



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

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**NOTICE OF ADMINISTRATIVE PENALTY  
ASSESSMENT AND ORDER**

*Pursuant to 7 Del. C. § 6005*

**Order No. 2011-W-0006**

***PERSONALLY SERVED BY  
AN ENVIRONMENTAL PROTECTION  
OFFICER***

**Issued To:**

The Honorable Larry Gum  
Mayor of the Town of Millsboro  
322 Wilson Highway  
Millsboro, DE 19966

Dear Mayor Gum:

This is to notify the Town of Millsboro (Respondent) that the Secretary of the Department of Natural Resources and Environmental Control (Department) has found that the Respondent has violated 7 Del. C. §6003, 7 Del. Admin. C. § 7201 et seq., Delaware Regulations Governing the Control of Water Pollution, hereinafter referred to as the Water Pollution Regulations, and National Pollutant Discharge Elimination System (NPDES) Permit No. DE 0050164. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Order (Notice).

**BACKGROUND**

The Department is responsible for the administration of the NPDES program and enforcement of the NPDES permits in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., and 7 Del. C., Chapter 60. Pursuant to this authority, the Department has promulgated the Water Pollution Regulations:

NPDES Permit No. 0050164 was issued to the Respondent, effective June 1, 2000, and authorized the discharge of effluent from the Respondent's Wastewater Treatment Plant in

*Delaware's Good Nature depends on you!*

Millsboro, DE. Through this Wastewater Treatment Plant, Outfall 001 discharges to Tiger Branch, a tributary of the Indian River.

Pursuant to NPDES Permit No. DE 0050164 Part I.B.1, the Respondent is required to monitor its discharge by collecting samples of its discharge and analyzing those samples for a number of pollutant parameters as specified in the above-mentioned NPDES Permit. Data generated as a result of the sampling and analysis is summarized in a monthly Discharge Monitoring Report (DMR) and submitted to the Department on a regular basis as required by the NPDES Permit.

Beginning in calendar year 2009 and continuing up until the date of this Notice, the Respondent submitted Discharge Monitoring Reports, "5-Day Letters," and non-compliance letters to the Department and reported effluent violations of the above-mentioned NPDES Permit. The reported violations appear to be the direct result of improper operation, equipment failures, process overloads, and various other circumstances detailed in reports submitted to the Department.

As a result of the above-mentioned reported violations, Notice of Violation W-10-SWD-02 was delivered to the Respondent on March 5, 2010.

### **FINDINGS OF FACT**

#### **NPDES Permit Violations:**

The Respondent reported the following violations:

#### **Outfall 001 Violations**

##### **A. The permit limit of 23.0 mg/l for the daily maximum concentration of Total Suspended Solids (TSS) was exceeded on the following days during CY 2009 through August 2010:**

- March 18 – 22 (5 days), concentration reported at 44 mg/l
- April 1 – 2 (2 days), concentration reported at 140 mg/l
- April 30 – May 3 (4 days), concentration reported at 59 mg/l
- May 4 (1 day), concentration reported at 75 mg/l
- May 5 – 6 (2 days), concentration reported at 26.8 mg/l
- May 15 – 18 (4 days), concentration reported at 46.9 mg/l
- May 22 – 25 (4 days), concentration reported at 28 mg/l
- May 27 (1 day), concentration reported at 80 mg/l
- May 30 (1 day), concentration reported at 77 mg/l
- June 1 – 2 (2 days), concentration reported at 28.4 mg/l
- June 20 (1 day), concentration reported at 164 mg/l

