



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE: (302) 739-4403
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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2016-WS-0005

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:
Oakwood Village at Lewes, LLC
Mr. David McGuigan and Mr. Dennis J. Dinger
150 Lafferty Lane
Dover, DE 19901

Registered Agent:
G&L Holdings, Inc.
150 Lafferty Lane
Dover, DE 19901

Dear Messrs. McGuigan and Dinger:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Oakwood Village at Lewes, LLC ("Respondent") in violation of 7 *Del. C.* Chapters 40 & 60, 7 *Del. Admin. C.* §5101 of the *Sediment and Stormwater Regulations*, and 7 *Del. Admin. C.* § 7201 of the *Delaware Regulations Governing the Control of Water Pollution*. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del. C.* § 6005(b)(3).

BACKGROUND

Respondent is a multi-phase subdivision in Sussex County, Delaware, comprised of 63.63 acres with 115 single family units. This subdivision is being built in phases and is in the process of completing the final phase-Phase 3.

On or about July 11, 2014, a significant sediment-laden discharge occurred, originating from the Respondent's construction site, migrating from said construction site onto the adjacent property. This discharge was witnessed and documented (photo) by a concerned citizen who reported this incident to the Department. Subsequently, on July 15, 2014, staff from the

Delaware's good nature depends on you!

Department's Sediment and Stormwater Program (S&SP) visited Respondent's construction site to evaluate the incident and documented the following unsatisfactory issues:

1. All of the Stabilized Construction Entrances (SCEs) were inundated with sediment;
2. The berm/grading completed at the southwest side of the site is eroding and overwhelming the silt fence. Additional silt fencing needs to be placed along the swale to control sediment flow;
3. Many of the recently installed catch basins are undermined and need corrective action to properly control stormwater flow;
4. Some areas require vegetative stabilization;
5. Silt fence is not appropriate for the amount of drainage area, is not properly trenched, and has been overwhelmed with soils/sediment;
6. General maintenance had not been consistently performed.

In addition to the physical site condition, the S&SP staff discovered that the administrative monitoring document requirements delineated in 7 Del. Admin. C. § 7201 of the *Delaware Regulations Governing the Control of Water Pollution*, e.g., incident reports, weekly reports and logs, and Certified Construction Reviewer Reports were not at the site.

On August 15, 2014, S&SP staff conducted another construction site review and documented their observations in a Construction Site Stormwater Management Review Report. This report basically indicated that the six deficiency items discovered on the July 15, 2014, site visit were still outstanding.

On August 29, 2014, S&SP staff conducted a construction site review and documented their findings in a Construction Site Stormwater Management Review Report. This report indicated that deficiency items one and four identified at the July 15, 2014, site visit, as described *supra*, were satisfactorily completed; the remaining issues were still outstanding.

On September 2, 2014, the S&SP issued Notice of Violation (NOV) E-Y2014-005 to the Respondent, listing the outstanding physical and administrative deficiencies still present at the construction site, outlining required compliance actions, and requiring the Respondent to schedule a meeting with the Department within 10 days of the date of the NOV to discuss current Plan inadequacies and develop a plan forward to bring the site into compliance.

On September 17, 2014, S&SP staff conducted a construction site review and documented their findings in a Construction Site Stormwater Management Review Report. This report indicated that deficiency item three identified at the July 15, 2014 site visit, as described *supra*, has been partially satisfied; the remaining issues were still outstanding.

On October 24, 2014, S&SP staff conducted a construction site review and documented their findings in a Construction Site Stormwater Management Review Report. This report indicated that deficiency items five and six identified at the July 15, 2014 site visit, as described *supra*, still remain outstanding. In addition, an unauthorized temporary SCE was constructed

comprised of soil instead of DE #3 stone as prescribed by the specifications. To date, these issues remain outstanding.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

The Department has determined that Respondent has committed the following violations:

1. Violation of 7 *Del. C.* § 6028 for failure to report the discharge of sediment-laden water to the Department;
2. Violation of 7 *Del. Admin. C.* § 5101-4.5 of the *Delaware Sediment and Stormwater Regulations* for failure to timely stabilize a stormwater conveyance swale;
3. Violation of 7 *Del. Admin. C.* § 7201-9.2.4.2 of the *Delaware Regulations Governing the Control of Water Pollution* for (1) failure to conduct inspections of erosion and sediment controls and stormwater management practices to next business day following a rainfall event that results in runoff and (2) failure to conduct weekly maintenance inspections of erosion and sediment controls and constructed stormwater management measures;
4. Violation of 7 *Del. Admin. C.* § 7201-9.2.4.3 of the *Delaware Regulations Governing the Control of Water Pollution* for failure to maintain the written records for erosion and sediment control review on the site;
5. Violation of 7 *Del. Admin. C.* § 7201-9.2.5 of the *Delaware Regulations governing the Control of Water Pollution* for blatantly compromising sediment controls permitting sediment-laden water to flow off the premises to an adjacent property and failing to timely repair an overwhelmed perimeter silt fence.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Oakwood Village at Lewes, LLC, has violated the above cited statutory and regulatory provisions.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of **\$36,900** for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of **\$5,535** pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of **\$36,900** to pay the penalty and one check to the Department in the amount of **\$5,535** to pay the estimated costs

within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: William J. Kassab, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, 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 Respondent's site, including but not limited to, one or more of the following: an action under 7 *Del. C.* §6005(b)(1) seeking penalties for past violations, action under 7 *Del. C.* §6005(b)(2) seeking penalties for continuing violations, action in the Court of Chancery pursuant to 7 *Del. C.* §6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§6005(b)(3) and (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 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 at its discretion. If no public hearing is requested within 30 days, this Order shall become final.

Any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board, pursuant to 7 *Del. C.* §6008(a), within twenty (20) days of the receipt or publication of the Secretary's final order.

If no hearing is requested and no appeal is filed, the administrative penalty of **\$36,900** and costs in the amount of **\$5,535** are due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting two (2) checks payable to the State of Delaware in the amounts of **\$36,900** and **\$5,535**, and mail to: William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, Delaware, 19901. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order. To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph; (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee that should be made payable to the "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph; (302) 739-9000

If you have any questions, please contact Ms. Jamie H. Rutherford, Environmental Program Manager II, Sediment and Stormwater Program at 302-739-9921.

2/25/14
Date


David S. Small, Secretary

cc: William J. Kassab, Deputy Attorney General
Frank Piorko, Director
Robert Palmer, Administrator
Jamie Rutherford, Program Manager
Matthew Watkins, Program Manager
Roy Heineman, Paralegal
Jennifer Bothell, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING AND APPEAL

Oakwood Village at Lewes, LLC hereby acknowledges that it has read and understands this Notice, and voluntarily waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. Oakwood Village at Lewes, LLC will pay the administrative penalty in the amount of **\$36,900** 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, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19901; and
2. Oakwood Village at Lewes, LLC will reimburse the Department in the amount of **\$5,535** 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 be directed to William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19901.

Oakwood Village at Lewes, LLC

Date: _____

By: _____

Title: _____