



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

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

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

**Order No. 2011-WS-0008**

**Respondent:**

*Personally Served by an Environmental Protection Officer*  
Signature Design Homes, LLC  
c/o Jeanne M. Parrot  
400 Campbell Road  
Wilmington, DE 19807

**Registered Agent:**

*By U.S. Mail, and U.S. Certified Mail*  
Jeanne M. Parrot  
Registered Agent for Signature Design Homes LLC  
400 Campbell Road  
Wilmington, DE 19807

This is to notify Jeanne M. Parrott and Signature Design Homes, LLC ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") determined that Respondent is in violation of 7 Del. C. Chapters 40 and 60 7 Del. Admin. C., § 5101 et seq., (Sediment and Stormwater Regulations), 7 Del. Admin C., § 7502 et seq., and 7 Del. Admin. C. § 7201 et seq., (Water Pollution Regulations). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order.

*Delaware's Good Nature depends on you!*

## **BACKGROUND AND FINDINGS OF FACT**

Respondent is a Limited Liability Company incorporated in the State of Delaware. It claims that it is separate, independent and unrelated entity to Riverbend Community, LLC and Joseph L. Capano, Sr. (collectively "Riverbend"). Respondent claims that it purchased lots, did its own financing, and sells its products, independent of Riverbend. Respondent purchased lots 73 and 75 in Riverbend's development project referred to as the "Riverbend at Old New Castle subdivision," located in the City of New Castle. At least one of the principals of Respondent and one of the principals of Riverbend are connected.

DNREC issued a Notice of Violation letter to Riverbend on January 21, 2010. The letter informs Riverbend, among other things: 1) The NPDES General Permit for Construction Activities has been terminated for the Riverbend at Old New Castle subdivision and the Sediment and Stormwater Plan for the subdivision expired on December 11, 2009; and 2) The subdivision is not in compliance with 7 Del. C. Chapters 40 and 60, the federal NPDES requirements, and DNREC's Sediment and Stormwater Regulations. A copy of this letter was provided to Respondent's attorney on October 5, 2010.

Secretary's Order No. 2010-DW-DWS-0027, was issued to Riverbend on September 20, 2010. A copy of Secretary's Order No. 2010-DW-DWS-0027 was provided to Respondent's attorney on October 4, 2010. Paragraphs 4 through 8 of the Conclusions section in particular put Respondent on notice of the lack of NDPED permit and Sediment and Stormwater Plan at the subdivision and that therefore any land disturbing activity and construction at the subdivision is illegal.

On October 10, 2010, DNREC received from Riverbend the Notice of Intent for National Pollutant Discharge Elimination System ("NPDES") form with a check for \$195.00 drawn on Respondent's bank account, for permit coverage for the "Riverbend at Old New Castle subdivision." On October 14, 2010, DNREC received Riverbend's application for the related Sediment and Stormwater plan. On December 3, 2010, the Department sent a letter to Riverbend denying the submitted Notice of Intent form and Sediment and Stormwater Plan, and returning Respondent's check for the Notice of Intent fee.

It was observed on December 29, 2010 that building construction was occurring on Lot 75 in the Riverbend subdivision. County records and other information show that Respondent Signature Design Homes, LLC is the owner of Lot 75 where home building construction is occurring, and is causing such construction to occur. At the time of the observation on December 29, 2010, it was noted that there was a house foundation, house framing, and sheathing installed on the new construction on Lot 75. Given the amount of construction at the time of the observation, a conservative estimate is that construction had been underway on a daily basis for at least two weeks (14 days) prior to December 29, 2010, and has continued to the date of this Order with possible interruptions for Sundays, holidays and inclement weather ("Construction Period").

Respondent claims that the pending purchaser of the home being constructed on lot 75 is Patricia A. Lawson, and that Ms. Lawson is an innocent third party who will suffer hardship financially and otherwise if she is not able to purchase the home and lot 75 and move in as soon as it is completed.