- July 24 – 28 (5 days), concentration reported at 37.6 mg/l
- July 31 – August 4 (5 days), concentration reported at 26 mg/l
- August 8 (1 day), concentration reported at 24.4 mg/l
- August 26 – 29 (4 days), concentration reported at 33.2 mg/l
- August 30 (1 day), concentration reported at 381 mg/l
- September 1 (1 day), concentration reported at 53 mg/l
- October 29 – November 3 (6 days), concentration reported at 66.7 mg/l
- November 5 – November 10 (6 days), concentration reported at 148 mg/l
- November 13 – November 17 (5 days), concentration reported at 172 mg/l
- February 27, 2010(1 day) – concentration reported at 97.5 mg/l
- February 28, 2010(1-day) – concentration reported at 124 mg/l
- March 1, 2010 (1-day) – concentration reported at 381 mg/l
- March 2, 2010 (1-day) – concentration reported at 285 mg/l
- March 3, 2010 (1-day) – concentration reported at 152 mg/l
- March 4, 2010 (1-day) – concentration reported at 100 mg/l
- March 5, 2010 (1-day) – concentration reported at 78 mg/l
- March 6, 2010 (1-day) – concentration reported at 54 mg/l
- March 7, 2010 (1-day) – concentration reported at 28 mg/l
- March 8, 2010 (1-day) – concentration reported at 131 mg/l
- March 9, 2010 (1-day) – concentration reported at 57 mg/l
- March 10, 2010 (1-day) – concentration reported at 26 mg/l
- March 11, 2010 (1-day) – concentration reported at 126 mg/l
- March 12, 2010 (1-day) – concentration reported at 50 mg/l
- March 13, 2010 (1-day) – concentration reported at 577 mg/l
- March 14, 2010 (1-day) – concentration reported at 737 mg/l
- March 26, 2010 (1-day) – concentration reported at 66.2 mg/l
- July 3, 2010 (1-day) – concentration reported at 87.4 mg/l
- July 4, 2010 (1-day) – concentration reported at 950 mg/l
- July 5, 2010 (1-day) – concentration reported at 51.5 mg/l
- July 6, 2010 (1-day) – concentration reported at 72 mg/l
- July 8, 2010 (1-day) – concentration reported at 47.3 mg/l

**B. The permit limit of 86 lbs/day for the daily maximum loading of Total Suspended Solids (TSS) was exceeded on the following days during CY 2009 through August 2010:**

- March 18 – 22 (5 days), loading reported at 171.74 lbs/day
- April 1 – 2 (2 days), loading reported at 562.78 lbs/day
- April 30 – May 3 (4 days), loading reported at 276.54 lbs/day
- May 4 (1 day), loading reported at 272.09 lbs/day
- May 15 – 18 (4 days), loading reported at 168.19 lbs/day

- May 22 – 25 (4 days), loading reported at 106.95 lbs/day
- May 27 (1 day), loading reported at 239.52 lbs/day
- May 30 (1 day), loading reported at 265.86 lbs/day
- June 1 – 2 (2 days), loading reported at 106.11 lbs/day
- June 11 (1 day), loading reported at 91.50 lbs/day
- June 20 (1 day), loading reported at 917.77 lbs/day
- June 29 (1 day), loading reported at 105.65 lbs/day
- June 30 (1 day), loading reported at 88.04 lbs/day
- July 24 – 28 (5 days), loading reported at 156.48 lbs/day
- July 31 – August 3 (4 days), loading reported at 102.35 lbs/day
- August 4 (1 day), loading reported at 96.71 lbs/day
- August 8 (1 day), loading reported at 128.0 lbs/day
- August 26 – 29 (4 days), loading reported at 126.26 lbs/day
- August 30 (1 day), loading reported at 1,000.93 lbs/day
- September 1 (1 day), loading reported at 207.31 lbs/day
- October 29 – November 3 (6 days), loading reported at 262.0 lbs/day
- November 5 – November 10 (6 days), loading reported at 486.32 lbs/day
- November 13 – November 17 (5 days), loading reported at 791.83 lbs/day
- February 27, 2010 (1-day) – loading reported at 567.58 lbs/day
- February 28, 2010 (1-day) – loading reported at 579.13 lbs/day
- March 1, 2010 (1-day) – loading reported at 1,611 lbs/day
- March 2, 2010 (1-day) – loading reported at 1,842.09 lbs/day
- March 3, 2010 (1-day) – loading reported at 836.67 lbs/day
- March 4, 2010 (1-day) – loading reported at 518.75 lbs/day
- March 5, 2010 (1-day) – loading reported at 424.13 lbs/day
- March 6, 2010 (1-day) – loading reported at 269.32 lbs/day
- March 7, 2010 (1-day) – loading reported at 119.56 lbs/day
- March 8, 2010 (1-day) – loading reported at 702.50 lbs/day
- March 9, 2010 (1-day) – loading reported at 297.11 lbs/day
- March 10, 2010 (1-day) – loading reported at 102.78 lbs/day
- March 11, 2010 (1-day) – loading reported at 643.11 lbs/day
- March 12, 2010 (1-day) – loading reported at 327.35 lbs/day
- March 13, 2010 (1-day) – loading reported at 2,973.93 lbs/day
- March 14, 2010 (1-day) – loading reported at 3,091.73 lbs/day
- March 26, 2010 (1-day) – loading reported as 448.31 lbs/day
- July 3, 2010 (1-day) – loading reported at 378.72 lbs/day
- July 4, 2010 (1-day) – loading reported at 3,700.04 lbs/day
- July 5, 2010 (1-day) – loading reported at 244.82 lbs/day
- July 6, 2010 (1-day) – loading reported at 381.30 lbs/day

