



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 Delaware Code §6005

ORDER NO. 2015-W-0019

**PERSONALLY SERVED BY
AN ENVIRONMENTAL PROTECTION
OFFICER**

Issued To:

**Junior's Auto Repair
C/O Junior Cruz
621 Garashes Lane
Wilmington, DE 19801**

**Junior's Auto Repair
621 Garashes Lane
Wilmington, DE 19801**

This is to notify you, Junior Cruz, owner and operator of the Facility, Junior's Auto Repair (herein collectively referred to as "Junior's") that the Department of Natural Resources and Environmental Control, Surface Water Discharges Section (herein referred to as "Department"), has determined that Junior's has failed to obtain permit coverage under the General Storm Water Program, and is in violation of 7 *Del. C.* § 6003 and 7 *Del. Admin. C.* § 7201 of the Delaware Regulations Governing the Control of Water Pollution; therefore, the Department is assessing Junior's an administrative penalty.

BACKGROUND

The Department is responsible for the administration of the National Pollutant Discharge Elimination System ("NPDES") program and enforcement of the NPDES permits issued under that program of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, and 7 *Del. C.*, Chapter 60., which has been delegated to the State of Delaware by the federal government. Pursuant to this authority, the Department has promulgated the Delaware Regulations Governing the Control of Water Pollution (herein referred to as the "Regulations").

Delaware's Good Nature depends on you!

Junior's operates an auto repair and salvage yard at 621 Garashes Lane, in Wilmington, Delaware. Because Junior's has failed to provide the required Storm Water Plan ("SWP") or map to the Department, the exact acreage of Junior's and Junior's onsite practices remain unknown to the Department.

FINDING OF FACTS

Beginning in 2006, Junior's submitted a Notice of Intent ("NOI") to obtain permit coverage under the General NPDES Permit for storm water discharges from industrial sites. The Department did not authorize the NOI, because of Junior's failure to meet the program's requirements for authorization. Since 2006, Junior's remained in operation and continued to discharge storm water without authorization. Junior's subsequently failed to submit an updated NOI or SWP in 2011, which is a violation of the Regulations, specifically 7 *Del. Admin. C.* § 7201-9.0 et seq.

As a condition of 7 *Del. Admin. C.* § 9.1.1 of the General Permit for storm water discharges from industrial sites, facilities engaged in industrial activities are required to obtain permit coverage through the Department. As stated in § 9.1.1.1.2.2 of the Regulations, facilities that meet the listed Standard Industrial Codes ("SIC") must submit a NOI to obtain authorization to discharge storm water from industrial sites. In addition, as required by § 9.1.5, facilities that meet said requirements must also submit a SWP to the Department for approval. Junior has failed to meet these conditions and is therefore subject to penalty.

In 2006, the Department issued two Notices of Violation ("NOV"). The first NOV (W-06-SWD-02) required the submission of an NOI, which Junior's submitted to the Department. The Department, however, did not authorize the NOI, as the site failed to meet the conditions of the NOI. The second NOV (W-06-SWD-60) was issued four months later, and required Junior's to submit a SWP as required by § 9.1.5 of the Regulations. Junior's did not submit the required SWP, and failed to meet the conditions of the second NOV.

In July 2007, a site visit was made to Junior's to address the outstanding issues and determine if any of the previous issues had been addressed. The inspector, Amber Moore, noted that the conditions of Junior's had not changed and none of the issues had been addressed. At the time of the inspection, an Environmental Protection Officer was present, who fined Junior's \$600.00 for failing to obtain permit coverage or develop a SWP.

Due to staff changes in the Department, no site visits were made to Junior's until January 2012. At the time of this inspection, the facility was found to be out of compliance with § 9.1 of the Regulations. The inspection found multiple violations, including, but not limited to: failure to submit an updated NOI and SWP; Junior's had not implemented an analytic sampling program; oil spills throughout Junior's; and lack of Best Management Practices and Good Housekeeping practices implemented by Junior's. Junior's was given 60 days to address the issues onsite.

In May 2012, a NOV was issued to Junior's for failure to address the violations listed in the January inspection report. The NOV (W-12-SWD-02) required Junior's to submit an updated NOI within 30 days and to submit a SWP within 90 days; implement analytical monitoring; and improve onsite Best Management Practices and Good Housekeeping practices.

Junior's requested a meeting with the Department in regards to the May 2012 NOV; this request was granted and a meeting was held with Surface Water Staff in September 2012. At that time, Junior's notified the Department that a consultant had been hired to help Junior's obtain compliance with the Regulations, and that a SWP was being developed. The Department granted Junior's a 60 day extension in order to allow the consultant time to develop the SWP. In December 2012, the consultant notified the Department that they would not be developing a SWP or working with Junior's due to a lack of payment for services by Junior's.

