



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
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Office of the Secretary

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CONCILIATION ORDER BY CONSENT
SECRETARY'S ORDER No. 2016-W-0025
Issued Pursuant to 7 *Del. C.* § 6005(b)

Issued To:

The City of Dover
Mr. Scott Koenig,
City Manager
15 Loockerman Plaza
Dover, DE 19903

This Secretary's Order reflects an effort by the City of Dover ("City") and the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") to address past and current violations and to ensure compliance with 7 *Del. C.* Chapter 60, the Phase II MS4 Permit (NPDES Permit# DE0051161, State Permit# WPCC 3033/03) and Del. Admin. C. § 7201, State of Delaware *Regulations Governing the Control of Water Pollution*, § 7201-9.1 of the "Regulations Governing Storm Water Discharges Associated with Industrial Activities" (the Regulations).

BACKGROUND

On August 27, 2003 a Phase II Municipal Separated Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit # DE0051161 was issued to the City to authorize the discharge of storm water from/through all portions of the municipal separate storm sewer systems that are owned or operated and maintained by the City and located in the City of Dover, Kent County, Delaware. The events enumerated below relate to incidents

that occurred at the City's Public Works II (Water Street) Site and the Warehouse Fleet Yard (Pear and William Streets) Site as more particularly delineated herein.

On July 15, 2013, staff from the Department's Surface Water Discharge Section (SWDS) conducted an inspection of the Water Street Site and found it to be in violation of its NPDES Permit # DE 0051161 and in violation of several provisions of the Regulations, to wit:

Industrial Stormwater Background

On August 14, 2013, the Department issued a "Manager's Deficiency Warning Letter" to the City requiring the City to submit the following to the Department for both the Water Street and Warehouse/Fleet Yard:

1. Notice of Intent (NOI) within 7 days of receipt of the warning letter;
2. Storm Water Plan (SWP) within 30 days of receipt of the warning letter;
3. Correction of all other violations at the Water Street Site within 60 days of receipt of the warning letter.

The Department received the NOI on August 27, 2013. On September 23, 2013, the City informed the Department that the SWP was expected to be completed "in the next couple of weeks".

On January 13, 2014, the Department received the City SWP with a date of November 2013. The SWP title page indicated that it represented both the Water Street site and the Pear and William Street sites. However, the Regulations do not allow the operators of different sites to incorporate both sites into one SWP. In addition, the submitted Plan was found to lack sufficient detail about the activities and storm water management found on these sites.

On January 16, 2014, SWDS staff Sandra Goodrow and Beau Croll conducted a follow-up inspection of the City's Water Street site. They observed that multiple previously cited outstanding issues had not been effectively resolved. A NOV (W-14-SWD-03) was issued to the City to address the outstanding issues still existing at the Water Street. During the same time period, the City received an NOV (W-14-SWD-04) addressing outstanding issues on the Pear and William Street site. The City failed to effectively handle both sets of issues to bring these sites into compliance.

A follow-up inspection was conducted at both sites on September 21, 2015 for both sites

to determine the current compliance status. At the time of the inspection, both sites were determined to be out of compliance. (All violations are addressed in the Industrial Stormwater Required Actions of the Conciliation section).

MS4 Background

On April 17, 2014 the City was issued Notice of Violation (NOV) W-14-SWD-05 for a series of violations under NPDES Permit # DE 0051161. The City failed to meet conditions of Part II.A.3 in reference to the Illicit Discharge and Elimination Section by failing to fully implement the program as specified by the permit. The City had failed to implement ordinances that provided comprehensive prohibitions for non-stormwater discharges as required by Part II.A.3.b. of the permit. While ordinances were developed, they failed to provide comprehensive prohibitions of non-stormwater discharges that protected water quality; therefore, these ordinances do not meet the requirements of Part II.A.3.b.

The NOV also found the City in violation of failing to develop formal procedures for investigating illicit discharges that included the full implementation of a program for illicit discharges. The NOV found that the City did not have a comprehensive program as stated by the permit, which requires the City to *"develop, implement and adequately fund a program to detect and address non-storm water discharges, including illegal dumping, to its separate storm sewer system."* Permit conditions require *"both proactive and reactive measures to detect illicit discharges ...e.g. visual screening of outfalls for dry weather discharges, promoting public reporting of suspicious discharges and investigating reports of such discharges ...This program shall establish priorities and schedules for screening the entire municipal separate storm sewer system at least once during the five-year term of this permit."* The program for the City failed to provide comprehensive measures for dry weather screenings of outfalls, no formal method for reporting or receiving illicit discharges, and no formal tracking mechanism with inspections/follow-up. In the Response Letter, the City acknowledged it was deficient in developing standard operating procedures for dry weather flows/illicit discharges; the letter states that formal procedures will be developed with the arrival of new staff. Additionally, the City stated that catch basin cleaning has been conducted and it was combined with dry weather screening; again the city reiterates that a

formal procedure will be developed with the arrival of new staff.

