Valley Protein had been unloaded into the outdoor manhole. (T-1519-1520). However, he insisted that Wilbros had pretreated the incoming waste by passing it through a drum screen before unloading it into the manhole. (T-1009-1011, 1021). The drum screen would remove large solids; the DDR mandated its use prior to sending high-oil content waste through a centrifuge. (J-2; T-1707).

While the drum screen can be used in conjunction with another form of pretreatment authorized by the DDR, in and of itself it is not a sufficient form of pretreatment. (J-2). The

DDR specifically states that types 2 and 3 waste, such as grease trap waste, "will be dewatered as indicated in Table 4 (of the DDR)." (J-2; T-895-896). Table 4 authorizes dewatering of type 2 waste via use of a belt press, and type 3 waste via use of a dewatering box. (J-2). Even if the undersigned credits Mr. Wilbanks's testimony that the waste material was unloaded through a drum screen, the drum screen only removes large solids. While the DDR does state that grease trap waste must first be "screened in a rotary screen to remove large solids," it also mandates that the screened material also must be processed "using a belt press or dewatering box . . . ." (J-2). The DDR requires use of the pretreatment equipment listed in Table 4 of the document, and the facility cannot recover oils and solids from the waste without use of that equipment. (J-2; T-319-323, 330-333).

The Department and Respondent-Intervenors also presented persuasive evidence that, despite Wilbros's contention that the unloading of waste into the outdoor manhole was due to an isolated incident, Wilbros routinely unloaded liquid waste directly to the anaerobic pond without pretreatment. Due to the nature of its business, FFW tested every incoming truck load of waste for oil content inside the waste receiving building. By written agreement, Wilbros was responsible for solids or wastewater resulting from FFW's extraction of oil. (T-1709).

Peter Burley is the chief executive officer of FFW. (T-1695). In 2013 he spent sixty days onsite at Wilbros's facility. (T-1699). If FFW rejected waste due to unacceptably low oil content, it either was used for land application or poured directly down the outdoor manhole without the use of a drum screen. (T-1713, 1714). Mr. Burley saw seventeen to twenty rejected loads dumped into the outdoor manhole from June of 2013 until FFW ceased operations later that year. No form of pretreatment took place. (T-1712-1714, 1784-1786).

David Drew, FFW's chief operating officer, also observed Wilbros dumping untreated waste

into the outdoor manhole on a regular basis. Mr. Drew testified he worked onsite for approximately thirty to forty days in late 2012, and four or five days out of the week in 2013, until FFW ceased operations. (T-1790). Beginning in July of 2013 and continuing through October of 2013, Mr. Drew saw Wilbros unload rejected waste directly into the outdoor manhole outside of the waste receiving building without any form of pretreatment. (T-1814-1815). During this four month period, FFW rejected an average of eight to ten loads per week; the majority of the rejected loads were sent directly to the manhole. (RI-102; RI-103; T-1814-1819).[16]

In conjunction with Mr. Burley's and Mr. Drew's testimony, FFW's daily operating logs demonstrate that Wilbros routinely dumped waste into the wastewater treatment facility without pretreatment. FFW maintained daily operating logs that documented the final disposition of every load of material tested by the company, whether or not the load was accepted by FFW for processing. (RI-102; RI-103; T-1793). FFW's operating logs from two weeks in August of 2013, months before Mr. Wilbanks contended he was unable to access the waste receiving building, reflect that Wilbros discharged the vast majority of loads rejected by FFW directly to the manhole. (RI-102; RI-103; T-1814-1815, 1819).

The AO also alleges that Wilbros bypassed pretreatment and discharged untreated liquid wastes from storage tanks located inside the waste receiving building into a manhole located inside of the building. (J-12). This manhole also drains to the wastewater treatment plant.

Jamila Norman is an environmental engineer with the Department. (T-287). On December 20, 2013, she inspected Wilbros. (J-17). A number of tanks are located inside of Wilbros's

[16] By October of 2013, the operational relationship between FFW and Wilbros had deteriorated, and Wilbros moved to formally evict FFW from the waste receiving building. (P-72; T-980-984). Eventually, Wilbros and FFW reached a settlement agreement (T-1729-1730). Although Wilbros contends that Mr. Burley's and Mr. Drew's testimony is not credible because FFW continues to harbor antagonistic feelings towards Wilbros following their business dispute, the undersigned finds their testimony to have been credible.

waste receiving building. (T-672-673). Ms. Norman observed waste being unloaded to the tanks through a screen. (J-17). Hoses from the tanks led to a manhole inside the building that flowed to the anaerobic pond, but not to any of the treatment units listed in Table 4. (T-309). Based on her observations, Ms. Norman concluded that the liquid waste would flow from the tanks directly to the anaerobic basin without pretreatment. (J-17).

In response to Ms. Norman's observations, Wilbros claimed that the liquid waste was being pretreated via "gravity separation." (T-777-782, 815-819). Mr. Wilbanks testified that Wilbros regularly unloads incoming waste to storage tanks located inside the waste processing building to gravity separate oils and wastewater. (T-869, 880-882). During gravity separation, solids float to the top or drop to the bottom of the tank, with the liquid remaining in the middle. According to Mr. Wilbanks, employees visually inspect the liquid, and if it appears to be free of solid material it is decanted from the tank via a hose and sent to the anaerobic basin. (T-881-885, 1181-1186, 1419, 1438-1442). The solids captured in gravity separation tanks can be used directly as a soil amendment or remain in the tanks until there is a sufficient amount to justify use of the dewatering box or belt press. (T-673, 676, 1185). A dewatering box or belt filter press is much more effective than gravity separation at dewatering incoming waste. (T-838).

The DDR specifies that incoming waste "will be dewatered as indicated in Table 4 (of the DDR). In addition, the incoming waste stream may be processed in a gravity separation tank or centrifuge for free oil removal." (J-2). The Department acknowledges that gravity separation is a permissible additional treatment but contends that the DDR requires that gravity separation only be done in addition to, or after, the use of other dewatering equipment. (T-281-283). Table 4 only authorizes dewatering of type 2 waste via use of a belt press, and type 3 waste via use of a dewatering box. Table 4 does not mention gravity separation. (J-2).

Wilbros argues the Department's interpretation of the DDR is "nonsensical" because the other dewatering equipment would render gravity separation useless. (T-679-681, 1194, 1634-1636). During the hearing Wilbros presented expert testimony from Brian Rindt. Mr. Rindt is a civil engineer who holds a M.S. in environmental engineering. He has forty years of experience in wastewater engineering and industrial wastewater management processes. (P-34; T-1614, 1618).

Mr. Rindt testified that that use of gravity separation is a normal process in wastewater treatment. Given that gravity separation separates liquid and solid material, it wouldn't make sense to use gravity separation to divide material and then recombine the separated material in order to process it via a method used in Table 4. (T-1636). Only the solids left after gravity separation had already taken place would need further processing as described by Table 4. (T-1633-1639, 1675-1680).

