



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE: (302) 739-9000
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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. Chapters 40 & 60

Order No. 2008-S-0062

*PERSONALLY SERVED BY AN
ENVIRONMENTAL OFFICER
TO REGISTERED AGENT;
BY U.S. CERTIFIED MAIL TO COMPANY
NO. 7003 3110 0004 5917 8247*

Issued To:

Hunt Building Company, Ltd.
Attn: Mr. Russell G. McSpedden,
Project Manager
4401 North Mesa
El Paso, TX 79913

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Dear Sir:

This is to notify Hunt Building Company, Ltd. ("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 leases property from the Dover Air Force Base, Dover, Delaware, where it has on-going construction activities, building military family housing units, adjacent to the Dover Air Force Base. The Respondent received an approved Sediment & Stormwater Plan ("Approved Plan"), Part 1 dated 5/3/06, and Parts 2 and Part 3 dated 11/28/07 from the Department under the *Delaware Sediment & Stormwater Regulations* ("the Regulations")¹.

¹ 7 Del. Admin. C. § 5101.

Delaware's Good Nature depends on you!

Numerous inspections conducted from January 2008 to May 2008 found the following violations. These violations were formally documented in inspection reports and/or communicated verbally to the Respondent:

- a) Inadequate and illegible CCR reports that do not properly describe site observations and prescriptive recommendations,
- b) Unauthorized access points being used with no stabilized construction entrance,
- c) Unprotected catch basins,
- d) Curblin silt fence not installed in some areas,
- e) Roadways and gutters loaded with sediment in all active construction areas,
- f) Poor stabilization efforts,
- g) Maintenance of the catch basins with Typ-1 plus TerraTubes.

In addition to the above-noted violations, on May 16, 2008, Department representatives and Respondent's representatives observed and documented a sediment release from Part 3 of the site to a channel that discharges to the St. Jones River.

On May 19, 2008, the Department issued a Secretary's Order to Cease and Desist. All construction activity ceased until such time as the Respondent complied with the order. On May 27, 2008 the Department issued a letter to the Respondent stating that they had met the requirements of the Secretary's Order to Cease and Desist and that construction could resume.

On June 12, 2008, the Department conducted a site inspection. The Respondent was found to be in compliance.

FINDINGS OF FACT

1. On January 11, 2006, the Department approved Sediment and Stormwater Plan for Part 1.
2. On February 23, 2006, the Department approved revisions to Sediment and Stormwater Plan for Part 1.
3. On May 3, 2006, the Department approved revisions to Sediment and Stormwater Plan for Part 1.
4. On August 22, 2006, the Department approved the Sediment and Stormwater Plan for Part 2.
5. On March 20, 2007, the Department approved the Sediment and Stormwater Plan for Part 3.
6. On November 28, 2007, the Department approved revisions to Sediment and Stormwater Plan for Parts 2 & 3.

7. On January 8, 2008, the Department conducted a site inspection of Part 1 and discussed observations with the Certified Construction Reviewer (CCR) via telephone. The following issues were discussed:
 - Lack of stabilization in the swale along Pine Cabin Road, associated with perimeter wall construction. It has been unstabilized for weeks. No erosion & sediment controls (E&S) were ever installed to contain the work area though directed to on December 3, 2007, via telephone. The CCR stated that they didn't need to because they were outside the limit of disturbance for the job. The Department corrected him and said that all work associated with the Hunt project on the DAFB housing was required to have E&S.
 - The work crew for the perimeter wall construction washed out the concrete in the swale head (no E&S was ever installed) which is a tributary to the St. Jones River.
 - Reminded CCR that E&S was required at the Pine Cabin Road swale and none had been installed to protect this work area. Matting was installed on the wrong side of the work area and the open sediment was still exposed directly to the swale w/out E&S protection.
 - Discussed the inadequacy of the CCR reports being submitted for the Hunt Building project at DAFB Housing. The emphasis is on a narrative account of the CCR's observation; not spreadsheets.
 - Streets and gutters were laden with sediment.
8. On May 5, 2008, the Department conducted site inspections of Parts 1, 2 & 3. The Department observed and documented unauthorized access points being used with no stabilized construction entrances, authorized stabilized construction entrances not being maintained, roadways and gutters loaded with sediment in all active construction areas, unprotected catch basins, inlets laden with sediment and not protected correctly, poor stabilization efforts, curblin silt fence not installed in some areas, and trash & debris not being controlled.
9. On May 14, 2008, the Department conducted a site inspection of Part 3. The same issues as the May 5, 2008 inspection were observed.
10. On May 16, 2008, the Department, DAFB, and Respondent conducted a tour of the site. Observed and documented was a discharge of sediment from Part 3 of the site to a channel that discharges to the St. Jones River.
11. On May 19, 2008, the Department issued a Secretary's Order to Cease and Desist (C&D Order). The Department entered the site to review the conditions of the order and walk the site. The following were the observations on the site: Asphalt paths could continue to be laid but the areas along the asphalt must be stabilized up to the edges; there was standing water in the Basin at Court E/D, re-grade to achieve positive flow and stabilize; a small berm needs to be established by the existing reinforced silt fence in the material stockyard (Annexed Area); additional agreements about cleaning houses and allowing concrete trucks to finish are contained in the signed agreement, 5/19/08.

