



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. §6005(b)(3)

**Amended Order No.: 2007-A-0017**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
PROTECTION OFFICER AND/OR CERTIFIED MAIL*

**Issued To:**

**Registered Agents and Attorney:**

**Milford Development, LLC**  
7524 W. Baltimore Annapolis Rd  
Glen Burnie, MD 21061-3391

**George B. Smith, Registered Agent**  
P.O. Box 588, 406 S. Bedford St.  
Georgetown, DE 19947

**Wayne Knight and  
Milford Properties, LLC**  
8814 Coventon Ave  
Perry Hall, MD 21061

**Jane Patchell, Esq.**  
Tunnell & Raysor, P.A.  
30 East Pine Street, P.O. Box 151  
Georgetown, DE 19947

**Kris Thompson, et. al.**  
d/b/a The Gilligan Group and successor  
business entities  
7524 WB & A Road, Suite 200  
Glen Burnie, MD 21061

**Daniel J. Hanley, Registered Agent**  
206 Washington Avenue  
Towson, MD 21204

**Patrick Belzner and  
Kapman Enterprises, LLC**  
9 Widebrook Court  
Baltimore, MD 21234

This is to notify Milford Development, LLC ("Milford Development"), Milford Properties, LLC ("Milford Properties"), Kris Thompson et. al., d/b/a The Gilligan Group and successor business entities ("The Gilligan Group"), and Patrick Belzner, Kapman

*Delaware's Good Nature depends on you!*

Enterprises, LLC ("Kapman Enterprises") (collectively "Respondents") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found them in violation of 7 Del. C. Chapters 60 and 74 and the State of Delaware Regulations Governing Underground Storage Tank Systems ("UST Regulations"). Accordingly, the Department is issuing a Notice of Administrative Penalty Assessment and Secretary's Order ("Assessment and Order"), pursuant to 7 Del. C. §6005(b)(3).

### ***BACKGROUND AND FINDINGS OF FACT***

The Mispillion Marina, located on Route 1 and Route 36 in Milford, Delaware 19963, is a facility as defined by the UST Regulations ("Mispillion Marina Facility"). Located at the Mispillion Marina Facility until June 17, 2007, was one (1) 4,000 gallon gasoline Underground Storage Tank system ("UST"), which was a fixture until its removal.

On May 10, 2007, the Department served Secretary's Order No. 2007-A-0017 on Kapman Enterprises. After service of the Order, the Department received a letter from Kapman Enterprises, stating that Milford Properties, LLC, has owned the Mispillion Marina Facility since June 2005. By Mr. Belznar's conduct and representations, the Department reasonably believed that he and Kapman Enterprises were the operator or were otherwise responsible to effectuate compliance, contractually or otherwise, and were communicating the Department's position to the owner and/or operator of the Mispillion Marina Facility. Therefore, the Department hereby rescinds Secretary's Order No. 2007-A-0017 and issues this newly Amended Secretary's Order No. 2007-A-0017.

The Gilligan Group sent the Department a letter dated May 1, 2006, stating in part that "as of May, 2005, The Gilligan Group is no longer the owner of this property", and stating that the current owner at that time was Kapman Enterprises. First, the statement necessarily means that The Gilligan Group had an ownership interest in the Mispillion Marina Facility prior to May 2005, and thus direct responsibility and liability as owner of the UST. Second, the Department's title search of the Mispillion Marina Facility suggests that The Gilligan Group's statement was a false and misleading report and submission to the Department. By The Gilligan Group's conduct and representations, the Department reasonably believed that The Gilligan Group was the operator or was otherwise responsible to effectuate compliance, contractually or otherwise, and was communicating the Department's demands to the owner and/or operator of the Mispillion Marina Facility

The Department's title search of the Mispillion Marina Facility indicates that on June 20, 2005, Milford Development LLC ("Milford Development"), a Delaware corporation, conveyed the Mispillion Marina Facility to Milford Properties, LLC, ("Milford Properties"), a Maryland corporation [Deed Book 3163, pg. 284]. . The Department has no documentation that Kapman Enterprises had an ownership interest in Milford Properties or Milford Development.

By letter from the Department dated October 11, 2005, Milford Development, Milford Properties, and The Gilligan Group were on written notice that the Department was seeking information on the ownership of the Mispillion Marina Facility and UST and that the UST, was in violation of Delaware Law.

During the term of the violations described in this Order, Kapman Enterprises and The Gilligan Group represented themselves to the Department as owner, operator, manager and/or agent or entity responsible for compliance at the Mispillion Marina Facility. The Gilligan Group was or is in the business of providing management services.

