



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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**NOTICE OF ADMINISTRATIVE PENALTY  
ASSESSMENT AND ORDER**

*Pursuant to 7 Del. C. § 6005*

**Order No. 2011-W-0005**

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

**Issued To:**

The Honorable Robert E. Price, Jr.  
Mayor of the City of Harrington  
106 Dorman Street  
Harrington, DE 19952

Dear Mayor Price:

This is to notify the City of Harrington (Respondent) that the Secretary of the Department of Natural Resources and Environmental Control (Department) 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 0020036. 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. 0020036 was issued to the Respondent, effective January 1, 2007, and authorizes the discharge of effluent from the Respondent's Wastewater Treatment Plant, in Harrington, DE. Through this Wastewater Treatment Plant, Outfall 001 discharges to Brown's Branch, a tributary of the Murderkill River.

*Delaware's Good Nature depends on you!*

Pursuant to NPDES Permit No. DE 0020036 Part 1.B.1 and 1.B.2, 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 as required by the NPDES Permit.

Beginning in calendar year 2009 and continuing up until the date of this Notice, the Respondent submitted numerous 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 equipment failures, process overloads due to Inflow and Infiltration (I & I) issues, and various other circumstances as detailed in the reports submitted to the Department.

On December 28, 2009, the Department was notified that levels in the two lagoons at the Respondent's wastewater treatment plant were on the rise and that part of the flow coming into the plant would need to be by-passed around the Dissolved Air Floatation (DAF) treatment and discharged directly to the chlorine contact chamber. This by-passing was a direct result of increased precipitation and I & I issues. The increased flow would have overloaded the already over-taxed DAF unit, and the flow had to be by-passed directly to the chlorine contact chamber. Increased flows in December resulted in a violation of the Respondent's NPDES Permit No. DE0020036 average flow requirement, average pounds of Phosphorus discharged, and cumulative loadings for Total Phosphorus, Total Nitrogen, and CBOD<sub>5</sub>. The by-passing of part of the influent flow around the DAF Unit continued through most of January 2010 and February 2010.

Department records contain correspondence received from the Respondent that clearly indicate that the Respondent is, and has been, aware of the serious I & I problem within the Respondent's collection system, which has been a material cause of several flow and sample exceedances over the past several years. Most recently, by letter to the Department dated January 2010, the Respondent again reiterated its awareness of the I & I problems and further stated that the Respondent contacted the engineering firm of Remington & Vernick to resolve this matter. The letter also stated (as has been indicated in prior correspondence to the Department) that a bid to remedy these I & I problems was received, and the Respondent was exploring avenues to obtain grant money to fund this project. The letter concluded with the Respondent agreeing to keep the Department informed of the progress of this project. However, to date, the Department has not received any communication concerning the resolution of the outstanding I & I issues; and, in fact, the Respondent's Wastewater Treatment Plant continues to have problems with its traveling bridge sand filter.

On March 3, 2010, the Department was notified by the Respondent's Wastewater Treatment Plant Superintendent that due to continuous unresolved I & I problems coupled with an unusual increase in precipitation the lagoon levels at the Respondent's Wastewater Treatment Plant were dangerously high and that some immediate action was needed to remedy this situation. The Respondent then contacted the Kent County Wastewater Treatment Plant to ask for assistance in getting a pump that was capable of pumping partially treated wastewater from the No. 1 Lagoon directly to the chlorine contact chamber. At approximately 2000 hours on March 3, 2010, the Respondent began pumping the partially treated wastewater from No. 1 Lagoon, by-passing the major treatment process, directly into the chlorine contact chamber. This activity continued until approximately 0400 hours on March 7, 2010. A total of approximately 3,024,000 gallons of only partially treated wastewater were discharged to Brown's Branch, causing various violations of the Respondent's NPDES Permit. Visual examination of the plant effluent and Brown's Branch (at the 001 Discharge Area) revealed visible floating solids and foam. Analytical testing confirmed elevated levels of total suspended solids, fecal coliform, and fecal enterococcus bacteria types.

Since December 2009, the Respondent regularly exceeded NPDES permit limitations for Total Phosphorus, Total Nitrogen, and CBOD<sub>5</sub>. When the Respondent was issued their NPDES permit on January 1, 2010, the permit specifically stated that Total Phosphorus (TP), Total Nitrogen (TN), and CBOD<sub>5</sub> would be a "monitoring parameter" for the first 35 months of the permit. Beginning with month number 36 (December 2009), permit effluent limitations for these same parameters would become effective. Parts I.C.1 and C.2 require the permittee to comply with the requirements of the Schedule of Compliance. Part C.1 requires that no later than 36 months after the permit effective date (January 1, 2007), the permittee must comply with the final effluent limitations and monitoring requirements for TP, TN, and CBOD<sub>5</sub> at Outfall 001. C.1 further requires the submittal of periodic reports to the Department every six (6) months regarding the progress made towards meeting the final effluent limitations. Part C.2 requires that no later than 14 days following the Final Effluent Limitations date (December 1, 2009), the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. The notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

On May 20, 2010, the Department issued a Notice of Violation (W-10-SWD-04) to the Respondent for violations of their NPDES permit.

