



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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DOVER, DELAWARE 19901

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT AND  
SECRETARY'S ORDER**

*Pursuant to 7 Del. C. Chapters 40 & 60*

**Order No. 2007-S-0003**

*PERSONALLY SERVED BY AN  
ENVIRONMENTAL OFFICER*

**Issued To:**

Capson of Brandywine, LLC  
Mr. Joseph Capano  
105 Foulk Road  
Wilmington, DE 19803

**Registered Agent:**

Capson of Brandywine, LLC  
105 Foulk Road  
Wilmington, DE 19803

Dear Sirs:

This is to notify Capson of Brandywine, LLC ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 Del. C. Chapter 40 & 60. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order ("Notice and/or Order").

***BACKGROUND***

Respondent is the developer of the Lake Como Woods Development, located in Smyrna, Delaware. Lake Como is a 28.10-acre residential community of 63 single family homes. On September 22, 2005, the Kent Conservation District ("KCD") approved the Sediment and Stormwater Plan ("Approved Plan") for Lake Como Woods. KCD is the Department's delegated agency for implementation of the *Delaware Sediment & Stormwater Regulations* ("the Regulations")<sup>1</sup> within its area of jurisdiction. KCD's jurisdiction includes unincorporated Kent County as well as all incorporated municipalities within Kent County.

On December 19, 2006, KCD referred the project to the Department for enforcement after repeated attempts by KCD to bring this site into compliance failed.

<sup>1</sup> 7 Del. Admin. C. § 5101.

*Delaware's Good Nature depends on you!*

On January 3, 2007, the Department issued a Notice of Violation ("NOV") to Respondent identifying four (4) specific measures required to bring the site into compliance with the Approved Plan. Respondent was required to

1. provide an "as-built" for both the North and South ponds, because there were some questions whether the ponds were built in accordance with the Approved Plan;
2. clear the sediment out of forebay and stabilize the side slopes of the South Pond. The slopes and adjacent areas of the South Pond were not stabilized, and the slopes were eroding into the pond. The inlet FES and forebay were full of sediment;
3. complete Phase 2 stabilization and E&S controls; and
4. install or repair inlet protection and curb silt fence.

The Respondent provided an as-built submission, which the Department and KCD reviewed. On February 15, 2007, KCD sent Respondent a letter requesting Respondent to address the review comments on the as-built submission.

On May 2, 2007 the Department conducted a site inspection and identified twenty-four (24) issues to be addressed by Respondent. On June 12, 2007, the Department issued a second NOV to Respondent identifying twenty-four (24) specific measures to bring the site into compliance with the Approved Plan. On June 12, 2007, the Department and KCD conducted a site meeting with Respondent, his design engineer, site contractor, and certified construction reviewer to discuss the corrective work required to bring the site into compliance with the Approved Plan. All the parties agreed that the work would be completed by July 12, 2007. The Department advised Respondent in the June 12, 2007 NOV and at the June 12, 2007 meeting that Respondent must submit documentation demonstrating compliance.

On July 12, 2007, the Department received an email from the Respondent's design engineer stating that the site contractor had experienced some delays with meeting the deadline to complete the work associated with the violation. He stated they were delayed at least two (2) weeks. The Department made several attempts to discuss the matter with the Respondent.

On July 16, 2007, the Department conducted another site inspection, which demonstrated that Respondent had done little to comply with the June 12, 2007 NOV. On August 8, 2007, the Department spoke with Respondent's design engineer regarding the June 12, 2007 NOV and the Department's July 16, 2007 site inspection. The Department reiterated that Respondent must provide documentation to demonstrate compliance. Respondent's design engineer advised the Department that it would receive a response to the NOV in a couple days.

On August 27, 2007, the Department performed another site inspection, which revealed that the Respondent had not corrected the items identified in the June 12, 2007 NOV. Accordingly, the Department issued a third NOV to the Respondent, advising that Respondent was in violation of 7 *Del. C.* §§ 4001-4016 and 6001-6099. The Department further informed