Even if Wilbros is correct in its contention that the DDR did permit gravity separation as a permissible form of pretreatment prior to the use of the dewatering equipment listed in Table 4, the undersigned does not find the evidence that Wilbros employed gravity separation as a pretreatment method persuasive.[17] Mr. Wilbanks's testimony that Wilbros employed gravity separation as a method of pretreatment was not credible. Instead, based on the evidence and testimony at the hearing, the undersigned concludes that the tanks inside of the waste receiving building were discharging waste directly to the anaerobic pond without any pretreatment at all.

Throughout the hearing Wilbros's counsel continually suggested that observations made by Department employees were unreliable, either because they were confused or because they

[17] Additionally, to the extent that Petitioner presented evidence that it routinely used gravity separation for pretreatment purposes throughout the course of its operations, the undersigned does not find such evidence credible. FFW owned the storage tanks allegedly used for gravity separation and Wilbros did not have access to the tanks until October 2013, after FFW ceased operations. (RI-100; T-1698; 1703-1705).

fundamentally misunderstood Wilbros's industrial processes. For example, while Department employees testified that they observed trucks unloading waste into the outdoor manhole, Mr. Wilbanks maintained that these employees were mistaken because Wilbros only allowed truck drivers to use the outdoor manhole to drain "washout" from their trucks after a delivery. (See J-22; T-1127-1128, 1212, 1236-38). However, even if the undersigned disregards the testimony of these allegedly "confused" witnesses, the evidence, including Mr. Wilbanks's own admissions, provide a sufficient basis to find that Wilbros unloaded type 2 and type 3 waste in violation of the D&O Plan, discharged untreated waste to the anaerobic pond, and failed to recover valuable organic materials as described in the DDR's project overview.

C. Violation of SWHP Condition 19

The next allegation in the AO concerns Wilbros's compost operations. When issuing a solid waste handling permit, the Department assesses a facility's "closure costs" to ensure that there are sufficient funds available should an owner abandon a facility and the Department is forced to assume responsibility for cleaning up the site. (T-86-89, 435-436). If the facility is storing significantly more material onsite than listed in a closure cost estimate, the costs of the cleanup will exceed any financial assurance provided by a facility, and the excess cost would be borne by the Department. (T-86-89, 435-436).

SWHP condition 19 provides: "[t]he amount of material to be stored and processed [at the facility] as listed in the closure cost estimate of the approved Design and Operational Plan shall not be exceeded at any time." (J-3, J-12). The D&O Plan addresses Wilbros's closure plan and closure costs in Sections H and J of the Operational Narrative.[18] As stated in Section H, the closure plan requires certain actions should Wilbros close; for example the "removal of all

[18] Under Ga. Comp. R. & Regs. 391-3-4-.01, closure is defined as "a procedure approved by the Division which provides for the cessation of waste receipt at a solid waste disposal site and for the securing of the site in preparation for post-closure."

(compost) feedstock, active compost and finished product from the Site, and the cleaning of all detention basins and the Compost Mixing Building." Any "[f]inished [compost] will be offered to customers free of charge," and "[c]ompost that is not acceptable for use will be disposed of in a permitted landfill or other compost facility." (J-4; P-76).[19] The Department reapproved Wilbros's closure plan in November 2012. (J-4).

Section J of the D&O's Operational Narrative projects that the closure costs for the facility would cover the removal of "750 tons" of "raw material," loading and hauling "seven (7) days of feedstock and compost waste," disposing of seven days of feedstock and compost waste at a landfill, cleaning the retention pond, and administration of the closure. The total cost of closure, in 2010 dollars, is estimated at $36,375.00. Under Section J, Wilbros must provide the Department proof of adequate financial assurance indicating that it maintains the required funds to close its operations. Paragraph 3 of Section J further requires Wilbros to update the financial assurance documents annually using a specified formula. (J-4; P-76; T-86-89).[20]

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[19] Section H states as follows:

H. CLOSURE PLAN

1. Closure of the Facility will include the removal of all feedstock, active compost and finished product from the Site, and the cleanup of all detention basins and the Compost Mixing Building.
2. Finished product will be offered to customers free of charge.
3. Compost that is not acceptable for use will be disposed of in a permitted landfill or other compost facility. (J-4; P-76).

[20] Section J states as in part as follows:

J. FINANCIAL RESPONSIBILITY

1. Proof of Adequate Financial Responsibility will be provided in an EPD approved instrument.
2. Closure Cost – (2010 Dollars)

Assume Phase 2 volumes
Raw Material currently estimated at 900 pounds/cy.
1,660 cy/wk at 900 lbs/cy = 750 tons

a) Cost of loading and hauling (7) days of feedstock and compost waste @ $2.5/ton
Est. 750 tons x 2.5/ton = $1,875
b) Cost of disposing of seven (7) days of feedstock and compost waste at a permitted landfill:
Est. 750 tons x $22/ton = $16,500 . . . .
e) Total Closure Cost in 2010 dollars: $36, 375 . . . . (J-4, P-76).

The Department asserts that Wilbros is storing and processing significantly more material, including raw material, active compost and finished compost, than permitted by the SWHP. (J-12, T-113). Wilbros does not dispute that it maintains a total amount of material onsite in excess of 750 tons, and that it has not provided financial assurance to account for the disposal of the active or finished compost. (T-646-647, 1025, 1029). However, Wilbros contends that the closure cost estimate as provided by the D&O Plan only reflects the costs of removing "raw material" stored at the facility. As active or finished compost could be sold or distributed free of charge to the public, it is only the raw material that would need to be taken to a landfill. (T-646).

An analysis of this issue requires an overview of the composting process. Wilbros receives raw solid wastes at the compost mixing building. (J-4, P-76). Once received, the waste is mixed with feedstocks, such as woodchips, to trigger a composting cycle. (J-4, P-76). The mixed raw material is then transferred from the compost mixing building to the compost pad and placed on long rows in the pad termed "windrows." At this point the raw material becomes "active compost." (J-4, P-76; T-436-437).

Active compost must move through a pathogen reduction phase and curing phase before it is ready for use. (T-438-440). As described in the D&O's Operational Narrative, windrows are turned to "move material from the outside of the pile to the inside where it can decompose more readily." (J-4, P-76). After an average of sixty days, materials will be moved from active compost windrows to curing windrows. (J-4, P-76). Materials will be moved from curing windrows to final storage after an average of thirty days, "where they will be screened to produce the final product." (J-4, P-76). Final product is compost that is no longer biologically active and is ready for sale and use by third parties. (T-438-439).

The D&O Plan includes a schematic reflecting a 5.2 acre compost pad, containing up to

fifteen windrows and two final storage rows. A table specifies estimated storage in the windrows to be well over 750 tons at 20,134 cubic yards (900 pounds per cubic yard) for active compost, 5,034 cubic yards (900 pounds per cubic yard) in the curing phase and a final storage pile of 4,278 cubic yards (900 pounds per cubic yard). (J-4). Each windrow of active compost alone contains close to 1,660 cubic yards, or at 900 pounds per cubic yard, approximately 750 tons of material. (T-446-451).

