



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No. 2017-W-0014

Re: The City of Rehoboth Beach's Consolidated Applications Seeking Regulatory Approvals for the Construction and Operation of a Treated Effluent Pumping Station, a Force Main, and an Ocean Outfall in Rehoboth Beach, Sussex County.

Date of Issuance: May 25, 2017

Effective Date: May 25, 2017

INTRODUCTION

Pursuant to 7 *Del. C.* §§ 6003, 6004(b), 6006(4) and other relevant authority, the Secretary of the Department of Natural Resources and Environmental Control ("Department") issues this Order on the City of Rehoboth Beach's ("City") six applications for regulatory approvals ("Applications").¹ The City seeks the approvals to construct and operate a treated effluent pumping station, a force main, and an ocean outfall structure (collectively called the "Ocean Outfall") for the City's wastewater treatment plant ("WWTP") at Bay Road, Rehoboth Beach, Sussex County.

The Department confines its review of the Applications to determining whether the Applications satisfy the Department's regulatory requirements. This Order and the Department's consideration of the Applications does not entail a reevaluation of possible alternatives to the

¹ This Order considers six applications that seek: 1) to renew and amend the National Pollutant Discharge Elimination System ("NPDES") permit; 2) a wastewater facility construction permit; 3) a coastal construction permit for construction on the beach area; 4) a subaqueous lands permit for use of subaqueous lands; 5) a water quality certification for the construction in the water, such as the dredging; and 6) a federal consistency determination that requires a review of all the applicable Department policies, because of the federal dredging permit under review by the United States Army Corps of Engineers ("USACE").

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Ocean Outfall. Instead, the Department's review of the Applications focuses on whether the City's selected alternative, the Ocean Outfall, satisfies the conditions for obtaining the sought regulatory approvals. In the narrow context of evaluating the City's Applications, the Department lacks the statutory authority to require that the City reevaluate or select an alternative to the Ocean Outfall.

The Department notes that many of the public comments it received during the public comment period and public hearing on the City's Applications focus on the City's selection of the Ocean Outfall, particularly the comments opposed to the Ocean Outfall. These comments generally requested that the Department require the City to reevaluate alternatives to the Ocean Outfall or that the Department reconsider its prior decision to provide the City financing from the Water Pollution Control Revolving Fund ("WPCRF"). These comments, however, do not directly address the City's Applications or whether the Applications satisfy the conditions for approval. Hence, comments directed to the City's selection of the Ocean Outfall or the Department's prior financing decision are outside the scope of the Department's review of the City's Applications.

The Department, however, considers it responsible to address the public concerns about the Ocean Outfall in this Order. Additionally, as the new Secretary of the Department, it was imperative that I took the time to enhance my own understanding of the Ocean Outfall project prior to acting on the City's Applications. Thus, even though this Order is limited to the Department's decision on the City's Applications, this Order includes an initial background section describing the history leading up to the City's selection of the Ocean Outfall, the Department's prior financing decision, and my recent efforts to enhance my understanding of the Ocean Outfall project. The background section concludes with an explanation that the recent

proposals and comments the Department received upon my confirmation as Secretary do not warrant revisiting the Department's prior financing decision, which some commenters requested.

Ultimately, the City has the discretion to choose how to dispose of its treated wastewater as long as the method meets relevant state and federal environmental laws and regulations, and the City, after a long and thorough review of possible disposal methods, has chosen the Ocean Outfall. In reviewing the City's Applications, the Department's role is to determine whether the City's Applications satisfy the conditions for regulatory approval, not to supplant its judgment or preferences for the City's by requiring the City to choose an alternative to the Ocean Outfall. Having taken the opportunity to enhance my understanding of the process that led the City to choose the Ocean Outfall, the Department's in-depth review of the Ocean Outfall during its prior financing decision, and the Department's careful consideration of the City's Applications, I am satisfied the Department should now act on the City's Applications.

The Department concludes, relying on the record developed during its review of the Applications, that the Ocean Outfall satisfies the conditions for regulatory approval. Therefore, by this Order, the Department approves the City's Applications.

BACKGROUND & SUMMARY OF THE DEPARTMENT'S REVIEW OF THE OCEAN OUTFALL

The Ocean Outfall project has a long history, which began shortly after the Department promulgated a Total Maximum Daily Load for the Inland Bays. As detailed in the attached Hearing Officer's Report, the Department has the responsibility to improve Rehoboth Bay's water quality, beginning with the Department's 1998 regulation, *TMDLs for the Indian River, Indian River Bay and Rehoboth Bay*, 7 DE Admin. Code 7407 ("TMDLs") and the 2006 adoption of *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay*,

Rehoboth Bay and the Little Assawoman Bay Watersheds, 7 DE Admin. Code 7402, ("PCS").