- July 7, 2010 (1-day) – loading reported at 109.21 lbs/day
- July 8, 2010 (1-day) – loading reported at 174.76 lbs/day

**C. The permit limit of 2.0 mg/l for the daily maximum concentration of Total Phosphorus (TP) was exceeded on the following days during CY 2009 through August 2010:**

- April 1 – 2 (2 days), concentration reported at 3.08 mg/l
- May 5 (1 days), concentration reported at 2.5 mg/l
- June 20 (1 day), concentration reported at 4.28 mg/l
- August 30 – 31 ( 2 days), concentration reported at 8.03 mg/l
- September 23 – 29 (7 days), concentration reported at 2.14 mg/l
- October 7 – 13 (7 days), concentration reported at 2.53 mg/l
- October 28 (1 day), concentration reported at 2.22 mg/l
- October 29 – November 3 (6 days), concentration reported at 2.72 mg/l
- November 4 (1 day), concentration reported at 2.22 mg/l
- November 5 – November 10 (6 days), concentration reported at 6.18 mg/l
- November 11 – 12 (2 days), concentration reported at 2.1 mg/l
- November 13 – November 17 (5 days), concentration reported at 6.63 mg/l
- November 25 – December 1 (7 days), concentration reported at 2.53 mg/l
- March 1, 2010 (1-day) – concentration reported at 8.68 mg/l
- March 2, 2010 (1-day) – concentration reported at 7.95 mg/l
- March 3, 2010 (1-day) – concentration reported at 3.88 mg/l
- March 4, 2010 (1-day) – concentration reported at 3.37 mg/l
- March 5, 2010 (1-day) – concentration reported at 2.48 mg/l
- March 8, 2010 (1-day) – concentration reported at 3.74 mg/l
- March 9, 2010 (1-day) – concentration reported at 2.14 mg/l
- March 11, 2010 (1-day) – concentration reported at 3.86 mg/l
- March 12, 2010 (1-day) – concentration reported at 2.2 mg/l
- March 13, 2010 (1-day) – concentration reported at 15.2 mg/l
- March 14, 2010 (1-day) – concentration reported at 17.9 mg/l
- March 26, 2010 (1-day) – concentration reported at 2.63 mg/l
- April 25, 2010 (1-day) – concentration reported at 2.11 mg/l
- April 26, 2010 (1-day) – concentration reported at 2.13 mg/l
- July 3, 2010 (1-day) – concentration reported at 2.97 mg/l
- July 4, 2010 (1-day) – concentration reported at 27 mg/l