Wilbros has implemented the schematic reflected in the D&O Plan. The compost pad contains fifteen windrows and two final storage rows. (J-4). Typically, Wilbros was processing fourteen windrows of "active compost," each holding approximately 750 tons. (T-1028-1029). It also maintained rows of curing compost and a large mound of "finished compost." (T-446-451).

The Department contends that Wilbros is processing and storing over ten times the amount allowed under the SWHP. (T-1446-1451). Regarding the schematics in the D&O Plan, the Department posits that any buildout reflected in the D&O Plan was simply theoretical. Chad Hall is an environmental engineer who works for the Department. (T-425-428). He testified that the Department has approved D&O Plans for other facilities that ultimately provided for storage of more material onsite than accounted for in financial assurance because engineers for applicants provide for maximum buildout, even if the operator intends to operate at less than hundred percent capacity. (T-451-453).

Evidence presented at the hearing makes clear that the Department knew that the D&O Plan's schematics were not merely "theoretical." Department employees regularly observed the number of windrows in operation, but the Department never issued a NOV. (T-453-454). James Raymonds, an environmental specialist for the Department, typically visited the compost pad as

part of his duties. In his twenty-five to thirty visits, he never noted that the volume of material on the compost pad was out of compliance with the SWHP. (T-588-589).

In fact, the Department had information regarding the precise volume of compost material in the windrows. Wilbros submitted solid waste disposal reports to the Department. (P-48). The reports indicated that Wilbros was accepting between 6,700 to 9,300 tons of solid waste each quarter during 2012 and 2013, far more than the 750 tons that the Department now claims is the maximum allowed under the SWHP. Despite receiving these reports, the Department never notified Mr. Wilbanks that this amount violated the terms of the SWHP or D&O Plan. (P-48).

Concomitantly, the D&O Plan estimates closure costs assuming "Phase 2 volumes" and describes Phase 2 volumes as receiving 1660 cubic yards, or roughly 750 tons of material, per week. (J-4; P-76). If the D&O Plan contemplates that the facility will receive 750 tons of material per week, clearly the total amount of material on site would exceed 750 tons within two weeks of operation.

Even if the D&O Plan would permit more than 750 tons of total material onsite, the Department points to the SWHP as controlling in this matter, suggesting that there is a conflict between the language in the SWHP and D&O Plan. Unlike the D&O Plan, the SWHP does not explicitly distinguish between the removal of raw, active and finished compost.

The SWHP and D&O Plan do not conflict. Under either the SWHP or the D&O Plan, the closure costs account for the materials that would have to go to a landfill. (T-658-659, 745). Both documents provide that the closure costs must cover the amount of raw material on site. Condition 19 of the SWHP refers to raw material "to be stored and processed," not to active compost undergoing processing or finished compost. (J-3).

The Department also suggests that the terms of the D&O Plan are ambiguous and that any

ambiguity should be construed in the Department's favor.[21] Section H of the Operational Narrative mandates removal of feedstock, active compost and finished product. The Department argues that as the active compost would be unmarketable for some period of time, the 750 ton limitation in Section J must include active compost materials in addition to the raw material housed in the compost mixing building.

The D&O Plan is not ambiguous. As the listed closure costs in Section J of the Operational Narrative include administrative costs, it is reasonable to read Sections H and J in conjunction with SWHP condition 19 to extrapolate that the active compost could be processed into a marketable product. (J-4, P-76). Wilbros manufactures compost for both agricultural and consumer use. Agricultural compost can be sold after twenty-one days of processing. (T-864-867).

Even if the D&O Plan is ambiguous, as noted in the aforementioned findings, the record is replete with evidence that the parties contemplated Wilbros would process significantly more than 750 tons of material at the facility.[22] Warren Howe, who initially drafted the D&O Plan, met with Department employees numerous times before the D&O Plan was approved and the SWHP issued. (T-658). There is no indication in the D&O Plan that material must be moved offsite immediately. (J-4). Active compost materials that are unmarketable at the beginning of a closure process would become marketable as an agricultural product after twenty days. Since the material on the compost pad is valuable and could be sold, it is reasonable to assume that it could be given away for free. (T-657). Under either the SWHP or the D&O Plan, the closure costs

[21] Although the Department suggests any ambiguity should be construed in its favor, courts have held that when a NPDES permit is ambiguous, "the Court will look outside of the terms of the permit for guidance on how the permit should be interpreted." *Ohio Valley Envtl. Coalition, Inc. v. Alex Energy, Inc.*, 12 F. Supp. 3d 844, 860 (S.D. W. Va. 2014).

[22] Moreover, if the 750 tons applied to the total amount of materials permitted in the windrows, the operation would only generate approximately $80 per day, making it unviable. (T-961).

account for the materials that would have no value. (T-658-659, 745).

At the hearing Dr. Langley acknowledged that the Department knew that accepted volumes, received weekly, could be on the compost pad for up to ninety days and thus that there had to be well in excess of 750 tons of material onsite. (T-108-109).[23] Indeed, the Department admitted that it did not arrive at its current interpretation of SWHP condition 19 until December 2013, when it was "recognized it as an issue." (T-110). Thus the Department only put Wilbros on notice that the amount of material stored at the facility exceeded closure cost estimates on January 6, 2014, when it issued an NOV to Wilbros identifying the issue. (J-11).

In contrast to the Department's assertions in the NOV and AO, a reasonable reading of the SWHP and D&O Plan indicates that the 750 ton limitation includes only the material "to be stored and processed" under the SWHP -- the same "raw material" that "would need to be loaded and hauled to a landfill" as specified by Section J. (J-4; P-76). The Department did not present evidence that there was more than 750 tons of raw material, including both feedstock and raw waste, "to be stored and processed" at the facility. (T-1025, 1028-1029).[24]

D. Effluent and Monitoring Violations

The next series of violations allege that Wilbros violated Parts I.A.1, I.C.3.c, and II.A.2 of the NPDES Permit. The NPDES Permit sets forth effluent limitations for thirteen different constituents. (J-1). It requires that Wilbros submit Operation Monitoring Reports ("OMRs") and Discharge Monitoring Reports ("DMRs") to the Department in order to demonstrate that Wilbros is in compliance with the Permit's effluent characteristics, limitations and monitoring requirements. (J-1). The Department relies on Wilbros's submissions to determine whether or

[23] The Department also prepared a "Frequently Asked Questions" document for distribution to the public to assist in answering questions in advance of a public meeting associated with the issuance of the December 10, 2012 Consent Order. The document states that "the facility may accept up to the 1660 cubic yards per week of nitrogen waste sources and 1875 cubic yards of carbon sources per week." (T-1538-41).

[24] For the fourth quarter of 2013, the report reflects 6,783 tons of raw waste received, averaging 521.77 tons per week. (T-106-107).

not Wilbros is in compliance with the NPDES Permit. (T-191-196, 203). If a pollutant's concentration in the discharge exceeds an applicable permit limit, the permittee has violated an effluent limitation. (T-266).