Issues with the Illicit Discharge and Elimination Section were previously cited in NOV W-11-SWD-05 on June 22, 2011, as the City then failed to fully implement various portions of the Part II.A.3.

In accordance with Part II.A.6., Pollution Prevention and Good Housekeeping, the City failed to perform a full evaluation of the municipal operations. The City failed to provide any of the requested information including inspection reports, tracking, maps, and an inventory of facilities. The Response Letter states that copies of inspection reports will be provided to the Department as they are conducted by the Kent Conservation District (KCD). The Response Letter also states that the Public Works Department is working on a tracking mechanism for inspection of municipal facilities. Additionally, the Response Letter requested the submittal of a GIS layer to provide an inventory of municipal operations.

As required by Part IV.B. Preparation and Submission of an Annual Report, the City failed to submit an annual report on November 1, 2013. (This report was later received on May 12, 2015). The Response Letter asks for a change of date with the annual report and stated that additional documents from Compliance Environmental, Inc. (CEI) will be provided. The Department never granted this request; therefore, all dates in the permit should be maintained.

FINDINGS OF VIOLATIONS

Part II.A.3. Illicit Discharge Detection and Elimination

1. The City has still not provided any documentation for the illicit discharge program as required by the 2014 Notice of Violation. The City has failed to provide any evidence or documentation that formal procedures were developed in the areas of tracking, investigating, and follow-up. While the Department acknowledges the City has done catch basin cleaning, this does not adequately address the required outfall screenings as stated in Part 11.A.3 of the program. The illicit discharge program must include comprehensive measures to address all aspects of the permit. Furthermore, this violation has been continuous since 2011 and has been referenced in a previous Notice of Violation (NOV W-11-SWD-05) before NOV W-14-SWD-05. The City indicated in

the 2012 Annual Report, 2013 Annual Report, and 2014 Response Letter that this violation will be addressed. At this time, the Department has not received any formal updates.

2. The City has provided no information in regards to the updates in monitoring protocols for dry weather flows/illicit discharges. In the 2014 Response letter, the City “acknowledges” it is deficient in this area. At this time, it has given no indication that this has improved or any measures have been implemented. The Department views this non-submission as a continued violation.
3. The City failed to address the ordinances violation listed in NOV W-14-SWD-05. The current ordinances do not meet the provisions of the permit under Part II A.3.b., as they do not provide protection of water quality necessary with the Phase II MS4 permit. The use of riparian buffers does not adequately address the protections of illicit discharges as required under the MS4 program. The Department will provide example ordinances for the City to review. Sample ordinances will be provided separate from this Order.
4. In the 2014 Response Letter, the City stated: “Information will be shared on the City’s website to educate the public about illicit discharges and to provide a phone number for reporting potential illicit discharges to the Code Enforcement Division.” To date, the City has failed to provide this information.

Part II.A.6. Pollution Prevention and Good Housekeeping

5. The City continuously failed to provide inspection information for their municipal facilities and operations. The City has failed to provide any of the inspection reports that they or the Kent Conservation District may have completed for post-construction. The City acknowledges in the 2013 annual report that maintenance on city-owned facilities was not completed. Additionally, no inventory as specified by the 2014 NOV has been submitted to the Department in any form.

Part IV.B. Preparation and Submission of an Annual Report

6. The City has failed to submit an annual report in the timeframe specified by the permit for November 1. This issue has been repeated throughout the permit term and has been addressed by the Department in NOV W-11-SWD-05 and other correspondence.
7. In the most recent annual report (2013), the City failed to complete numerous programmatic goals. The City failed to complete or partially completed the public

education and outreach and the public participation programs. These programs have been completed in previous annual reports and the City has given no indication of how it will address these matters in the future.

CONCILIATION

The Department and the City agree that the resolution of these outstanding issues without further protracted formal enforcement actions is in the best interest of the Parties. The Parties agree this resolution can be effectively accomplished via this Order by stipulating the corrective actions required to obtain compliance with the Phase II MS4 Permit and to bring both the Water Street and Pear and William Street sites into regulatory compliance in a systematic manner. The Order also provides the Department with enforceable assurances that the necessary activities will be timely undertaken and completed.