In May 2014, a follow-up site visit was made by Surface Water staff members, Beau Croll and Bill Tanner. A walk through was done of Junior's, which disclosed that Junior's has not addressed its outstanding compliance issues. At this time, Junior's has failed to address any of the violations or communicate with the Department. Junior's continues to discharge storm water without a permit and remains in violation of the Regulations.

STATUTORY AND REGULATORY VIOLATIONS

The following violations were noted at Junior's. Junior's has failed to address these violations:

7 *Del. C.* § 6003(a)(2) states: "No person shall, without first having obtained a permit from the Secretary, undertake any activity [i]n a 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"

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"

As described in the May 2012 Notice of Violation, Junior's has also failed to meet the prescriptions of 7 *Del. Admin. C.* § 7201-9.1, to wit:

§ 9.1.1.1.2: Requires that industrial facilities with a designated SIC code must obtain permit coverage;

§ 9.1.4.2.1.1: Requires the implementation of an analytic sampling program;

§ 9.1.4.3.1: Requires that Quarterly Visual Monitoring be implemented;

§ 9.1.5.1.1: Requires that a Storm Water Plan be developed and implemented;

§ 9.1.5.7.2.2: A map of the Facility is required with Storm Water Plan;

§ 9.1.5.7.3: Requires industrial material inventory and management;

§ 9.1.5.7.3.1: Requires use of Good Housekeeping Practices;

§ 9.1.5.7.3.4: Requires implementation of reasonable measures to minimize the exposure of industrial materials to storm water;

§ 9.1.5.7.3.6: Requires use of Best Management Practices.

CONCLUSIONS

The Department has determined that Junior's has violated 7 Del. C. § 6003 and 7 Del. Admin. C. § 7201-9.0 et seq.

Junior's has failed to address these violations after three separate NOVs over the period of 2006-2012. To date, Junior's continues to discharge storm water without authorization.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Junior's that on the basis of its findings, the Department is assessing Junior's an administrative penalty of **Nine Thousand Four Hundred Dollars** (\$9,400) for the violations identified in this Assessment and Order.

Pursuant to 7 Del. C. § 6005(c), Junior's shall additionally reimburse the Department in the amount of **One Thousand Four Hundred and Ten Dollars** (\$1,410) for its recoverable costs incurred in connection with these violations.

Junior's shall remit two (2) checks payable to the State of Delaware in the amounts of \$9,400 and \$1,410, within thirty (30) days of receipt of this notice, to William J. Kassab, Esq., Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, Delaware, 19901.

The Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Junior's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees.

MANDATORY CORRECTIVE ACTIONS

Junior's must also complete the following actions detailed below within the designated period provided or become subject to additional penalties:

Within 30 days of receipt of this Administrative Penalty Assessment and Order, Junior's must submit a Notice of Intent form for NPDES Industrial Storm Water General Permit coverage in accordance with *7 Del. Admin. C. § 9.1.3.1.1* to the Department for review.

- i. **Failure to submit the Notice of Intent form per above will result in a \$100 per day administrative penalty being assessed against Junior's.**

Within 60 days of receipt of this Administrative Penalty Assessment and Order, Junior's must submit a Storm Water Plan to the Department for review. The Storm Water Plan must meet the guidelines as specified in *7 Del. Admin. C. § 9.1.5* and incorporate the Analytic Sampling requirements of *7 Del. Admin. C. § 9.1.4*.

- ii. **Failure to submit the Storm Water Plan per above will result in a \$500 per day administrative penalty being assessed against Junior's.**

PUBLIC HEARING

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Junior's, 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)* and (c). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so in its discretion.

PRE-PAYMENT

In the alternative, Junior's may prepay the administrative penalty of **\$9,400** and the Department's estimated costs in the amount of **\$1,410** in the manner described in the assessment section above. By doing so, Junior's waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

DATE: 5/28/15



David Small, Secretary
Department of Natural Resources
& Environmental Control

cc: Virgil Holmes, Division Director
William J. Kassab, Deputy Attorney General
Jennifer Roushey, Program Manager
Bryan Ashby, Program Manager
Beau Croll, Environmental Scientist
Roy W. Heineman, Paralegal
Jenny Bothell, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

Junior Cruz, owner and operator of Junior's Auto Repair, and Junior's Auto Repair hereby waive their right to a hearing and their opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Junior Cruz and Junior's Auto Repair** will pay the administrative penalty I the amount of **\$9,400.00** 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 William J. Kassab, Esq., Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901;
2. **Junior Cruz and Junior's Auto Repair** will reimburse the Department in the amount of **\$1,410.00**, 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 made payable to the State of Delaware and shall be directed to William J. Kassab, Esq., Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901; and
3. **Junior Cruz and Junior's Auto Repair** further agree to abide by all of the terms and conditions of this Assessment and Order.

Junior's Auto Repair

DATE:

BY: _____

Title: _____