

**HEARINGS, MEETINGS, LICENSES**  
**12-1-08**



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE  
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

DEVAL L. PATRICK  
Governor

IAN A. BOWLES  
Secretary

TIMOTHY P. MURRAY  
Lieutenant Governor

LAURIE BURT  
Commissioner

FAX: (508) 947-6557

From: Roslyn Reimao Phone: (508) 946-2863

To Fax #(s):

BOS (508) 946-0058

Date: 11-20-08

Pages: 4 plus this cover page

2-sided

Comments; Please find attached letter (s): Middleboro-ACAP-SE-08-4008

Written by: Don Connick

Jean: 946-2321

CAF



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November 17, 2008

Mr. Ron High  
A Plus Waste Removal  
P.O. 6241  
176 Court Street  
Plymouth, Massachusetts 02362

RE: MIDDLEBOROUGH--BWP/SW  
A Plus Waste Removal.  
ADMINISTRATIVE CONSENT  
ORDER WITH PENALTY  
File No. ACOP-SE-08-4008

Dear Mr. High:

Enclosed please find two signed originals of Administrative Consent Order with Penalty, ACOP-SE-08-4008, executed on November 17, 2008. Please provide Mr. Mitchell with one copy and maintain one copy for your files.

Should there be any questions regarding this matter, please contact MassDEP at the letterhead address or telephone me at (508) 946-2833, or Dan Connick at (508) 946-2884.

Sincerely,

*David B. Ellis*  
David B. Ellis, Chief  
Solid Waste Management Section

E/DC/tr

M:\NMiddleboro\RIVER STREET - MITCHELL INDUSTRIES\signed ACOP cover letter 11-08

Enclosure: Administrative Consent Order with Penalty/ACOP-SE-08-4008

CERTIFIED MAIL # 7008 0150 0003 5433 6782

fc: Middleborough Board of Selectmen  
Fax No. (508) 946-0058

cc: Middleborough Board of Health  
[ispldng@middleborough.com](mailto:ispldng@middleborough.com)

DEP-Boston  
ATTN: J. Doucett

DEP/SERO  
ATTN: David Johnston, Acting Regional Director  
Dan d'Hedouville, Chief Regional Council  
D. Simpson, Regional Enforcement  
R. Gioiosa, REACT  
T. Barao, Public Affairs  
Lee MacEachern

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

IN THE MATTER OF: )  
A Plus Waste Removal )  
and )  
Mitchell Industries )  
Middleborough, MA 02346 )

RE: **MIDDLEBOROUGH - BWP/SW**

Unpermitted Solid Waste Storage Facility  
310 CMR 16.00 & 310 CMR 19.000  
**ADMINISTRATIVE CONSENT  
ORDER with SUSPENDED  
PENALTY**  
FILE# ACOP-SE-08-4008

**I. THE PARTIES**

1. The Massachusetts Department of Environmental Protection ("MassDEP") maintains its principal offices at One Winter Street in Boston, Massachusetts and also operates a regional office at 20 Riverside Drive in Lakeville, Massachusetts.
2. A Plus Waste Removal is a solid waste container transportation business that owns a place business located at 88 River Street, Middleborough, Massachusetts (the "Site").
3. Mitchell Industries is a solid waste container transportation business that that stores waste containers at the Site.
4. Collectively, A Plus Waste Removal and Mitchell Industries are referred to as (the "Respondents"), herein.

**II. STATEMENT OF FACTS AND LAW**

5. MassDEP is responsible for the implementation and enforcement of: M.G.L. c. 111, §§ 150A and 150A1/2, the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00, and the Solid Waste Management Regulations at 310 CMR 19.000.
6. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty

Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

7. The following facts have led MassDEP to issue this Consent Order:

- A. On October 1, 2008, MassDEP received a complaint from a citizen that alleged that the Respondents were storing solid waste overnight at the Site and that waste materials had spilled on public roads.
- B. On October 2, 2008, MassDEP reviewed its files to ascertain whether the Respondents possessed a solid waste site assignment and/or solid waste facility permit regarding the alleged activities. MassDEP records disclosed that the Respondents do not possess a solid waste site assignment or solid waste facility permit.
- C. On October 2 and 3, 2008, MassDEP drove by the site/facility and observed solid waste in roll-off containers. MassDEP did not enter the site and conduct an inspection because the site was closed with a locked gate and no personnel were observed on site. MassDEP determined that the observed solid waste storage was not a temporary occurrence but appeared to be a part of routine operation. The roll-off containers were stored on the ground and not on truck bodies.
- D. On October 3, 2008, MassDEP contacted A-Plus Waste Removal. A Plus Waste Removal stated that the full containers observed by MassDEP would be removed by Monday October 6, 2008.
- E. On October 5, 2008, the MassDEP Emergency Response Section was notified by the Middleborough Fire Department that a 100 yard truck trailer at the 88 River Street, Middleborough site was on fire.

- F. On October 6, 2008, the MassDEP solid waste section inspected the site and observed that the waste material that had been on fire, dumped on the ground and extinguished, was being reloaded into a 100 yard trailer stored inside the building. MassDEP also observed that the full containers observed on October 2 and 3, 2008 were still on site.
- G. On October 7, 2008, MassDEP inspected the site and observed that the full containers observed on October 2, 3 and 6 2008, had been removed from the site.
- H. As a result of its observations and findings, MassDEP has determined that Respondent's operation of a solid waste storage facility was not occasional pursuant to 310 CMR 19.16.05(5)(c) and waste was being stored without a solid waste site assignment and without a solid waste management facility permit in violation of M.G.L. c. 111, §§ 150A and 150A1/2, the "Site Assignment Regulations for Solid Waste Facilities" at 310 CMR 16.00, and the "Solid Waste Management Regulations" at 310 CMR 19.000.

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues and the Owner/Operator hereby consents to, this Administrative Consent Order (the "Consent Order") as a means to achieve and maintain compliance with the applicable regulatory requirements:

8. The Parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matter set forth above. The Respondents enter into this Consent Order without admitting or denying the facts or allegations set forth herein. The Respondents agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
9. MassDEP's authority to issue this Consent Order is conferred by the Statutes and

Regulations cited in Part II of this Consent Order.

10. The Respondents shall immediately cease storing full solid waste at the site, and shall remove all such stored solid waste from the site.
11. The Respondents shall ensure that any solid waste materials generated by demolition of structures on site are inspected for the presence of suspect asbestos containing materials by a Massachusetts Division of Occupational Safety Certified Asbestos Inspector and that all identified asbestos containing materials are abated prior to removal and transfer to a properly permitted solid waste disposal facility.
12. Except as otherwise provided, all notices, submittals, permit applications, and other communications required by this Consent Order shall be directed to:

David B. Ellis, Chief  
Solid Waste Management Section-MassDEP  
20 Riverside Drive  
Lakeville, MA 02347

Such notices, submittals, permit applications, and other communications shall be considered delivered by Owner/Operator upon receipt by MassDEP.

13. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving the Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
14. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance ("NON") concerning the issues of noncompliance with the requirements cited in Part II above.

15. MassDEP hereby determines, and the Respondents hereby agrees, that the deadlines set forth above constitute reasonable periods of time to take the actions described.
16. Respondents shall pay to the Commonwealth the sum of Eighteen Thousand Five Hundred (\$18,500.00) as a civil administrative penalty for the violations identified in Part II above, according to the following schedule:
- A Within ninety (90) days of the effective date of this Consent Order, Respondents shall pay to the Commonwealth a sum of Four Thousand Six Hundred and Twenty Five dollars (\$4,625.00),
  - B Within one hundred and eighty (180) days of the effective date of this Consent Order, Respondents shall pay to the Commonwealth an additional sum of Four Thousand Six Hundred and Twenty Five dollars (\$4,625.00).
  - C Within two hundred and seventy (270) days of the effective date of this Consent Order, Respondents shall pay to the Commonwealth an additional sum of Four Thousand Six Hundred and Twenty Five dollars (\$4,625.00).
  - D Within three hundred and sixty (360) days of the effective date of this Consent Order, Respondents shall pay to the Commonwealth an additional sum of Four Thousand Six Hundred and Twenty Five dollars (\$4,625.00).
17. This Consent Order establishes the schedule of payments, and constitutes notice that the payments are due as described above. Except for the first payment, and solely for Respondent's convenience, billing notices may be sent to Respondents before each payment due date. All payments must be made according to the schedule and terms agreed upon in this Consent Order, regardless of whether Respondents receives billing notices. All payments made after the first payment must include the billing stub from the billing notice (if received by Respondent). Failure to make timely payments in accordance with the foregoing payment plan shall result in revocation of the payment plan. In such event, the entire remaining penalty amount, plus interest dating back to the default date, shall become immediately due to the Commonwealth.