**D. The permit limit of 9.22 lbs/day for the daily maximum loading of Total Phosphorus (TP) was exceeded on the following days during CY 2009 through August 2010:**

- April 1 – 2 (2 days), loading reported at 12.38 lbs/day
- June 20 (1 day), loading reported at 23.95 lbs/day
- August 30 - 31 (2 days), loading reported at 21.09 lbs/day
- October 7 – 13 (7 days), loading reported at 9.74 lbs/day
- October 28 (1 day), loading reported at 12.79 lbs/day
- October 29 – November 3 (6 days), loading reported at 10.68 lbs/day
- November 4 (1 day), loading reported at 9.50 lbs/day
- November 5 – November 10 (6 days), loading reported at 20.31 lbs/day
- November 13 – November 17 (5 days), loading reported at 30.52 lbs/day
- November 25 – December 1 (7 days), loading reported at 11.92 lbs/day
- March 1, 2010 (1-day) – loading reported at 36.70 lbs/day
- March 2, 2010 (1-day) – loading reported at 51.38 lbs/day
- March 3, 2010 (1-day) – loading reported at 21.36 lbs/day
- March 4, 2010 (1-day) – loading reported at 17.48 lbs/day
- March 5, 2010 (1-day) – loading reported at 13.48 lbs/day
- March 8, 2010 (1-day) – loading reported at 20.06 lbs/day
- March 9, 2010 (1-day) – loading reported at 11.15 lbs/day
- March 11, 2010 (1-day) – loading reported at 19.70 lbs/day
- March 12, 2010 (1-day) – loading reported at 14.40 lbs/day
- March 13, 2010 (1-day) – loading reported at 78.34 lbs/day
- March 14, 2010 (1-day) – loading reported at 75.09 lbs/day
- March 26, 2010 (1-day) – loading reported at 17.81 lbs/day
- April 9, 2010 (1-day) – loading reported at 10.06 lbs/day
- April 26, 2010 (1-day) – loading reported at 10.25 lbs/day
- July 3, 2010 (1-day) – loading reported at 13.55 lbs/day
- July 4, 2010 (1-day) – loading reported at 105.16 lbs/day
- July 6, 2010 (1-day) – loading reported at 9.43 lbs/day

**E. The permit limit of 23.0 mg/l for the daily maximum concentration of BOD<sub>5</sub> was exceeded on the following days during CY 2009 through August 2010:**

- April 1 – 2 (2 days), concentration reported at 52.7 mg/l
- May 4 (1 day), concentration reported at 28.6 mg/l
- May 27 (1 day), concentration reported at 24.3 mg/l
- May 30 (1 day), concentration reported at 33.8 mg/l
- June 19 (1 day), concentration reported at 62.9 mg/l
- August 30 – 31 (2 days), concentration reported at 98.0 mg/l

- November 5 – November 10 (6 days), concentration reported at 63.7 mg/l
- November 13 – November 17 (5 days), concentration reported at 54.6 mg/l
- March 1, 2010 (1-day) – concentration reported at 100 mg/l
- March 2, 2010 (1-day) – concentration reported at 53.6 mg/l
- March 3, 2010 (1-day) – concentration reported at 36.9 mg/l
- March 4, 2010 (1-day) – concentration reported at 23.6 mg/l
- March 8, 2010 (1-day) – concentration reported at 25 mg/l
- March 11, 2010 (1-day) – concentration reported at 34.9 mg/l
- March 13, 2010 (1-day) – concentration reported at 170 mg/l
- March 14, 2010 (1-day) – concentration reported at 210 mg/l
- July 4, 2010 (1-day) – concentration reported at 312 mg/l
- July 5, 2010 (1-day) – concentration reported at 36 mg/l
- July 6, 2010 (1-day) – concentration reported at 47.2 mg/l
- July 8, 2010 (1-day) – concentration reported at 24.9 mg/l