12. On May 23, 2008, the Department conducted site inspections of Parts 1, 2, & 3 for compliance with the C&D Order. The following items were found to be out-of-compliance: Stabilized construction entrance at the Pinnacle Building is not properly installed; stabilized construction entrances needs to be refreshed; reinforced silt fence across from the Pinnacle Building was not trenched; sediment in the gutter by inlet protection by the main stabilized construction entrance at Pine Cabin Road; roadways and gutterlines need to cleaned at the end of each workday and a log of the cleaning must be on the CCR report; access being used between units, across the paved driveways and not being cleaned daily; inlet protections are not trenched and catch basin boxes have sediment in the bottom and in the pipes; curblin silt fence is not properly trenched at the curblin.
13. On May 27, 2008, the Department conducted site inspections of Parts 1, 2, & 3. Notification was sent to the Respondent that they have met the requirements of the Secretary's Order to Cease and Desist and construction activity could resume.
14. On June 12, 2008, the Department conducted site inspections of Parts 1, 2, & 3 and found the site to be in compliance.

STATUTORY, REGULATORY AND PERMIT REQUIREMENTS

1. 7 Del. C. § 6003(a)(2) states:

No person shall, without first having obtained a permit from the Secretary, undertake any activity: In a way which may cause or contribute to discharge of a pollutant into any surface or ground water...

2. 7 Del. C. § 6010(a) states:

The Secretary may adopt, amend, modify or repeal rules or regulations, or plans, after public hearing, to effectuate the policy and purposes of this chapter."

Pursuant to this authority, the Secretary of the Department of Natural Resources and Environmental Control adopted the *Regulations Governing the Control of Water Pollution*.

3. Section 6.01(a) of the *Regulations Governing the Control of Water Pollution* states:

The following regulations delineate the authority and general procedures to be followed in connection with the Department's administration of the National Pollutant Discharge Elimination System ("NPDES") Program and specifically, the processing of any NPDES permits issued by the Secretary authorizing discharges of pollutants into State waters during the periods that the Secretary authorizing discharges of pollutants into State waters during the periods that the

Secretary may be authorized to issue such permits pursuant to Sections 402, 318, and 405 of the Act. During any periods in which the Secretary may not be authorized to issue such permits pursuant to Sections 402, 318, and 405 of the Act, these regulations shall remain in full force and effect with respect to any certificates or permits authorizing discharges of pollutants into State waters issued by the Secretary pursuant to 7 Del. C. Chapter 60.

4. Section 6.01(b) 4 of the *Regulations Governing the Control of Water Pollution* states:

The NPDES Program requires a permit for the discharge of a “pollutant” or combination of pollutants from any “point source” to “State waters”. The terms “pollutant”, “point source” and “State waters” or “waters of the State” are defined in Section 2. The following are point sources and require NPDES permits for any discharge(s) there from:

4. Storm water discharges associated with industrial activities as set forth in Section 9.

5. Section 9.1.02.1.A.1 of the *Regulations Governing the Control of Water Pollution* states:

The following discharges and activities are eligible for NPDES General Industrial Storm Water Permit Coverage under this Part.

1. This Part covers all new and existing storm water discharges that are composed in whole or in part of discharges associated with construction activity [as defined by 40 Code of Federal Regulations (CFR), Section 122.26(b)(14)(x),15; see §9.1.02..0 DEFINITIONS].

2. Discharges from support activities (e.g., concrete or asphalt plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

- c. Appropriate controls and measures are identified in a Sediment and Stormwater Plan covering the discharges from the support activity areas.

6. Section 9.1.02.1.D of the *Regulations Governing the Control of Water Pollution* states:

To be authorized to discharge stormwater under this Part, a person planning a construction activity must submit, in accordance with the requirements of §9.1.02.3, an NOI form prior to commencement of

any construction activities. Unless notified by the Secretary to the contrary, persons who submit such notification and have either obtained approved Sediment and Stormwater Plans or have been deemed exempt in accordance with the *Delaware Sediment and Stormwater Law and Regulations*, are authorized to discharge storm water associated with construction activity under the terms and conditions of this Part.

7. Section 9.1.02.2.C. of the *Regulations Governing the Control of Water Pollution* states:

Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Sediment and Stormwater Plan.

8. Section 9.1.02.2.I. of the *Regulations Governing the Control of Water Pollution* states:

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 *Del. C.* Chapter 60. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under that statute.