### **FINDINGS OF FACT**

The Respondent reported the following NPDES permit violations:

**Outfall 001 Violations**

- A. The permit limit of 20 mg/l for the daily maximum concentration of Total Suspended Solids (TSS) was exceeded on the following days during CY 2010:**
- March 4 – 5 (2 days), concentration reported at 47 mg/l
- B. The permit limit of 13 mg/l for the monthly average concentration of TSS was exceeded during the following month in CY 2010:**
- March – monthly average concentration was reported at 17 mg/l
- C. The permit limit of 125 lbs/day for the daily maximum loading of Total Suspended Solids (TSS) was exceeded on the following days during CY 2010:**
- March 3 – 5 (3 days), loading reported at 613 lbs/day
- D. The permit limit of 81 lbs/day for the monthly average loading of TSS was exceeded during the following month in CY 2010:**
- March – monthly average loading was reported at 135lbs/day
- E. The permit limit of 37.5 lbs/day for the monthly average loading of CBOD<sub>5</sub> was exceeded during following months in CY 2010:**
- February – monthly average loading was reported at 41.2 lbs/day
  - March – monthly average loading was reported at 92.0 lbs/day
- F. The permit limit of 3,000 lbs for the moving 12-month cumulative loading for CBOD<sub>5</sub> was exceeded during following months in CY 2009 through June 2010:**
- December (2009) – 12-month cumulative loading reported at 6,594 lbs.
  - March (2010) – 12-month cumulative loading was reported at 5,030 lbs.
  - May (2010) – 12-month cumulative loading was reported at 6,052 lbs.
  - June (2010) – 12-month cumulative loading was reported at 6,228 lbs.
  - July (2010) – 12-month cumulative loading was reported at 6,947 lbs.
  - August (2010) – 12-month cumulative loading was reported at <15,776 lbs.
- G. The permit limit of 0.75 lbs/day for the monthly average loading of TP was exceeded during following months in CY 2009 through June 2010:**

- December (2009) – monthly average loading was reported at 2.4 lbs/day
- January (2010) – monthly average loading was reported at 1.69 lbs/day
- February (2010) – monthly average loading was reported at 1.90 lbs/day
- March, (2010) – monthly average loading was reported at 3.08 lbs/day
- April, (2010) – monthly average loading was reported at 2.60 lbs/day
- May (2010) – monthly average loading was reported at 0.76 lbs/day
- August (2010) – monthly average loading was reported at 1.16 lbs/day

**H. The permit limit of 55 lbs for the moving 12-month cumulative loading for Total Phosphorus was exceeded during following months in CY 2009 through June 2010:**

- December (2009) – 12-month cumulative loading reported at 410 lbs.
- February (2010) – 12-month cumulative loading reported at 108.6 lbs.
- March (2010) – 12-month cumulative loading was reported at 203 lbs.
- April (2010) – 12-month cumulative loading was reported at 283 lbs.
- May (2010) – 12-month cumulative loading was reported at 307 lbs.
- June (2010) – 12-month cumulative loading was reported at 318 lbs.
- July (2010) – 12-month cumulative loading was reported at 335 lbs.
- August (2010) – 12-month cumulative loading was reported at 1,556 lbs.

**I. The permit limit of 9,125 lbs for the moving 12-month cumulative loading for Total Nitrogen was exceeded during following months in CY 2009 through June 2010:**

- December (2009) – 12-month cumulative loading was reported at 26,466 lbs.
- May (2010) – 12-month cumulative loading was reported at 9,184 lbs.
- June (2010) – 12-month cumulative loading was reported at 9,611 lbs.
- July (2010) – 12-month cumulative loading was reported at 9,674 lbs.
- August (2010) – 12-month cumulative loading was reported at <23,114 lbs.