**F. The permit limit of 86 lbs/day for the daily maximum loading of BOD<sub>5</sub> was exceeded on the following days during CY 2009 through August 2010:**

- April 1 – 2 (2 days), loading reported at 211.85 lbs/day
- April 30 – May 3 (4 days), loading reported at 95.15 lbs/day
- May 4 (1 day), loading reported at 103.76 lbs/day
- May 30 (1 day), loading reported at 116.70 lbs/day
- June 19 (1 day), loading reported at 351.99 lbs/day
- July 24 (1 day), loading reported at 92.81 lbs/day
- August 30 - 31 (2 days), loading reported at 257.46 lbs/day
- November 5 – November 10 (6 days), loading reported at 209.32 lbs/day
- November 13 – November 17 (5 days), loading reported at 251.36 lbs/day
- March 1, 2010 (1-day) – loading reported at 422.84 mg/l
- March 2, 2010 (1-day) – loading reported at 346.44mg/l
- March 3, 2010 (1-day) – loading reported at 184.65 mg/l
- March 4, 2010 (1-day) – loading reported at 122.42 mg/l
- March 8, 2010 (1-day) – loading reported at 134.07 mg/l
- March 9, 2010 (1-day) – loading reported at 96.95 mg/l
- March 11, 2010 (1-day) – loading reported at 178.13 mg/l
- March 13, 2010 (1-day) – loading reported at 876.20 mg/l
- March 14, 2010 (1-day) – loading reported at 880.95 mg/l
- July 4, 2010 (1-day) – loading reported at 1,215.17 mg/l
- July 5, 2010 (1-day) – loading reported at 171.14 mg/l
- July 6, 2010 (1-day) – loading reported at 249.97 mg/l
- July 8, 2010 (1-day) – loading reported at 92 mg/l

**G. The permit limit of 56 lbs/day for the monthly average loading of BOD<sub>5</sub> was exceeded during following months in CY 2009 through August 2010:**

- April – monthly average loading was reported at 60.37 lbs/day
- June – monthly average loading was reported at 61.99 lbs/day
- August – monthly average loading was reported at 62.90 lbs/day
- November – monthly average loading was reported at 87.97 lbs/day
- March 2010 – monthly average loading was reported at 129.28 lbs/day
- July 2010 – monthly average loading was reported at 74.38 lbs/day

**H. The permit limit of 56 lbs/day for the monthly average loading of TSS was exceeded during following months in CY 2009 through August 2010:**

- April – monthly average loading was reported at 130.83 lbs/day
- May – monthly average loading was reported at 129.73 lbs/day
- June – monthly average loading was reported at 131.16 lbs/day
- July – monthly average loading was reported at 66 lbs/day
- August – monthly average loading was reported at 178.28 lbs/day
- November – monthly average loading was reported at 217.32 lbs/day
- March 2010 – monthly average loading was reported at 472.14 lbs/day
- July 2010 – monthly average loading was reported at 169.44 lbs/day

**I. The permit limit of 4.56 lbs/day for the monthly average loading of TP was exceeded during following months in CY 2009 through August 2010:**

- November – monthly average loading was reported at 14.64 lbs/day
- December – monthly average loading was reported at 6.76 lbs/day
- March 2010 – monthly average loading was reported at 16.10 lbs/day
- April 2010 – monthly average loading was reported at 7.22 lbs/day
- July 2010 – monthly average loading was reported at 6.54 lbs/day

**J. The permit limit of 400 col/100 mls for the daily maximum concentration for Fecal Coliform was exceeded on the following days during CY 2009 through August 2010:**