1. Total Residual Chlorine

Part I.A.1 of the NPDES Permit authorizes Wilbros to discharge treated wastewater from a specified outfall at Wilbros's facility in accordance with listed effluent limitations and monitoring requirements. It details the effluents and their characteristics, and the frequency, method and location of sampling for those characteristics. (J-1).[25] The AO alleges that Wilbros failed to meet effluent characteristic limitations for total residual chlorine ("TRC") eighty times, dissolved oxygen seven times, fecal coliform three times, and oil and grease one time, for a total of ninety-one violations. The AO also states that Wilbros failed to monitor at the required frequency sixty times. (J-1, J-12).

Wilbros began discharging treated wastewater, and submitting OMRs and DMRs to the Department, in February of 2013. (P-41; T-1042-1044). The OMRs report the sampling results at Wilbros's outfall. (P-41). From February through July 2013, Wilbros's OMRs reported eighty TRC effluent violations. (P-41).[26] Although Wilbros notified the Department that it believed the TRC violations were false positives due to testing interference caused by another chemical agent, Wilbros reported the TRC concentrations to the Department without adjusting its analysis for the suspected interference. (T-1046-1047, 1054, 1074-1075).

At the hearing Wilbros presented persuasive evidence that the reported TRC effluent violations were due to interference. Wilbros treats wastewater produced at the facility with

[25] The violations detailed in the Administrative Order address violations of the listed effluent limitations and monitoring requirements and are essentially the same as alleged by Respondent in a prior NOV dated October 18, 2013. (J-9; T-75). Petitioner responded to those allegations in writing on or about November 14, 2013, but Respondent was dissatisfied with Petitioner's response. (J-9, J-10, J-12; T-75-77).

[26] The AO does not allege any NPDES Permit violations subsequent to July 2013. (J-12).

chlorine in a chlorine contact chamber to eliminate fecal and other pathogens from the wastewater. (J-2; T-909-910). To meet effluent limitations for TRC, Wilbros removes the chlorine before discharge from the chamber. (J-1, J-2; T-909-910, 919-920).

When chemical analysis indicated that there were levels of TRC present in the wastewater even before Wilbros added chlorine in the chlorine contact chamber, Mr. Wilbanks suspected that the ferric chloride used in its clarifier was causing the interference, or false positives, for TRC. (T-1052-1053; 1621-1623). Ferric chloride has a significant concentration of manganese that can cause interference in TRC sampling. (T-1623-1624). As a result Wilbros gradually lowered the amount of ferric chloride in the clarifier, replacing it with aluminum sulfate by the end of May 2013. (T-1059, 1060). After this modification, the interference was eliminated. (P-37, P-64; T-1049-1061, 1075-1079). Wilbros has not reported any TRC violations since July 2013. (P-64; T-1058-1060).

Wilbros's expert, Brian Rindt, is familiar with the concept of interference. (T-1620). He testified that that he believes that Wilbros's initial use of ferric chloride in the chlorine contact chamber caused interference generating false positive TRC reports. The TRC effluent limitations did not occur but were false positives as the result of interference and the undersigned finds that Wilbros did not violate its TRC limit. (J-10; 1620-1624).[27]

2. Dissolved Oxygen

Wilbros concedes that it violated the Permit's dissolved oxygen effluent limitations on seven occasions from June 10, 2013, to July 16, 2013. To address these violations, Mr. Wilbanks

[27] In support, Wilbros submitted one laboratory report reflecting sampling from its aerobic basin. (J-10). Based on the results of this report, Petitioner's response to the October NOV reflected that it should subtract an interference value of 0.06 mg/L from the levels reported on the OMRs. (J-10). The Department disputes the reliability and accuracy of this report, claiming that because the sample was not taken at the facility's outfall where the NPDES permit requires that samples be taken, the sample was not packaged and shipped properly and an inappropriate test method was utilized, it should be disregarded. The undersigned finds the report to be reliable and probative. (J-10; T-247-248, 378-382, 1406-1412, 1514-1518).

testified that he added a blower to his wastewater to increase the oxygen levels. There have been no further violations of this effluent limitation. (T-1062-1063).

3. Fecal Coliform

As a result of its efforts to cure the TRC violations by limiting chlorine in the chlorine contact chamber, Wilbros concedes that it violated its fecal coliform effluent limit in May and June 2013. (T-1063-1064). In response to the fecal coliform effluent violations, Mr. Wilbanks moved the location of his chlorine contact chamber. (T-1062-1065). There have been no fecal effluent violations reported since June of 2013. (T-1063-1064).

4. Oil and Grease

The Department also alleges that Wilbros violated its oil and grease effluent limitation on one occasion. (J-12). Wilbros presented evidence that the laboratory that performs sample analysis transposed results of the oil and grease sample with the results of the sample for total suspended solids (TSS) on its lab report. (T-1064-1065). The lab report indicated that TSS were less than 5 and reported oil and grease as 16.2. (T-1066). A report of less than 5 for TSS suggests the detection limit[28] for TSS is 5; however, 5 is the detection limit for oil and grease. (T-1067). Moreover, the oil and grease result reflected was more than double any other oil and grease result Wilbros has reported, but it is consistent with the TSS reports. Wilbros presented persuasive evidence that the reported effluent violation was due to a laboratory error. (T-1062-1075). There have been no additional oil and grease effluent violations alleged by the Department. (J-12).

5. Failure to Monitor

The Department also alleges that Wilbros failed to monitor in accordance with NPDES

[28] The detection limit is the concentration below which the lab cannot detect a substance even though it may be present in trace amounts. (T-1067).

Permit specifications sixty times from February through July 6, 2013. (J-12). The NPDES Permit requires monitoring on a daily basis for certain parameters. (J-2; T-203, 1392-1398).

A majority of the alleged failures to monitor daily occurred on the weekends or holidays. (T-1080). Mr. Wilbanks testified that because Wilbros did not operate its wastewater treatment system on weekends or holidays he believed he did not need to sample on those days. However, the NPDES Permit requires daily monitoring, sampling, and reporting, regardless of a facility's stated operational days. (T-203). Further, the DDR and D&O Plan list Wilbros's operating hours as 6:00 a.m. to 9:00 p.m. seven days a week. (J-2, J-4). Mr. Wilbanks also acknowledged that Wilbros did accept waste on Saturdays. (T-1817).

Wilbros is required to sample and report seven days per week under the NPDES Permit. (J-2; T-1396-1397). Once notified by the Department that it required monitoring every day including holidays and weekends, Mr. Wilbanks hired employees to perform the required sampling. (T-173, 1082-1083). There have been no further violations since July 2013. (T-173, 1082-1083).

6. Failure to Report

Part II.A.2 of the NPDES Permit requires that if for any reason Wilbros does not comply with, or will be unable to comply with any effluent limitation specified in the Permit, it must notify the Department via an oral report within twenty-four hours from the time Wilbros becomes aware of the circumstances, followed by a written report within five days. The report must contain a description of the discharge and cause for noncompliance, the time in which the noncompliance occurred, the anticipated time the noncompliance is expected to continue (if any), and the steps being taken by Wilbros to prevent reoccurrence of the problem. (J-1).