NOW THEREFORE, the Department and the City jointly execute this Order to effectuate the purposes and actions delineated herein, and, pursuant to *7 Del. C. §6005(b)(2)*, it is Ordered and Agreed as follows:

MS4 Required Actions

1. Within **30 days of receipt of this Order**, the City must submit an updated Illicit Discharge Detection and Elimination Plan that includes an overview of how the IDDE program will operate and meet standards beset in the permit.
2. Within **30 days of receipt of this Order**, the updates for the dry weather screening monitoring program must be provided to the Department. The City must include any results of the program to the Department or if these programs have not been implemented, the City must provide a detailed proposal and timeframe for their implementation within **60 days of receipt of this Order**.
3. Within **60 days of receipt of this Order** the City must provide a draft ordinance to the Department that meets the necessary provisions of the permit for water quality protection under the Phase II MS4 program. The ordinance must meet the aforementioned criterion that includes provisions for protecting water quality and discharge prohibitions specifically related to stormwater.
4. Public information for the illicit discharge program must be included on the website

- within **60 days of receipt of this Order.** The Department would accept another medium for reaching the public if the City chooses not use the website as they originally stated.
5. Any completed inspections under the Good Housekeeping Program from 2013 to present shall be submitted to the Department within **30 days of receipt of this Order.** The subsequent annual reports should include inspection reports for these programs effective November 1, 2015.
 6. Within **60 days of receipt of this Order,** the City must provide an inventory of all municipal operations. This should include any operations which the City maintains through the Good Housekeeping program and include if it is maintained through the Kent Conservation District (KCD) or the City. These facilities can include, but are not limited to, maintenance yards, park operations, and other municipal based operations that have the potential to contribute stormwater pollution. The inventory should be provided through an Excel Spreadsheet.
 7. The City must adhere to the timeframe in the permit for the submission of the annual report. Failure to submit the annual report, unless otherwise approved in writing by the Department, will result in appropriate enforcement action pursuant to 7 Del. C. §6005.
 8. The subsequent annual report must show improvement in the public education and outreach and public participation program. Failure to improve these programs will result in future enforcement actions and possible penalties. For any other programmatic goals not met in the 2013 annual report, the City must show improvement for the subsequent year's annual report. Failure to meet annual report programmatic goals in future years may be subject to appropriate enforcement action pursuant to 7 Del. C. §6005.

Industrial Stormwater Required Actions

Warehouse/Fleet Yard

1. Update the site map in the SWP according to Section 9.1.5.7.2.2. of the Regulations within **30 days of receipt of this Order.**
2. Identify all outfalls onsite according to Section 9.1.6 of the Regulations within **30 days of receipt of this Order.** Multiple outfalls were identified during the inspection, which were not marked onsite or on the site map. The Respondent must begin monitoring these outfalls as part of the second semi-annual benchmark sampling in 2016.

3. Improve Best Management Practices (BMPs) to meet Benchmark Concentration values according to 9.1.4.4.1.6 of the Regulations. The City must implement BMPs to reduce Total Suspended Solids within **30 days of receipt of this letter.** . The City must submit any benchmark monitoring results for samples taken subsequent to receiving this Order to the Department for review and include a detailed description of corrective actions taken if a benchmark exceedance is identified. The Department will notify the City in writing when submission of benchmark monitoring results is no longer warranted. In addition, any future benchmark exceedances identified and corrective actions taken must be documented in the SWP maintained at the facility.
4. The site must update the spill response procedures and practices in the SWP for training according to Section 9.1.5.7.6 of the Regulations within **30 days of receipt of this Order.**
5. The Respondent must also improve the overall Good Housekeeping according to Section 9.1.5.7.3.1 of the Regulations within **30 days of receipt of this Order.**

Water Street

1. Update the site map in the SWP according to Section 9.1.5.7.2.2. of the Regulations within **30 days of receipt of this Order.**
2. Identify all outfalls onsite according to Section 9.1.6 of the Regulations within **30 days of receipt of this Order.** Multiple outfalls were identified during the inspection, which were not marked onsite or on the site map. The Respondent must begin monitoring these outfalls as part of the second semi-annual benchmark sampling in 2016. This includes the catch basins throughout the site.
3. Improve Best Management Practices to meet Benchmark Concentrations values according to Section 9.1.4.4.1.6 of the Regulations. The City must implement BMPs to reduce Total Suspended Solids within **30 days of receipt of this Order.** The City must submit any benchmark monitoring results for samples taken subsequent to receiving this Order to the Department for review and include a detailed description of corrective actions taken if a benchmark exceedance is identified. The Department will notify the City in writing when submission of benchmark monitoring results is no longer warranted. In addition, any future benchmark exceedances identified and corrective actions taken must be documented in the SWP maintained at the facility.
4. The Respondent must relocate or improve the storage of street sweeping waste located at

the facility. Any waste stored onsite, must be listed in the SWP and follow all requirements as specified in Section 9.1.5.3.1 of the Regulations within **30 days of receipt of this Order**.