The construction occurring on Lot 75 in the Riverbend subdivision is in violation because there is neither a required National Pollutant Discharge Elimination System (NPDES) General Permit Notice of Intent (NOI) coverage nor an approved Sediment and Stormwater Plan. Furthermore, Respondent has failed to follow and comply with the numerous legal requirements imposed to prevent and/or minimize erosion and sediment discharges during construction, including without limitation preconstruction meetings with DNREC and written weekly reports, as well as various stabilization measures such as silt fencing, all as specified in the Sediment and Stormwater Handbook.

The City of New Castle has not issued a building permit for lot 75, and DNREC has reason to believe that the City of New Castle Municipal Services Corporation will not provide water service to lot 75.

#### ***SEDIMENT AND STORMWATER PROGRAM***

7 Del. C. § 4001 states, in relevant part:

“[T]he policy of this chapter [is] to strengthen and extend the present erosion and sediment control activities and programs of this State for both rural and urban lands and to provide for control and management of stormwater runoff consistent with sound water and land use practices.... This policy, to be carried out by establishing and implementing by the Department of Natural Resources and Environmental Control... a statewide comprehensive and coordinated erosion and sediment control and stormwater management program to conserve and protect land, water, air and other resources of the State.”

7 Del. C. § 4006(b)(2) states that one of the Department’s responsibilities is to:

“Develop and publish, as regulation components, minimum standards, guidelines and criteria for delegation of sediment and stormwater program components, and model sediment and stormwater ordinances for use by districts, counties and municipalities.”

Pursuant to this authority, the Secretary of the Department of Natural Resources and Environmental Control adopted the *Sediment & Stormwater Regulations*.

“Sediment and stormwater approvals are required for land changes or construction activities for residential, commercial, industrial, or institutional land use which are not exempted or waived by these Regulations.” 7 Del. Admin. C. § 5101-1.2.

As Signature Design Homes, LLC was not exempt, it was required to obtain and remain under an approved Plan during all land disturbing activities pursuant to 7 *Del. Admin. C.* § 5101-8.1.

There is no approved Sediment and Stormwater Plan for the construction activity on Lot 75 and thus the construction activity is in violation of 7 *Del. Admin. C.* § 5101-8.1.

### ***NPDES PERMITTING PROGRAM***

7 *Del. C.* § 6001(b)(2) states that “[t]he State, in the exercise of its sovereign power, acting through the Department should control the development and use of the land, water, underwater and air resources of the State so as to effectuate full utilization, conservation and protection of the water and air resources of the State.”

7 *Del. C.* § 6003(a)(2) states that “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....”

Pursuant to 7 *Del. C.* § 6010(a), “[t]he 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 *Water Pollution Regulations* were duly promulgated.

7 *Del. Admin. C.* §7201- 6.12 of the *Water Pollution Regulations* requires a NPDES permit for the discharge of a “pollutant” from any “point source” to “State waters.” Although discharges related to construction activities are covered in §7201- 9.2 of the *Water Pollution Regulations* and fall under the “General Permit Program,” a Notice of Intent must be filed with the Department, which will be considered “the equivalent of an NPDES Permit application for a General NPDES Permit.” See §7201- 9.1 of the *Water Pollution Regulations*.

7 *Del. Admin. C.* §7201- 6.10.1 of the *Water Pollution Regulations* requires “[a]ny person who discharges or proposes to discharge pollutants from any point source subject to NPDES program requirements and who does not have an effective permit or equivalent authorization from the Secretary shall submit a complete application to the Department in accordance with this section.” Signature Design Homes, LLC is a “person” who participated in “construction activity” that likely resulted in “Discharge of Storm Water Associated with Construction Activity” pursuant to § 7201-9.2 of the *Water Pollution Regulations*.

7 *Del. Admin. C.* § 7201-9.2.1.4 of the *Water Pollution Regulations* states:

“To be authorized to discharge stormwater under this Part, a person planning a construction activity must submit, in accordance with the requirements of §9.1.2.3, 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 Del. Admin. C. § 7201- 9.2.2.3 of the Water Pollution Regulations* 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.”

*7 Del. Admin. C. §7201- 9.2.2.9 of the Water Pollution Regulations* 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.”

*7 Del. Admin. C. §7201- 9.2.4.2.2 of the Water Pollution Regulations* 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.”