In the fall of 2004, the Department, attempted to conduct a compliance inspection of the UST. Upon arrival at the Mispillion Marina Facility, the gate was locked and the Department could not gain access. A sign on the gate had a telephone number to contact for information. Since then, the Department repeatedly contacted various business entities and personnel involved to request and demand that the UST be brought into compliance. The UST was in violation and evidently had not had regulated substances added to it or withdrawn from it, from the fall of 2004 until its removal on June 17, 2007.

In a February 4, 2005 phone conversation, the Department discussed with Jay Hauck of The Gilligan Group that the UST was out of service for over a year, and was out of compliance. The Department further explained to Mr. Hauck that the UST must be brought back into compliance by either putting the tank back into service, removing it, or having it properly abandoned. The Department faxed Mr. Hauck a "Removal and Abandonment Notification" form, removal and abandonment sampling requirement forms, change of ownership forms, a list of Delaware certified contractors for UST removal/abandonment, and Part B, Section 3 "Requirement for Removal/Abandonment and Out-of-Service Petroleum UST Systems" of the UST Regulations.

The Department continued repeatedly contacting Mr. Hauck to demand compliance. On June 16, 2005, Mr. Hauck stated to the Department by telephone that the Department would be provided with a signed contract with a certified removal/abandonment contractor by June 24, 2005, but this never happened. The Department repeatedly contacted other personnel at The Gilligan Group. By The Gilligan Group's conduct and representations, the Department reasonably believed that The Gilligan Group was responsible to effectuate compliance, contractually or otherwise, and was communicating the Department's demands to the owner and/or operator of the Mispillion Marina Facility.

In response to a written inquiry from the Department concerning, among other issues, compliance and ownership of the Mispillion Marina Facility, the Department was contacted by Patrick Belznar and Kapman Enterprises. On October 21, 2005, the Department faxed Mr. Belznar a tank removal certified contractor list. The Department followed up with Mr. Belznar by telephone, and eventually was able to speak with him on February 13, 2006 to demand compliance. By Mr. Belznar's conduct and representations, the Department reasonably believed that he and Kapman Enterprises

were responsible to effectuate compliance, contractually or otherwise, and were communicating the Department's position to the owner and/or operator of the Mispillion Marina Facility.

On June 1, 2006 the Department issued a Notice of Violation (NOV) to Patrick Belznar and Kapman Enterprises, which required submission of a Removal/Abandonment Form, a Change of Ownership Form and a Change-In-Service Registration Form, and all other actions required to come into compliance at the Mispillion Marina Facility, within thirty (30) days.

Neither Respondents nor any of the other person or business entity produced or submitted an UST registration and notification form, an UST ownership Transfer Notification Form, Site Assessment Documentation, or any other required forms and documents. Respondents failed to remove or properly abandon in place the UST, Respondents failed to take any of the actions required by law to minimize the risk of groundwater contamination by petroleum and gasoline constituents in an area immediately adjacent to the Mispillion River. Respondents unlawfully and illegally allowed this risk to continue for a period of years.

In response to the Secretary's Order issued on May 3, 2007, the UST was finally removed on June 17, 2007. The violations referenced in this Secretary's Order ceased on June 17, 2007.

## ***REGULATORY AND PERMIT REQUIREMENTS***

Respondents failed to comply with the *Regulations Governing Underground Storage Tank Systems* specifically,

1. *Regulations Governing Underground Storage Tank Systems*, Part B, Section 3.01 B & C, Requirements for Out of Service UST Systems, states that:

B. When any UST system is out-of-service for three (3) months or more, owners and operators must comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other liens, pumps, manways, and ancillary equipment.

C. When an UST system is out-of-service for more than twelve (12) months, owners and operators must permanently remove or properly abandon the UST system if it does not meet the requirements for new UST systems in §1 of this Part or the upgrading/retrofitting requirements in §2 of this Part, except that the spill and overfill equipment requirements do not have to be met as long as the tank remains out-of-service.

The UST has been out of service for more than three (3) years. The Respondent(s) are in violation of Part B, Sections 3.01 B and C.

2. *Regulations Governing Underground Storage Tank Systems*, Part B, Section 3.02 D, Site Assessment During Removal/Abandonment and Change-In-Service, states that:

Before permanent removal/abandonment or change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site.

Respondents are in violation of Part B, Section 3.02 D.

"Out of service" means a storage system which: A. is not in use; that is, which does not have regulated substances added to or withdrawn from the storage system, and B. is intended to be placed back in service. "Abandoned underground storage tank system" means a storage system which: A. is not intended to be returned to service; B. has been out-of-service for twelve consecutive months; or C. has been rendered permanently unfit for use. The UST was out of service from the fall of 2004 until its removal on June 17, 2007.