The Department alleges that Wilbros violated this provision 151 times by failing to report the

violations detailed in Parts I.A.1 as required.[29] (J-1, J-12). Mr. Wilbanks admitted he did not report the alleged TRC, dissolved oxygen, fecal coliform and oil and grease violations as required under Part II.A.2 of the NPDES Permit. While he maintains that he did not report the TRC or oil and grease effluent violations because he believed that these were not actual violations of the NPDES Permit, Mr. Wilbanks did not offer a satisfactory explanation for his failure to report the other violations. (T-1080-1094).

In addition to the failure to report the effluent violations as required, the AO also alleges that Wilbros's failure to monitor on a daily basis constitutes effluent violations. The Department reasons that if Wilbros fails to monitor discharges, it cannot know whether or not there is an effluent violation. Wilbros contests the Department's allegation that failure to monitor requires reporting under Part II.A.2 of the NPDES Permit, as that section only specifically addresses effluent, and not monitoring, violations.

The undersigned finds a violation of Part II.A.2 of the NPDES Permit. Even if the undersigned credited Mr. Wilbanks's reasoning that he did not have to report an effluent violation if he believed it to be in error, nor that he had to report the failure to monitor as required because such failure is not an effluent violation, the evidence is uncontroverted that Wilbros failed to report even the effluent violations it concedes are accurate. Such reporting was mandatory under Part II.A.2 of the NPDES Permit.

7. Arithmetic Average and Geometric Mean

Part I.C.3.c of the NPDES Permit defines the term "daily average" concentration stating, "[t]he 'daily average' concentration means the arithmetic average of all the daily determinations of concentrations made during a calendar month . . . ." (J-1). The Department alleges Wilbros

[29] The Department alleges a violation for each of the ninety-one effluent limit violations as well as for each of the sixty monitoring frequency violations. (J-12).

violated Part I.C.3.c of the NPDES Permit by failing to use the arithmetic average calculation method when reporting fecal coliform, instead reporting this value using the geometric mean calculation method. (J-1, J-12).

Mr. Wilbanks initially reported fecal coliform to the Department using the arithmetic average. (T-1097). After he had submitted fecal coliform results using the arithmetic average, Mr. Wilbank's wastewater system operator told him that fecal coliform should be calculated using the geometric mean. (T-1097-1098).[30] Mr. Wilbanks did not consult the Department as to which statistical model was appropriate under the NPDES Permit, but reported fecal coliform employing the geometric mean for the months of April and May of 2013. (J-12; T-1098). Consistent use of the arithmetic average would likely have resulted in Wilbros accruing several additional NPDES Permit violations. (T-1096-1102). Following submission of the April and May 2013 reports, the Department told Mr. Wilbanks that he must report fecal coliform using the arithmetic average. (T-173). Since the Department's request, Wilbros has only reported fecal coliform using the arithmetic average. (T-173, 1098-1103).

Wilbros argues that fecal coliform is not subject to the strictures of Part I.C.3.c of the NPDES Permit because it is calculated on a weekly, not a daily, basis. (T-150, 253-254). Although the Permit directs that the arithmetic average be used when calculating "daily average concentrations," it is silent as to how substances subject to weekly monitoring, such as fecal coliform, must be evaluated. (T-253-254, 255, 376). In response, the Department argues that absent specific direction to use the geometric mean, Wilbros must employ the arithmetic average. (T-196-197).

Wilbros's expert witness, Brian Rindt, testified that he agreed that the NPDES Permit did not

[30] Pursuant to Ga. Comp. R. & Regs. 391-3-4-.01, a facility's operator is the person responsible for the overall operation of a facility or part of a facility; an owner is the person who owns a facility or part of a facility.

clearly set forth the appropriate method by which to calculate fecal coliform, but that use of the geometric mean is the industry standard, recommended by both state and federal environmental agencies. (P-7; T-1646-1647). In his forty years of relevant experience, Mr. Rindt has always used the geometric mean to calculate fecal coliform. (T-1645-1647).

The Department instructed Wilbros to report fecal coliform using the arithmetic average and Wilbros has complied with this directive. Notwithstanding the Department's position regarding the use of the arithmetic average to report fecal coliform, the evidence demonstrated that Wilbros's use of the geometric mean was reasonable under the NPDES Permit. As Mr. Rindt testified, Dr. Langley acknowledged that the use of the geometric mean would be a better indication of a bacterial colony. (T-152). The Department's engineer concurred that Wilbros's use of the geometric mean was reasonable. (T-385). Even the Department's general OMR instructions indicate that geometric mean is the appropriate way to measure for fecal coliform. (T-153-154).

E. Financial Assurance

The next violation concerns Wilbros's alleged failure to update required financial assurance documents in violation of the December 2012 Consent Order, which mandated compliance with the D&O Plan. Specifically, the D&O Plan directs Wilbros to update its the financial assurance by December 31 of each year using "the annual implicit price deflator for Gross National Product published by the U.S. Department of Commerce." (J-4).[31]

Wilbros provided financial assurance by purchasing an insurance bond through BB&T Iron Shore Casualty. (T-1107-1108). It updated its financial assurance in 2012 by obtaining an

[31] The D&O Plan also provides "[t]o ensure the appropriate deflator is used, contact the "[Department]." (J-4).

irrevocable letter of credit for an additional $1,500 in spring of 2013. (P-1; T-1117).[32]

The Department asserts that even if Wilbros updated its financial assurance for 2012, the update was untimely because it was not completed by December 31, 2012. However, the annual implicit price deflator for Gross National Product is not published until spring of the following year. (T-125-126). Thus, it would only be possible for Wilbros to comply with the provisions of the D&O Plan if it is understood to require compliance by December 31 of the year that the implicit price deflator is published. In other words, a reasonable interpretation of the D&O Plan suggests that as the implicit price deflator for 2012 would be published in spring of 2013, Wilbros's 2012 update to its financial assurance documents would be due by December of 2013.

In fact, Jim Ussery, the Department's assistant director until he retired in 2013, testified that he had met with Mr. Wilbanks regarding his alleged failure to supply updated financial assurance for 2012. (T-1543). Contrary to the assertions in the AO, in June of 2013, Mr. Ussery documented in writing that Wilbros had provided updated financial assurance as required for 2012. (P-4; T-1543).

According to Dr. Langley, Wilbros also violated this provision for 2013 because the Department had not received Wilbros's update for 2013 by January 21, 2014. (T-89). However, Wilbros submitted its updated financial assurance, based on the implicit price deflator published in spring 2014, in August of 2014, well prior to the due date of December 2014. (P-87; T-1445-1446).