**J. The permit limit of 33 col/100 mls for the monthly average concentration for Enterococcus (geometric mean) was exceeded for the following month during CY 2010:**

- March – monthly average concentration was reported at >33.1 col/100 mls\*\*  
*\*\*Note: the March 4, 2010 sample was reported at >2,429.2 col/100 mls; the March 5, 2010 sample was reported at 1,553.07 col/100 mls; the March 10, 2010 sample was reported at 1 col/100 mls.*

**K. The permit limit of 0.57 MGD (0.75 MGD beginning in December 2009) for the monthly average flow rate was exceeded during the following months in CY 2009 through June 2010:**

- May (2009) – monthly average flow rate was reported at 0.58 MGD
- June (2009) - monthly average flow rate was reported at 0.65 MGD
- November (2009) - monthly average flow rate was reported at 0.63 MGD
- December (2009) – monthly average flow rate was reported at 0.81 MGD
- March, (2010) – monthly average flow rate was reported at 0.84 MGD

**L. Failure to Meet General Clause that Requires the Discharge be Free of floating Solids, Sludge Deposits, Debris, Oil, and Scum.** Part I, B.2 of NPDES Permit DE 0020036 requires that the effluent be free of floating solids, sludge deposits, debris, oil, and scum.

- On at least one (1) occasion (March 3, 2010), the 001 Discharge was observed to contain floating solids, sludge deposits, scum, and foam. This condition also was observed approximately 200 feet downstream of 001 discharge point as well.

**M. Failure to Meet Permit Facilities Operation.** Part II, A.3 of NPDES Permit DE 0020036 requires that *the permittee shall at all times maintain in good order and operate as efficiently as possible, all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of their permit.*

- Inflow and Infiltration has been an ongoing issue at the City of Harrington and has caused or contributed to many of the violations previously listed above. The City of Harrington has not maintained communication with the Department as they stipulated in their 5-day letters. Additionally, proper planning to meet the new limitations for phosphorus, nitrogen, and CBOD<sub>5</sub> that became effective December 1, 2009, was not carried out to achieve compliance.

**N. Violation: Failure to Meet Permit Schedule of Compliance:**

Parts I.C.1 and C.2 require the permittee to comply with the requirements of the Schedule of Compliance. C.1 requires that no later than 36 months after the permit effective date (January 1, 2007), the permittee must comply with the final effluent limitations and monitoring requirements for TN, TP, and CBOD<sub>5</sub> at Outfall 001. The permittee continues to be in noncompliance with these permit limitations. C.1 further requires the submittal of periodic reports to the Department every six (6) months regarding the progress made towards meeting the final effluent limitations. C.2 requires that no later than 14 days following the Final Effluent Limitations date (December 1, 2009), the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. The

notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

- Prior to issuing Notice of Violation W-10-SWD-04, the permittee had not demonstrated compliance with the Final Effluent Limitations, and the Department had not received any progress reports since the permit was issued in January, 2007, as required in C.1.
- Prior to issuing Notice of Violation W-10-SWD-04, the permittee had not submitted the required notice of compliance or noncompliance as required in C.2.

### **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 No. DE 0020036 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 0020036 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. DE0020036 is a direct violation as cited below:

- NPDES Permit No. DE0020036, Part I.B.1 and Part I.B.2 (Effluent Limitations and Monitoring Requirements) list specific Effluent Limitations for this outfall that were not met.

- NPDES Permit No. DE 0020036, Part I.D.2 (Monitoring and Reporting) lists specific requirements for reporting that were not met.
- NPDES Permit No. DE 0020036, 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 0020036.

### **ASSESSMENT OF PENALTY**

Pursuant to the provisions of 7 Del. C. §6005(b)(3), this is written to the Respondent that on the basis of its findings, the Department is assessing the Respondent an administrative penalty of **one hundred nineteen thousand seven hundred sixty dollars** (\$119,760) 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 **seventeen thousand nine hundred sixty-four dollars** (\$17,964) pursuant to 7 Del. C. §6005(c).

Respondent shall remit two checks payable to the State of Delaware in the amounts of \$119,760 and \$17,964, 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 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

**WAIVER OF STATUTORY RIGHT TO A HEARING**

The **City of Harrington** 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 **City of Harrington** will pay the administrative penalty in the amount of **\$119,760** 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 **City of Harrington** will reimburse the Department in the amount of **\$17,964**, 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 **City of Harrington** further agrees to abide by all of the terms and conditions of this Assessment and Order.

**City of Harrington:**

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

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

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

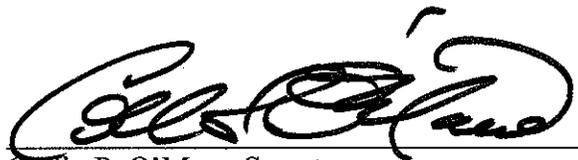
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Department's costs pursuant to 7 Del. C. §6005. The Department does not otherwise intend to convene a public hearing on these matters but reserves the right to do so at its discretion.

**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 P. 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