This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in

any way affect, any legal or equitable right of MassDEP to assess the Respondents additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

18. The Respondents understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP, including any future Solid Waste Site Assignment Determination pursuant to 310 CMR 16.00 et seq., or Solid Waste Management Facility Permit pursuant to 310 CMR 19.000 et seq., as contemplated by this Consent Order.
19. This Consent Order may be modified only by written agreement of the Parties hereto.
20. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
21. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

22. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or the Respondents with respect to any subject matter not covered by this Consent Order.
23. This Consent Order shall be binding upon the Respondents and upon the Respondent's heirs, successors and assigns. The Respondents shall not violate this Consent Order and shall not allow or suffer the Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order.
24. Stipulated Civil Administrative Penalty(ies) - In addition to the Civil Administrative Penalty set forth in this Consent Order, if the Respondents violates any provision of the Consent Order or further violates any of the regulations cited above, the Respondents shall pay Stipulated Penalties to the Commonwealth in the amount of \$500.00 per day, for each day, or portion thereof, each such violation continues. Instructions for payment of the Stipulated Penalties are cited below.

Stipulated Penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day the Respondents corrects the violation or completes performance, whichever is applicable. Stipulated Penalties shall accrue regardless of whether MassDEP has notified the Respondents of a violation or act of noncompliance. All Stipulated Penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues the Respondents a written demand for payment. If a court judgment is necessary to execute a claim for Stipulated Penalties under this Consent Order, the Respondents agrees to assent to the entry of such judgment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of Stipulated Penalties shall not alter in any way the Respondent's obligation to achieve compliance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of the Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative

penalties, the Respondents shall not be required to pay Stipulated Penalties pursuant to this Consent Order for the same violations.

The Respondents reserves whatever rights it may have to contest MassDEP's determination that the Respondents failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of any such Stipulated Civil Administrative Penalty.

25. The Respondents shall pay all civil administrative penalties due under this Consent Order, including suspended penalties and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts. The Respondents shall clearly print on the face of its payment the Respondent's full name, the file number appearing on the first page of this Consent Order (ACOP-SE-08-4008), and the Respondent's Federal Employer Identification Number, and shall mail it to:

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

The Respondents shall simultaneously mail a copy of the payment to:

David B. Ellis  
Massachusetts Department of Environmental Protection  
20 Riverside Drive  
Lakeville, MA 02347

In the event the Respondents fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, the Respondents shall be liable to the Commonwealth for up to three (3) times the

amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

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

27. The Respondents agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access to the Site at all reasonable times for purposes of conducting any inspection or activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

28. Force Majeure - MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of the Respondents and the Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by the Respondents or the Respondent's employees, agents, consultants, and contractors.

Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

If any event occurs that delays or will delay the performance of any requirement of this Consent Order, the Respondents shall immediately, but in no event later than five (5) days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay; and (iii) the timetable for taking such measures. If the Respondents intends to assert that the delay or potential delay is or will be caused by a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event.

If MassDEP determines that the Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and the Respondents otherwise complies with the notice provisions set forth above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that the Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for the Respondent's failure to perform a requirement of this Consent Order as a result of a Force Majeure event.

The delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

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

30. This Consent Order shall become effective on the date that it is signed and executed by MassDEP. This latter date shall be known as the Effective Date.

**A Plus Waste Removal**

Federal Employer Identification Number: # 04 346 4409

By: [Signature]

Name

Date: 11/12/08

**Mitchell Industries**

Federal Employer Identification Number: # 04-3408836

By: [Signature]

Name

**MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: [Signature]

David Johnston, Acting Regional Director

Date: 11-17-08