



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 SECRETARY'S ORDER**

Pursuant to 7 Del. C. §6005(b)(3)

ORDER NO. 2009-W-0033

BY HAND DELIVERY

**TO: Kent County Levy Court
555 Bay Road
Dover, DE 19901**

This is to notify Kent County Levy Court (Respondent), that the Department of Natural Resources and Environmental Control (Department), has determined, from information submitted by the Respondent, that collection systems maintained and operated by the Respondent caused and contributed to the discharge of pollutants into the surface water without a permit—a violation of 7 Del. C. §6003(a)(2); discharged pollutants (liquid waste), which flowed upon the ground surface and discharged into surface water without a permit—a violation of 7 Del. Admin. C. §7201-3.2.1; and discharged liquid waste from an existing system which caused liquid waste to flow into surface water, a violation of 7 Del. Admin. C. §7201-3.2.4. Accordingly, the Department is assessing an administrative penalty.

FINDINGS OF FACT

Kent County Levy Court maintains and operates a series of collection systems for the purposes of collecting, pumping, and treating wastewater from homes and businesses throughout Kent County. One such portion of the permitted collection system is a 24-inch diameter forcemain that runs from the City of Milford, DE to the Kent County Wastewater Treatment Facility. A portion of this forcemain is located along the median of Route 1 (Rt. 113 across from I. G. Burton Chevrolet) north of Milford and is the section involved in the aforementioned violations.

On Monday, December 1, 2008, at 10:45 a.m., a section of the 24-inch diameter pre-stressed concrete cylinder pipe forcemain connecting Milford to the Kent County Wastewater Treatment Plant ruptured, creating a Sanitary Sewer Overflow spilling 180,000 gallons of untreated wastewater into a storm drain system. The pipe rupture was located along the median of Route 1 north of Milford. From the time of the December 1, 2008, initial pipe rupture until 3:00 p.m. on Tuesday, December 2, 2008, approximately 90,000 gallons of untreated wastewater

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was recovered via pumper trucks, and the additional 90,000 gallons flowed into Swan Creek (and, then into the Mispillion River) via Route 1 storm drain piping and open swales.

To repair the ruptured section of 24-inch pipe on Rt. 1, Kent County personnel isolated the southern transmission system. When the valves on Milford Neck Road were closed, Kent County personnel began pumping untreated sewage out of a manhole located outside of Pump Station No. 7 (behind Milford Police Station) and directly into the Mispillion River. This pumping activity was initiated to prevent the Milford gravity system from overflowing into the City streets. Beginning Monday, December 1, 2008 (3:00PM), and ending Tuesday, December 2, 2008 (9:45PM), the Kent County Department of Public Works pumped approximately 1.55 million gallons of untreated wastewater from a manhole located outside Pump Station No. 7 (behind Milford Police Station) directly into the Mispillion River.

STATUTORY AND REGULATORY PROVISIONS

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. Admin. C. §7201-3.2.1 states

“No person shall undertake any activity that causes or contributes to the discharge of a pollutant to any surface water or groundwater except as authorized pursuant to a permit or equivalent authorization, issued by the Secretary or as prescribed by these regulations (e.g. General Permit Program requirements of §9).”

3. 7 Del. Admin. C. §7201-3.2.4 states

“No person shall discharge liquid waste from an existing septic tank or other system where such liquid waste flows to the surface of the ground or into surface water.”

CONCLUSIONS

The Department determined that Respondent violated 7 Del. C. §6003, the Regulations Governing the Control of Water Pollution ("Regulations"), and specific terms and conditions of its NPDES Permit more particularly as follows:

Respondent violated 7 Del. C. §6003(a)(2) by discharging pollutants without a permit.

Respondent violated 7 Del. Admin. C. §7201 3. 2.1 of the Regulations Governing the Control of Water Pollution, by discharging pollutants to surface water, except as authorized by the NPDES permit.

Respondent violated 7 Del. Admin. C. §7201 3. 2.4 of the Regulations Governing the Control of Water Pollution, by discharging discharge liquid waste from an existing system which caused liquid waste to flow into surface water, except as authorized by the NPDES permit.

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 the maximum administrative penalty of Ten Thousand Dollars (\$10,000) 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 \$5,117.00, pursuant to 7 Del. C. §6005(c)(1), which were incurred by the Department in the investigation of the noted violations.

Respondents shall submit two (2) checks to the Department in the amounts of \$10,000.00 and \$5,117.00 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: Office of the Attorney General, Attn: Robert F. Phillips, DAG, Department of Justice, Civil Division, 3rd Floor, 102 West Water Street, Dover, Delaware, 19904.

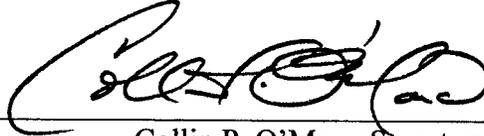
PUBLIC HEARING

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 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

Respondents may prepay the administrative penalty of \$10,000.00 and the Department's estimated costs in the amount of \$5,117.00 in the manner described in the attached waiver. By doing so, Respondents waive their right to a hearing and the opportunity to appeal or contest the Assessment, which shall become a final Order.

Date: 17 September 2009



Collin P. O'Mara, Secretary

CPO:RFP:jmb/48-26.doc

cc: Katherine Bunting-Howarth, Director
Robert F. Phillips, Deputy Attorney General
R. Peder Hansen, Program Manager
Glenn Davis, Program Manager
Jemifer Bothell, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

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

Respondent will pay the administrative penalty in the amount of \$10,000.00 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 Office of the Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, Delaware, 19904 ; and

Respondents will reimburse the Department in the amount of \$5,117.00, which represents the Department's estimated costs. The reimbursement shall be sent within 30 days of receipt of this assessment and Order. The check shall be payable to the "State of Delaware" and be directed to the Office of the Attorney General, Department of Justice, 102 West Water Street-3rd Floor, Dover, Delaware, 19904."

Kent County Levy Court

DATE: _____

BY: _____

TITLE: _____

ACKNOWLEDGEMENT OF RECEIPT

I, _____, of the Kent County Levy Court,
hereby acknowledge receipt of Notice of Administrative Penalty Assessment and Secretary's
Order No. _____, hand delivered by _____,
of the DNREC, Division of Water Resources, Surface Water Discharges Section.

KENT COUNTY LEVY COURT

Date of Receipt: _____

By: _____

Printed Name: _____

Title: _____