5. The Respondent must also improve the overall Good Housekeeping according to Section 9.1.5.7.3.1 of the Regulations within **30 days of receipt of this Order**.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to the City that on the basis of its findings, the Department assesses the City an administrative penalty of \$100,000 for the combined violations identified in this Order. The City has agreed to perform the Environmental Improvement Project (EIP) identified *infra*. The Department agrees to offset \$75,000 of the assessed penalty expressly contingent on the completed performance of this EIP.

The City shall remit the remaining amount of \$25,000 as follows: one check in the amount of \$21,250, to pay the administrative penalty, pursuant to 7 *Del. C.* § 6005(b)(3); and one check in the amount of \$3,750 for the Department's costs, pursuant to 7 *Del. C.* § 6005(c)(1). Both checks should be payable to the State of Delaware and mailed to Ms. Devera B. Scott, Esquire, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, Delaware, on or before July 1, 2016. Additionally, should the City fail to achieve any one of the aforementioned deadlines, the City shall be assessed \$1,000.00 per day for each day of non-compliance, beginning the 1st day of August 2016.

Notwithstanding anything stipulated herein to the contrary, the Department reserves the right to take additional enforcement actions regarding these violations or any other violations committed by the City, including, but not limited to, one or more of the following: (1) an action under 7 *Del. C.* §6005(b)(1) seeking penalties for past violations; (2) an action under 7 *Del. C.* §6005(b)(2) seeking penalties for continuing violations; (3) an action in the Court of Chancery pursuant to 7 *Del. C.* §6005(b)(2) seeking a temporary restraining order or an injunction; or (4) the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§6005(b)(3) & (c)(1).

ENVIRONMENTAL IMPROVEMENT PROJECT

An Environmental Improvement Project (EIP) is defined as an environmentally beneficial project, which a defendant/respondent agrees to undertake in settlement of an enforcement action, but that the defendant/respondent is not otherwise legally required to perform. The City will undertake two EIPs as part of this Order. For the first EIP the City has chosen to undertake as part of this Order is the construction of a salt barn in Schutte Park for storage of their road salt. The storage buildings minimize the possibility of contaminating surface water with salt runoff and an impervious pad prevents seepage of salt into groundwater. This salt barn will be designed to have capacity for all of the City's salt needs, prevent stormwater contact with stored salt, facilitate transition of salt from storage to operational uses without impacting the environment and be built on an impervious pad. The cost of the salt barn is estimated at \$150,000 including design and construction. The salt barn will be constructed within 14 months of receipt of this Order. Upon completion of the salt barn, the City will submit to DNREC construction plans and receipts of design and construction work within 60 days.

For the second EIP, the City shall remove stores of material and eliminate public works activities from the site of the old Public Works II (PWII) maintenance facility, convert impervious surface to meadow, and create a riparian buffer to improve water quality in the adjacent St. Jones River. The site's juxtaposition to the St. Jones River puts the facility at increased risk of a pollutant discharge from salt, pesticides and herbicides, cold patch, mulch, stone and other materials stored at the site. The PWII discharges stormwater via surface flow and four (4) catch basins that are connected to dual 42-inch pipes that discharge into the St. Jones River. The work of relocating stockpiled materials, relocating operations, removal of concrete tanks, and creation of a meadow and riparian buffer will primarily be performed by City of Dover Public Works staff. As such the cost of these activities will be demonstrated through an accounting of the cost of the salaries of Public Works personnel and equipment. Additional costs will include purchasing trees, plants, seeds, and soil amendments. The total cost is estimated to be \$37,793. The project will be constructed within 32 months of receipt of this Order. No later than 60 days after the completion of the PWII project, the City will submit to the Department documentation of the completion of the project, including the receipts for the work performed.

The Department may provide oversight to the City to ensure that a project is implemented pursuant to the provisions of this Order and to determine its legal recourse if the

EIP is not performed adequately. Failure to complete the EIP as described in the Order may result in additional enforcement action pursuant to 7 Del. C. §6005.

PUBLIC HEARING AND APPEAL RIGHTS

By accepting the stipulations contained herein and executing this Order, the City formally acknowledges that it has read and understood this Order and voluntarily waives its right to a hearing and to appeal or contest this Order and further agrees to perform each of the actions listed in this Order pursuant to the schedule set forth herein.

FOR THE STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

6/22/16
Date:

David Small
David Small, Secretary
Department of Natural Resources
& Environmental Control

FOR THE CITY OF DOVER

6/29/2016
Date

Scott D. Koenig
Scott Koenig, City Manager
City of Dover

cc: Virgil Holmes, Division Director
Devera B. Scott, Deputy Attorney General
Jennifer Roushey, Program Administrator
Bryan Ashby, Program Manager
Roy W. Heineman, Paralegal