F. Diversion of Stormwater Flows

The Department alleges that Wilbros did not comply with the DDR, in violation of the December 2012 Consent Order, because it failed to construct a permanent diversion of all

[32] Although the Department complains that it did not have a copy of this letter in its files, the D&O Plan only requires Petitioner obtain the document, not that it provide a copy to the Department. (J-4).

stormwater flows from the compost operation into the stormwater containment basin. (J-2, J-12). The DDR provides that stormwater entering the wastewater treatment system must first be detained in a stormwater basin, buffered, and then run by gravity to the wastewater treatment system over time. (J-2; T-206-210). The stormwater basin is designed to reduce the flow rate into the wastewater treatment system. (J-2).

In November of 2012, the Department approved the construction of a truck washing pad near the compost operations as a minor modification to the D&O Plan. (T-634). The truck washing pad would allow drivers to rinse out their trucks after they delivered materials to Wilbros. (T-1139-1140). The schematic reflected that the truck washing pad would have a single drop inlet that flowed directly into the wastewater treatment plant. (T-634, 1145-1146, 1149-1150). Any water from the truck washing pad, including stormwater that generally would have been diverted to the stormwater detention basin, would flow directly to the wastewater treatment plant. (T-228-229).

During a January 2013 inspection, Department employee Ted Hendrickx observed stormwater from the truck washing pad entering the drop inlet. (T-204-208, 223, 230). Mr. Hendrickx believed that the unrestricted stormwater flow would harm the wastewater treatment plant. (T-206-210). He requested that Wilbros install an additional pipe to route the stormwater to the stormwater detention basin. (T- 641-642, 1147).

Wilbros installed the additional pipe in May 2013. (T-638-642, 641-642, 1147-1149). In order to ensure that the stormwater flowed into this additional pipe, Wilbros used concrete blocks to obstruct the drop inlet when the truck washing pad was not in use. (T-1147). When trucks were being washed, Wilbros removed the blocks to ensure that the wastewater from rinsing the trucks flowed directly into the wastewater treatment plant. (T-1147).

On November 5, 2013, Mr. Hendrickx observed that Wilbros had used concrete blocks to block the drop inlet. (J-15). He never saw the blocks in operation and was unable to determine if this structure was effective in diverting stormwater flow. (T-235). Nonetheless, the Department asserts that the Wilbros violated the DDR by failing to construct a permanent diversion to ensure that the stormwater from the truck washing pad flowed into the stormwater basin.

During the hearing Dr. Langley acknowledged that the DDR does not require a "permanent diversion." (T-158). Although he expressed concern that the concrete blocks were not effective in preventing the stormwater from the truck washing pad from directly entering the wastewater treatment system, no one from the Department ever observed stormwater flowing into the wastewater treatment system but just thought that it possibly "could occur." (T-159). In contrast, Wilbros presented unrebutted evidence that the concrete blocks would divert the water flow. (T-640). The DDR did not require Wilbros to install a permanent diversion of stormwater flows from the compost operation into the stormwater containment basin.

G. Loadings to Wastewater Treatment System

The Department also alleges that Wilbros violated the December 2012 Consent Order by failing to comply with the DDR's directive to account for loadings to the wastewater treatment system from the truck washing pad, including rinsate from incoming trucks and any incidental stormwater. The DDR specifically authorizes loading to the wastewater treatment system from the truck washing pad, stating: "wastewater from dewatering operations, sanitation, compost trailer washout and compost pad runoff will be directed to the onsite wastewater treatment [f]acility for treatment and either reuse or discharge." (J-2). All of these sources flow into the wastewater treatment plant through the facility's "H" flume, by which Wilbros monitors the flow

rate. (T-895, 896-897). The H flume monitors all wastewater, including the water from the compost truck washing pad. (T-640-643, 900-901, 1146-1147). Weekly influent sampling would also occur. (T-641).

At the hearing Dr. Langley conceded that the DDR did account for the truck rinsate. (T-160-161). Dr. Langley also acknowledged that if the stormwater is piped to the stormwater detention basin from the truck washing pad there would not be a violation regarding incidental stormwater. (T-162).[33]

Ultimately all of the water, whether it flowed through a drop inlet or through the stormwater basin would travel through the same influent flow meter, or H-flume. (T-643). According to Mr. Howe, the loading from the stormwater basin to the wastewater treatment plant is accounted for by the H-flume meter. (T-630). The loadings from the truck washing pad travel through the H-flume's inflow monitoring. (T-640-641, 643). The loadings to the wastewater treatment system from the truck washing pad, including rinsate from incoming trucks and any incidental stormwater, would be accounted for under this system.

IV. VOLUNTARY COMPLIANCE

Pursuant to O.C.G.A. § 12-2-2(c)(6), "[n]otwithstanding any other law to the contrary, whenever the [Department] determines that a violation of any provision of this title or any rule or regulation promulgated pursuant to this title relating to those laws to be enforced by the [Department] has occurred, the [Department] shall be required to attempt by conference, conciliation, or persuasion to convince the violator to cease such violation." *Reheis v. AZS Corp.*, 232 Ga. App. 852, 853 (1998) (statute's purpose is to encourage voluntarily

[33] Mr. Howe testified that even if stormwater loaded directly into the wastewater treatment system, any effect would be "fairly minimal." (T-640).

compliance);[34] *see also* O.C.G.A. § 12-8-30 (requiring under the Solid Waste Act that "[w]henever the director [of the Department] has reason to believe that a violation of [the solid waste management statutes or rules] has occurred, he shall attempt to obtain a remedy with the violator or violators by conference, conciliation or persuasion"); O.C.G.A. § 12-5-42(a)-(c) (Water Quality Control Act requires that if the Department determines "that any person is discharging sewage, industrial waste, or other wastes into any waters of the state in a degree which prevents the water from meeting the established standards of water purity, the [Department] shall act to secure the person's cooperation in the reduction or elimination of the detrimental effects of the discharge."). If the attempt to obtain voluntary compliance is unsuccessful, the Director may then issue an Administrative Order. *In Re Apollo Indus., Inc.*, 1994 Ga. ENV LEXIS 3, at *4 (Jan. 13, 1994) (Director is "only required to attempt to persuade a violator to achieve compliance voluntarily before ordering the violator to do so."). Whether or not the Director has made the attempt to obtain voluntary compliance is a question of fact for the Administrative Law Judge. *Reheis*, 232 Ga. App. at 853.

In this case the undersigned finds that the evidence demonstrates the Director engaged in the required effort to conference, conciliate, or persuade. As noted in the Findings of Fact, before issuing the AO, the Department sent Wilbros a NOV and proposed Consent Order that did not revoke the SWHP or NPDES Permit. The Department gave Wilbros ten days to respond. At Mr. Wilbank's request, the Department agreed to a meeting. When Mr. Wilbanks arrived at the meeting with plans and a banker's box of materials, Dr. Langley asked that he reply to the Department's NOV in writing. Mr. Wilbanks did not submit a written response to the NOV, and the Department issued the AO.

[34] *Reheis*, 232 Ga. App. at 853 considers O.C.G.A. § 12-8-71(a), which, like O.C.G.A. § 12-8-30, mandates that the Director attempt to remedy a hazardous waste violation "by conference, conciliation, and persuasion."