9. Section 9.1.02.4.B of the *Regulations Governing the Control of Water Pollution* states:

For the purposes of monitoring, persons subject to this Part must:

2. Conduct the following:
 - a. weekly maintenance inspections of erosion and sediment controls, and constructed storm water management measures; and
 - b. inspections of erosion and sediment controls and storm water management practices the next business day after a rainfall event that results in runoff.

10. Section 9.1.02.5.A of the *Regulations Governing the Control of Water Pollution* states:

Persons covered by this Part shall develop, fully implement, and maintain at the site, the approved Sediment and Stormwater Plan (Plan) and any other records that are required in accordance with 7

Del. C. Chapter 40 and the Delaware Sediment and Stormwater Regulations. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with Delaware Erosion and Sediment Control Handbook standard and specification for Construction Site Pollution Prevention, shall be incorporated into the Plan for construction activity.

CONCLUSIONS

Based on the foregoing facts, the Department has determined that Respondent has violated 7 Del. C. Chapter 40 and 60, the *Regulations Governing the Control of Water Pollution*, and the following permit conditions:

1. Respondent violated its NPDES permit Section 9.1.02.2.C., Section 9.1.02.2.D., and Section 9.1.02.2.E. by not complying with the measures of the approved Sediment and Stormwater Plan from January 2008 to May 2008, specifically failed to follow the sequence of construction on the approved plan, failed to install authorized construction entrances, failed to install inlet protection in localized areas, failed to install curb line silt fence, failed to submit adequate weekly Certified Construction Reviewer (“CCR”) reports, failed to maintain roadways and gutters free of sediment in all active construction areas, failed to maintain catch basins with Typ-1 plus TerraTubes, and failed to properly stabilize all disturbed areas of the site within 14 calendar days of being disturbed in accordance with Delaware’s Erosion and Sediment Control Handbook.
2. Respondent violated its NPDES permit Section 9.1.02.2.C., Section 9.1.02.2.D., and Section 9.1.02.2.E by not complying with the Standard detail notes on the approved Sediment and Stormwater Plan from January 2008 to May 2008, specifically by failing to temporarily and/or permanently stabilize disturbed areas within 14 days, install stabilized construction entrances as per the details, and adhere to the vegetative stabilization details.
3. Respondent violated its NPDES permit Section 9.1.02.2.C., Section 9.1.02.2.D., and Section 9.1.02.2.E by not complying with the General Phase I Construction Phasing Notes on the approved Sediment and Stormwater Plan, specifically by failing to construct and stabilize the basins and drainage areas as per the approved plan.

ASSESSMENT OF PENALTY AND ORDER

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$70,000.00 for the violations identified in this Notice and Order.

Respondent shall submit a check to the Department in the amount of \$70,000.00 within 30 days from the receipt of this Notice of and Order for the aforementioned penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: David L. Ormond, Jr., Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, 3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING

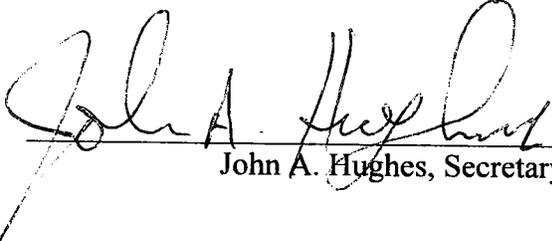
This Notice and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. § 6005(b)(3) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Notice and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$70,000.00 and the Department's estimated costs in the amount of \$10,500.00, in the manner described in the attached Waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Notice and Order, which shall become a final Order.

If you have any questions, please contact Jamie H. Rutherford at (302) 739-9921.

12-17-88
Date



John A. Hughes, Secretary

JAH:jhr

cc: Robert S. Baldwin, Director
Kevin P. Maloney, Deputy Attorney General
David Ormond, Deputy Attorney General
Frank Piorko, Program Administrator
Jamie Rutherford, Program Manager
Cheryl Gmuer, Program Manager
Jennifer Bothell, Enforcement Coordinator
David McGuigan, EPA Region III Associate Division Director,
NPDES Permits and Enforcement

WAIVER OF STATUTORY RIGHT TO A HEARING

Hunt Building Company, Ltd. hereby waives his right to a hearing and his opportunity to appeal or contest this Notice of Conciliation, Assessment and Order and agrees to the following:

1. **Hunt Building Company, Ltd.** will pay the administrative penalty in the amount of \$70,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order, along with this signed Waiver. The check shall be directed to: David L. Ormond, Jr., Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, 3rd Floor, Dover, Delaware 19904; and

2. **Hunt Building Company, Ltd.** will reimburse the Department in the amount of \$10,500.00, which represents the Department's estimated costs pursuant to 7 *Del. C.* § 6005(c). The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street, 3rd Floor, Dover, Delaware 19904.

Hunt Building Company, Ltd.

Date: _____

By: _____

Title: _____