Change-in-service means any change to a regulated UST system to include but not limited to change in nature of contents, removal or abandonment, change in status from either in-service or out of service or conversion to unregulated use. In-service means a storage system which is not abandoned, contains regulated substances and/or has regulated substances regularly added or withdrawn. At some time prior to the fall of 2004, there was a change-in-service of the UST, from in-service to out of service.

## **CONCLUSION**

Based on the foregoing findings and provisions, the Department has determined that Respondents have violated the Regulations Governing Underground Storage Tank Systems, Part B, Section 3.01 B & C, Requirement for Out of Service UST Systems and Part B, Section 3.02 D, Site Assessment During Removal/Abandonment and Change-In-Service, as follows:

Respondents violated Regulation, Part B, Section 3.01 B & C. The UST was 1) out of service for three months, and Respondent(s) did not leave vent lines open and functioning and did not cap and secure all other lines, pumps, manways, and ancillary equipment, and 2) the UST was out-of-service for more than 12 months, and Respondents did not permanently remove or properly and legally abandon the UST. The UST did not meet the requirements for new UST systems and was not exempt under any exemptions. This is evidenced by Respondents not producing the UST Registration and Notification Form or a UST Ownership Transfer Notification Form within thirty (30) days after being requested by the Department to provide them.

Respondents violated Regulation, Part B, Section 3.02 D, by not measuring for the presence of a release where contamination is most likely to be present at the UST site, as evidenced by the fact that Respondents has not produced the UST Site Assessment Documentation within, thirty (30) days after being requested by the Department to provide them, until removal.

### ***ASSESSMENT OF PENALTY***

Pursuant to the provisions of 7 Del. C. §6005(b)(3), this is written notice to Respondents that on the basis of its findings, the Department is assessing Respondents an administrative penalty of \$50,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondents are hereby assessed estimated costs in the amount of \$7,500.00, pursuant to 7 Del. C. §6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondents shall submit 2 checks to the Department in the amounts of \$50,000.00 and \$7,500.00 within 30 days from the receipt of this Assessment and Order for the aforementioned penalties and costs. The checks shall be made payable to the "State of Delaware" and shall be directed to: David Ormond, Deputy Attorney General, Department of Justice, Civil Division, 3<sup>rd</sup> Floor, 102 West Water Street, Dover, Delaware, 19904.

### ***PUBLIC HEARING***

This Order and Assessment shall become effective and final unless the Department receives from Respondents, 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). In the event Respondents requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondents' facility, including, but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 Del. C. §6005(c). The Department reserves the right to do so at its discretion.

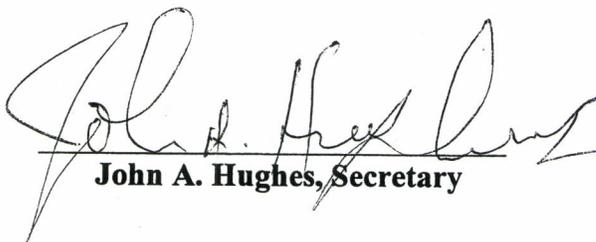
### ***PRE-PAYMENT***

Respondents may prepay the administrative penalty of \$50,000.00 and the Department's estimated costs in the amount of \$7,500.00 in the manner described in the attached waiver. By doing so, Respondents waives their right to a hearing and the opportunity to appeal or contest the Assessment, which shall become a final Order.

If you have any questions, please contact Alex Rittberg at (302) 395-2500.

Date:

11-19-07



**John A. Hughes, Secretary**

Cc:

James Werner, Director  
David Ormond, Deputy Attorney General  
Alex Rittberg, Program Manager II  
David Brixen, Program Manager I  
Ron Brown, Environmental Scientist  
Jennifer Bothell, Enforcement Coordinator

***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Respondents** hereby waive their right to a hearing and its opportunity to appeal or contest this Assessment and Order and agree to the following:

**Respondents** will pay the administrative penalty in the amount of \$50,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to David Ormond, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware, 19904 ; and

**Respondents** will reimburse the Department in the amount of \$7,500.00, which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this assessment and Order. The check shall be payable to the "State of Delaware" and be directed to David Ormond, Deputy Attorney General, Department of Justice, 102 West Water Street-3<sup>rd</sup> Floor, Dover, Delaware, 19904.

**Milford Development, LLC**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Milford Properties, LLC**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Kris Thompson and others d/b/a The Gilligan  
Group and successor business entities**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Patrick Belzner and  
Kapman Enterprises, LLC**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_