In and of itself, these actions would satisfy the Director's statutory duty. *In Re Apollo Inds., Inc.*, 1994 Ga. ENV LEXIS 3 at *4 (Director satisfied statutory requirement by communicating with violator about alleged violations and offering violator opportunity to correct those violations prior to the issuance of the Order); *Reheis*, 232 Ga. App. at 855 (when a violation is reasonably believed to have occurred, the Department required to initiate "informal dialogue and discourse" in effort to remedy situation). More broadly, the Department has demonstrated a long history of attempting to secure Wilbros's cooperation.[35] The Department held "lots of talks and conferences with Mr. Wilbanks," as well as moving forward with "enforcement actions." (T-92). Even though Wilbros denied the alleged violations contained within the NOVs, the evidence at the hearing demonstrated that many of those violations had occurred -- in fact the Department required Wilbros to submit a new DDR in part because it had failed to implement the original DDR as drafted by Mr. Howe. (T-707-708).

The Department may agree to a Consent Order as part of its obligation to conference, conciliate, or persuade an alleged violator to cease violations. (T-66). The AO notices two prior Consent Orders, Consent Order No. EPD-WQ-5371 executed on March 27, 2012, and Consent Order No. EPD-SW/WQ-5418 dated December 10, 2012, signed only after the Department had issued Administrative Order No. EDP-WQ-5397. The December 2012 Consent Order specifically mandated adherence to both the new DDR and the D&O Plan. The evidence presented at the hearing demonstrates that, despite the Department's efforts to secure Wilbros's cooperation in complying with the DDR and D&O Plan, Wilbros failed to comply with the terms of the December 2012 Consent Order.

Wilbros also complains that that the Director's actions were arbitrary and capricious because

[35] Dr. Langley testified that "[t]here was a large amount of time and effort placed in trying to make sure the Wilbros facility could operate in a compliant manner . . . ." (T-92).

the NOV was premised on incorrect facts, the Director refused to allow an extension of time to the ten day period to reply to the NOV, and certain terms of the Proposed Consent Order were non-negotiable. An agency decision is only arbitrary and capricious when it lacks any rational basis. *See Prof'l Standards Comm'n v. Adams*, 306 Ga. App. 343, 346 (2010).

Mr. Wilbanks had ample time to respond to the allegations within the ten day time period. The Department issued the AO on January 6, 2014, and met with Mr. Wilbanks three days later. After the Department issued its proposed Consent Order, other than requesting an extension of time, Mr. Wilbanks failed to submit a written response to the Department. If the NOV was premised on incorrect facts, Wilbros should have responded in writing. If the Department had erred in formulating the allegations, Dr. Langley stated that it would reconsider them. (T-171).

During the meeting with Mr. Wilbanks, Dr. Langley informed him that certain terms of the proposed Consent Order, including the reduction in the amount of material stored and processed onsite, the provision that Wilbros cease accepting waste until the Department determined Wilbros to be in compliance with its permits, and the payment of the $250,000 civil penalty, were non-negotiable. (T-82). According to Dr. Langley, the Department believed that Wilbros repeatedly had operated in violation of its Permits and operating documents. (T-63). Based on the aforementioned findings of fact, even if the Department did not prove all of the violations alleged, it had a rational basis to believe that Wilbros had exhibited a pattern of non-compliance that has led to significant environmental problems in the past at other recycling facilities. (J-11; T-169). Contrary to Wilbros's arguments, the Department is not required to change or compromise its position prior to the issuance of a corrective administrative order. *In Re Apollo Indus., Inc.*, 1994 Ga. ENV LEXIS 3, at *6-7.

The inclusion of the civil penalty in the proposed Consent Order was neither arbitrary nor

capricious. A Consent Order entered into on March 28, 2012, had included a settlement amount of $5,000, and a second Consent Order dated approximately eight months later included a settlement amount of $25,000. (J-6, J-8). According to Dr. Langley, it is not unusual to have progressively increasingly stringent monetary requirements in light of a history of non-compliance. (T-182). The evidence supports the Department's claim that over the course of Wilbros's operations it has actively worked to persuade Wilbros to comply with its Permits, the DDR and the D&O Plan, and that it did not act arbitrarily or capriciously in issuing the AO.

V. CONCLUSIONS OF LAW

The Solid Waste Act governs the collection, disposal, and handling of solid waste in Georgia. O.C.G.A. § 12-8-20. It grants the Director primary responsibility for enforcing the provisions of the Act, and the rules and regulations thereunder. O.C.G.A. § 12-8-23.1. Pursuant to O.C.G.A. § 12-8-23.1, the Director is authorized to issue orders or permits covering the operation of solid waste sites, stipulating in each permit the conditions under which such permit is issued. The Director is also authorized to revoke, suspend or modify any permit when the holder of the permit violates any of the permit conditions, any order of the Director, or fails to perform solid waste handling in accordance with the Solid Waste Act and/or rules and regulations promulgated thereunder. O.C.G.A. § 12-8-24(e)(1)(B).

The Water Quality Control Act was enacted to preserve and protect the quality of the state's waters. O.C.G.A. § 12-5-21. The Water Quality Control Act provides the Director with the authority to issue orders as may be necessary to enforce compliance with the provisions of the Act. O.C.G.A. § 12-5-23. In general, the Water Quality Control Act requires anyone operating a facility which will or has potential to discharge pollutants into the waters of the state to obtain a

permit from the Director. O.C.G.A. § 12-5-30. The Director is authorized to revoke, suspend or modify any permit for cause, including for violation of any condition of the permit. O.C.G.A. § 12-5-30 (d).

In the instant case, the Department has issued an AO alleging violations of the Solid Waste Act, the Water Quality Act, as well as Solid Waste Rules and the Water Quality Rules, and revoking Wilbros's SWHP and NPDES permits. Wilbros challenges the Department's issuance of the AO.

The Administrative Law Judge must consider the applicable facts and law anew, without according deference or presumption of correctness to the Department's decision. *Longleaf Energy v. Friends of the Chattahoochee*, 298 Ga. App. 753, 760-61 (2009); Ga. Comp. R. & Regs. 616-1-2-.21(3); 616-1-2-.21(1). After due consideration, the undersigned may make any disposition of this matter available to the referring agency, the Georgia Board of Natural Resources. *Chattahoochee Riverkeeper, Inc. v. Forsyth Cnty.*, 318 Ga. App. 499, 506-07 (2012); O.C.G.A. §§ 50-13-41(b); 12-2-2(b)(1), 12-2-2(c)(1)(A), and 12-5-23(a)(1).

A. Proven Violations

The Department bears the burden of proof with respect to the alleged violations and the standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.07(1), 616-1-2-.21(4). Wilbros's SWHP authorizes the facility to accept, store, and recycle or compost solid waste in accordance with the specific conditions set forth in the SWHP and subject to the conditions contained in the approved D&O Plan. SWHP condition 5 provides that all loading and unloading of waste shall be confined to areas shown in the D&O Plan.