7 *Del. Admin. C.* § 7201-9.2.5.1 of the *Water Pollution Regulations* states:

“A. 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.

B. The Plan shall be signed in accordance with this Part and kept at the facility.

C. Persons covered by this Part shall retain records of all information required by the Plan for a minimum of five (5) years.

### CONCLUSIONS

Based on the foregoing facts, the Department has determined that Respondent has violated 7 *Del. C.* Chapters 40 and 60, and the *Sediment and Stormwater Regulation* and the *Water Pollution Regulations*:

1. Respondent violated 7 *Del. Admin. C.* § 5101-10.2.1, and the *Sediment and Stormwater Regulations* during the Construction Period.
2. Respondent violated 7 *Del. Admin. C.* §7201 - 9.2.1.3 of the *Water Pollution Regulations*, during the Construction Period, in that it was required to obtain a NPDES permit for stormwater discharges, pursuant to the *Water Pollution Regulations* §§ 9.2.1.4 prior to the initiation of construction activities.
3. Respondent violated 7 *Del. Admin. C.* § 7201- 9.2.5 of the *Water Pollution Regulations*, in that the Respondent began construction and land-disturbing activities without an approved Plan continuing to the present.
4. Respondent failed to perform the required weekly inspections and the inspections after rainfall events as required by 7 *Del. Admin. C.* §7201- 9.2.4.2 of the *Water Pollution Regulations* and 7 *Del. C.* § 4013(a)(3)(g).
5. Continued construction activities by Respondent subsequent to the date of this Order will subject Respondent to liabilities for additional daily violations and penalties under Sediment and Stormwater Regulations and the Water Pollution Regulations. Respondent remains subject to all appropriate enforcement and regulatory actions for

past, future, and on-going violations, including without limitation, pursuant to 7 *Del. C.* §§ 6005.

### **ASSESSMENT OF ADMINISTRATIVE PENALTY**

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), the Department is assessing the Respondent an administrative penalty in the amount of \$10,000.00 for the Sediment and Stormwater violations delineated in and as the date of this Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$1,500.00 pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$10,000.00 to pay the penalty and one check to the Department in the amount of \$1,500.00 to pay the estimated costs within 30 days from the receipt of this Order. The checks 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-3<sup>rd</sup> Floor, Dover, Delaware 19904.

The administrative penalty 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 request a hearing, the Department reserves the right to withdraw this Assessment and/or part or all of this Order and take additional enforcement actions regarding these and other violations, including without limitation, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to hold a public hearing but reserves the right to do so at its discretion.

Respondent may prepay the administrative penalty of \$10,000.00 and the Department's estimated costs in the amount of \$1,500.00 in the manner described in the assessment section above. By doing so, Respondent waives its rights to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

This action does not preclude the Department from commencing additional enforcement action.

The foregoing is so Ordered.

Date: 3 July 2011



Collin P. O'Mara, Secretary

*CPO:DLO:jrm/jmb/52-3.doc*

cc: L. Vincent Ramunno, Esq. (By U.S. Mail)  
Adam Balick, Esq. (By U.S. Mail)  
David L. Ormond, Jr., Deputy Attorney General  
Katherine Bunting-Howarth, Director, Division of Water  
Frank Piorko, Director, Division of Watershed Stewardship  
Jamie Rutherford, Env. Program Manager II  
Laura Herr, Env. Program Manager II  
Scott Figurski, Env. Scientist II  
Cheryl Gmuer, Program Manager I  
Roy Heineman, Paralegal  
Jennifer Bothell, Enforcement Coordinator

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

Respondent hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Respondent** will pay the administrative penalty in the amount of \$10,000.00 by sending a check payable to the "State of Delaware" to be received within 30 days of receipt of this Assessment and Order. The check shall be directed to David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street- 3<sup>rd</sup> Floor, Dover, DE 19904.
2. **Respondent** will reimburse the Department in the amount of \$1,500.00, which represents the Department's estimated costs. The reimbursement shall be received 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 - 3<sup>rd</sup> Floor, Dover, DE 19904.

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

By: \_\_\_\_\_  
(Signature)

Name: Jeanne M. Parrott

SIGNATURE DESIGN HOMES, LLC