- October 29 – November 3 (6 days), daily maximum reported at >800 col/100 mls
- November 5 – November 10 (6 days) daily maximum reported at 800 col/100 mls
- March 1, 2010 (1-day) – daily maximum reported at 44,000 col/100 mls
- March 2, 2010 (1-day) – daily maximum reported at 66,000 col/100 mls
- March 3, 2010 (1-day) – daily maximum reported at 1,000 col/100 mls
- March 4, 2010 (1-day) – daily maximum reported at 3,700 col/100 mls
- March 7, 2010 (1-day) – daily maximum reported at 580 col/100 mls

- March 13, 2010 (1-day) – daily maximum reported at 30,000 col/100 mls
- March 14, 2010 (1-day) – daily maximum reported at 545 col/100 mls
  
- July 3, 2010 (1-day) – daily maximum reported at >800 col/100 mls
- July 4, 2010 (1-day) – daily maximum reported at >8,000 col/100 mls
- July 5, 2010 (1-day) – daily maximum reported at >8,000 col/100 mls
- July 6, 2010 (1-day) – daily maximum reported at >8,000 col/100 mls
- July 7, 2010 (1-day) – daily maximum reported at >7,600 col/100 mls

**K. The permit limit of a minimum pH value of 6.0 SU was not met when the values reported on the following days during CY 2009 and through August 2010 were below the minimum value:**

- October 14 – pH reported at 5.66 S.U.
- November 13 – pH reported at 5.83 S.U.
- November 24 – pH reported at 5.81 S.U.
- November 25 – pH reported at 5.82 S.U.
- December 21 – pH reported at 5.78 S.U.
- December 22 – pH reported at 5.82 S.U.
- December 31 – pH reported at 5.79 S.U.
- January 1, 2010 – pH reported at 5.85 S.U.
- January 4, 2010 – pH reported at 5.67 S.U.
- January 5, 2010 – pH reported at 5.68 S.U.
- January 6, 2010 – pH reported at 5.84 S.U.
- January 7, 2010 – pH reported at 5.53 S.U.
- January 8, 2010 – pH reported at 5.75 S.U.
- January 9, 2010 – pH reported at 5.60 S.U.
- January 11, 2010 – pH reported at 5.65 S.U.
- January 12, 2010 – pH reported at 5.88 S. U.
- January 13, 2010 – pH reported at 5.65 S. U.

**L. The permit limit of 0.55 MGD for the monthly average flow rate was exceeded during the following month in CY 2009 through August 2010:**

- December – monthly average flow rate was reported at 0.604 MGD
- March, 2010 – monthly average flow rate was reported at 0.635 MGD

**M. Part I.D.2 (Monitoring and Reporting) of the permit requires that a Discharge Monitoring Report (DMR) is to be sent to the Department, and must be postmarked by no later than the 28<sup>th</sup> of the month immediately following each monitoring period. DMR's were late and postmarked after the 28<sup>th</sup> for the following months (total of 7 months) during CY 2009:**

- February, March, May, August, September, October, and November

**N. Part III A.7 (Special Conditions) of the permit requires that no later than five (5) years after the effective date of this permit, the permittee shall eliminate the discharge from this facility to waters of the State of Delaware. The permittee shall submit an annual report, each year, outlining progress made during the year towards elimination of discharge and steps taken—technical, financial, and legal—toward implementation of this special condition. The first annual progress report shall be due one (1) year from the permit's effective date.**

- The effective date of the permit was June 1, 2000. As of June 1, 2005, stream discharge was to have been discontinued. The Town of Millsboro continues to discharge effluent at Outfall 001 and has been in violation of its NPDES Permit Special Conditions for over five (5) years. The Town also failed to send in all of the required annual progress reports.

### **STATUTORY AND REGULATORY VIOLATIONS**

*7 Del. C. § 6003 (a)(2)* states: “No person shall, without first having obtained a permit from the Secretary, undertake any activity in any way which may cause or contribute to discharge of a pollutant into any surface or ground water.”