The Department has proven this violation. Based on the Findings of Fact, the undersigned finds that the D&O Plan does restrict the unloading of types 2 and 3 waste to the inside of the

waste receiving building, and that Wilbros violated this condition by unloading such waste into an outdoor manhole outside of the wastewater receiving building. Contrary to Wilbros's assertions at the hearing, the evidence demonstrates that Wilbros routinely unloaded types 2 and 3 at the outdoor manhole.

Wilbros's NPDES Permit authorizes it to discharge treated wastewater according to operational requirements, effluent limitations, monitoring requirements, and other conditions set forth in the NPDES Permit. A December 2012 Consent Order entered into by the parties mandates adherence to NPDES Permit's DDR. The Department charges that Wilbros unloaded waste directly to the wastewater treatment facility's anaerobic basin without the required pretreatment, and that by bypassing oil recovery and dewatering processes, Wilbros did not recover valuable materials contained in the incoming waste in accordance with the approved DDR.

The Department has proven these violations. The DDR requires use of the pretreatment equipment listed in Table 4 of the document, and the facility cannot recover oils and solids from the waste without use of that equipment.[36] Based on the Findings of Fact, Wilbros failed to use the pretreatment equipment required by Table 4 of the DDR on multiple occasions by unloading waste directly into the outdoor and indoor manholes leading directly to the anaerobic basin. Moreover, Mr. Wilbanks's statements regarding the unloading, both to Department employees and during his testimony, proved disingenuous. Coupled with his testimony that he believed unloading waste directly into the manhole without pretreatment would not necessarily violate the DDR, the undersigned is concerned that these violations are ongoing and likely to be repeated in

[36] Petitioner maintains an alleged "violation" of the DDR's Project Overview, and not of a specific direction contained within the document, could not be a proper basis for issuance of the Administrative Order. Even if Petitioner is correct, the Department's proof that Petitioner failed to comply with the DDR's Project Overview is premised on similar, if not the identical, set of facts as the allegation that Petitioner failed to comply with the DDR's requirement that it pretreat types 2 and 3 waste pursuant to Table 4.

the future.

The next series of violations allege effluent and monitoring violations under Parts I.A.1 and I.C.3.c of the NPDES Permit. Based on the Findings of Fact, and conceded by Wilbros at the hearing, the Department has proven some of the allegations that Wilbros failed to monitor discharges and exceeded effluent limitations on a few occasions. However, Wilbros quickly remedied these violations of the NPDES Permit.

Given that the Department does not allege that Wilbros has violated any monitoring requirement or effluent limitation since July of 2013, it appears that the Department achieved voluntary compliance prior to issuing the October 2013 NOV relied on by the AO. Pursuant to O.C.G.A. § 12-5-42(c), Wilbros has not "refuse[d] to cooperate with the efforts of the director to reduce pollution. . . ." The AO may not be premised on these NPDES permit violations because such violations were conciliated successfully. O.C.G.A. § 12-2-2(c)(6); *In Re Apollo Indus., Inc.*, 1994 Ga. ENV LEXIS 3, at *4 (if attempt to obtain voluntary compliance is unsuccessful, the director may then issue an AO).

The undersigned also finds a violation of Part II.A.2 of the NPDES Permit. Even if the undersigned credited Mr. Wilbanks's reasoning that he did not have to report an effluent violation if he believed it to be in error, nor that he had to report the failure to monitor as required because such failure is not an effluent violation, the evidence is uncontroverted that Wilbros failed to report even the effluent violations it concedes are accurate. Such reporting was mandatory under Part II.A.2 of the NPDES Permit.

B. Unproven Violations

The Department did not prove that Wilbros violated the SWHP's condition 19. The evidence was insufficient to demonstrate that there was more than 750 tons of raw material, including both

feedstock and raw waste, to be stored and processed at the facility.

The next violation concerns Wilbros's alleged failure to update required financial assurance in violation of the December 10, 2012 Consent Order, which mandated compliance with the D&O Plan. As explained in the Findings of Fact, the undersigned concludes that the Department did not prove this violation of the December 2012 Consent Order.

The Department also alleges that Wilbros did not comply with the DDR, in violation of the December 2012 Consent Order, because it failed to construct a permanent diversion of all stormwater flows from the compost operation into the stormwater containment basin. As explained in the Findings of Fact, the undersigned concludes that the Department did not prove this violation of the December 2012 Consent Order.

Last, the Department also alleges that Wilbros violated the December 2012 Consent Order by failing to comply with the DDR's directive to account for loadings to the wastewater treatment system from the truck washing pad, including rinsate from incoming trucks and any incidental stormwater. As explained in the Findings of Fact, the undersigned concludes that the Department did not prove a violation of the December 2012 Consent Order.

VI. DECISION

The Director is vested with the broad authority to enforce the environmental laws in Georgia. *See* O.C.G.A. § 12-2-2(b)(1),(c)(1)(A). He may issue, revoke, modify or suspend Solid Waste Handling and NPDES permits. O.C.G.A. §§ 12-5-23; 12-5-30, 12-8-23.1, 12-8-24(e)(1). The Legislature has also accorded him the authority to "issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance [with the Solid Waste Act] . . . ." O.C.G.A. § 12-8-23.1(a)(8); *see also* O.C.G.A. § 12-5-31(k) (Director has authority to issue orders as may be necessary to ensure compliance with Water Quality Act).

Although Wilbros posits that any violations proven were harmless because the Department could not prove any subsequent environmental harm, the Director is not "required to wait until the risk of harm presented by a pattern of violations results in actual harm before closing a facility." *In Re Steel Brothers*, 1994 Ga. ENV LEXIS 32, at *4 (Oct. 21, 1994). A significant violation "standing alone" is sufficient to authorize an Administrative Order revoking a permit, especially if "the nature of the violations proven was such that the issuance of the Administrative Order was both authorized and appropriate." *In Re Steel Brothers*, 1994 Ga. ENV LEXIS 32, *5, *7 (1994).

Although the Department has only proven a minority of the alleged violations, the nature of these violations proved significant. Under the DDR, Wilbros was "formed for the purpose of recovering valuable organic material from what would have been considered waste products." (J-4). The evidence demonstrated that Wilbros repeatedly, and without authorization, disregarded the mandates of the DDR and D&O Plans that facilitated its fundamental purpose. Contrary to Wilbros's suggestion that any outdoor unloading in violation of the D&O Plan or direct discharge into the anaerobic basin was a one-time specific deviation from ordinary

practice, the evidence suggests that these practices were routine.

Relying on *Upper Chattahoochee Riverkeeper, Inc.*, 318 Ga. App. at 506-07, the Department argues that in this case the Administrative Law Judge may only affirm or reject the Director's action, as it is only the Director, and not the Board, that is vested with the statutory authority regarding Administrative Orders or Permits. For the aforementioned reasons, in this case the Director's action is **AFFIRMED.**

SO ORDERED THIS 21 day of January, 2015.

Ronit Walker
Administrative Law Judge