*7 Del Admin. C. §7201- 3.2.1* of the Water Pollution Regulations, states, in relevant part: “No person shall undertake any activity that causes or contributes to the discharge of a pollutant to any surface water or groundwater....” Violations of the Respondent's NPDES Permit constitutes a violation of this section of *7 Del Admin. C. §7201* by discharging pollutants that exceeded permitted limitations as described in the Outfall 001 permit violations above.

*7 Del Admin. C. §7201- 3.2.3* of the Water Pollution Regulations, states, in relevant part: “No person shall discharge any pollutant from a point source into surface or ground water, directly or indirectly, except as authorized....” Violations of the Respondent's NPDES Permit No. DE 0050164 constitutes a violation of this section of *7 Del Admin. C. §7201* by discharging pollutants that exceeded permitted limitations as described in the Outfall 001 permit violations above.

### **NPDES PERMIT VIOLATIONS**

The Respondent's failure to meet the requirements of NPDES Permit No. DE0050164 is a direct violation as cited below:

- NPDES Permit No. DE0050164, Part I.B1 (Effluent Limitations and Monitoring Requirements) list specific Effluent Limitations for this outfall that were not met.
- NPDES Permit No. DE 0050164, Part I.D.2 (Monitoring and Reporting) lists specific requirements for reporting that were not met.
- NPDES Permit No. DE 0050164, Part II A.3 (Facilities Operation) list specific requirements for maintaining in good order and operating as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee to achieve compliance with the terms and conditions of the permit.

### **CONCLUSIONS**

The Department has determined that the Respondent violated 7 Del. C. §6003, 7 Del. Admin. C. §§ 7201- 3.2.1 and 3.2.3 of the Water Pollution Regulations, and NPDES Permit No. DE 0050164.

### **ASSESSMENT OF PENALTY**

Pursuant to the provisions of 7 Del. C. §6005(b)(3), this is written notice to the Respondent that on the basis of its findings, the Department is assessing the Respondent an administrative penalty of **three hundred twenty-seven thousand two hundred twenty dollars** (\$327,220) for the violations identified in this Penalty Assessment and Order.

In addition to the penalty assessment, the Respondent is hereby assessed estimated costs in the amount of **forty nine thousand eighty-three dollars** (\$49,083) pursuant to 7 Del. C. §6005(c).

The Respondent shall remit two checks payable to the State of Delaware in the amounts of \$327,220 and \$49,083, within thirty (30) days of receipt of this Notice, to Kevin Maloney, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901.

It is the intent of the Department that the penalty be invested in activities that will benefit water quality and the environment upon agreement on the project by both parties.

### **PUBLIC HEARING**

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from the Respondent, no later than thirty (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 the Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take any additional enforcement action it deems appropriate, including, but not limited to, the imposition of civil penalties and recovery of the Department's costs pursuant to 7 *Del. C. §6005*. 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**

In the alternative, the Respondent may prepay the penalty to the Department within thirty (30) days and sign the attached waiver and return it to the Department. By doing so, the Respondent waives the right to a hearing and the opportunity to appeal or contest this Assessment and Order.

DATE: 2-18-11



Collin P. O'Mara, Secretary

- cc: Kevin Maloney, Deputy Attorney General  
Katherine Bunting-Howarth, Director, DNREC Division of Water  
Robert G. Underwood, Program Manager, Division of Water  
Roy W. Heineman, Paralegal, Division of Water  
Jennifer Bothell, Environmental Enforcement Coordinator

**WAIVER OF STATUTORY RIGHT TO A HEARING**

The **Town of Millsboro** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order, and agrees to the following:

1. The **Town of Millsboro** will pay the administrative penalty in the amount of **\$327, 220** 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 Kevin Maloney, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901;
2. The **Town of Millsboro** will reimburse the Department in the amount of **\$49,083**, 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 made payable to the State of Delaware and shall be directed to Kevin Maloney, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901; and
3. The **Town of Millsboro** further agrees to abide by all of the terms and conditions of this Assessment and Order.

**Town of Millsboro**

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

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

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

Name: \_\_\_\_\_  
(Print)