The TMDLs and PCS require the removal of direct sources of nutrients from Rehoboth Bay.

Currently, the City discharges its treated wastewater into the Rehoboth-Lewes Canal, which carries it to the Rehoboth Bay, where it ultimately mixes with the waters of the Bay and the Atlantic Ocean. Despite the City's efforts to remove nutrients (namely nitrogen and phosphorus) from its wastewater discharge to the maximum extent practicable, the City's discharge continues to contribute an appreciable amount of nutrients to the Bay. Thus, following Department action and a Court approved Consent Order, the City is legally obligated to remove its discharge of treated wastewater from Rehoboth Bay. The Consent Order obligates the City to remove its discharge by June 1, 2018.

The City thus undertook a long and extensive process to evaluate alternative disposal options, including land application of its treated wastewater, with the goal of finding a suitable alternative to discharging its treated wastewater to Rehoboth Bay. Through this process, the City concluded for itself that the Ocean Outfall is the most reasonable and effective way to completely remove its current discharge from Rehoboth Bay and dispose of its treated wastewater.

Subsequently, the City applied for financing from the Department's WPCRF. As a component of the application and the Department's review, the City was required to submit an Environmental Impact Statement ("EIS"). In preparing the EIS, the City performed a comprehensive review of alternative methods of disposal, including but not limited to, land application of treated wastewater using spray irrigation, rapid infiltration basins, and wetlands. The EIS also included extensive analysis of the Ocean Outfall's potential impacts on human health, the environment, marine life, beach tourism and cultural resources. The City also

provided the public with many opportunities to comment on the EIS, including at an April 10, 2012 public hearing before the City's hearing officer.

The Department reviewed the City's selection of the Ocean Outfall in its January 5, 2015 "*Record of Decision on the Final Environmental Impact Statement on Wastewater Disposal Options Including a Proposed Ocean Outfall for the City of Rehoboth Beach Wastewater Treatment Facility*" ("ROD").² The ROD detailed the Department's review of the City's financing application and EIS, as well as public comments on the Ocean Outfall.³ The ROD concluded that the Ocean Outfall: (1) will accomplish the goal of removing the City's discharge from Rehoboth Bay, (2) not adversely affect human health, the environment, marine species, beach tourism, or cultural resources, and (3) that the City's selection of the Ocean Outfall from among multiple alternative disposal options was reasonable. Therefore, as detailed in the ROD, the Department approved the City's financing application, subject to several conditions, including the City successfully securing the regulatory approvals that are the subject of this Order.

Upon my confirmation as Secretary of the Department, effective March 16, 2017, I faced a substantial amount of information and public concern about the Ocean Outfall project, as well as the need to issue a final decision on the City's Applications. Thus, before making a final decision on the City's Applications, the only responsible course of action was for me to take the time necessary to enhance my understanding of the City's Applications for the Ocean Outfall. During this period, I met with the Department's technical staff who reviewed the City's earlier

² The Environmental Appeals Board dismissed an appeal of this decision on procedural and jurisdictional grounds. See *Surfrider Foundation Delaware Chapter v. Department of Natural Resources and Environmental Control et al*, EAB Appeal No. 2015-02, Decision and Final Order, Dated September 16, 2015.

³ The public comments that opposed the City's Applications that are the subject of this Order raised many of the same points the Department previously considered during its review of the City's financing application and addressed in its ROD.

financing application and EIS, and who have reviewed the City's current Applications to understand better the Department's extensive review of the Ocean Outfall and its potential impacts. I also met with representatives of the City and Sussex County, outside experts, various stakeholders, and interest groups, which further added to my understanding of the Applications.

Two companies, Tidewater Utilities and Artesian Resources, were among the stakeholders, each of which offered land application alternatives to manage the City's treated wastewater using spray irrigation and rapid infiltration basins. The information these two companies submitted enhanced the Department's knowledge and understanding of the land application options; however, the decision of method of disposal rests with the City, and the City has chosen to proceed with the Ocean Outfall.

The Department also appreciates that the City has invested substantial time and resources over the past several years to evaluate alternative methods of managing its treated wastewater, which process has led the City to conclude that the Ocean Outfall is, for them, the best option. Based on the City's decision to proceed with the Ocean Outfall, and in consideration of the Department's prior extensive review of the substantial evidence demonstrating that the Ocean Outfall will not adversely affect human health or the marine environment, the Department finds that is appropriate to act on the City's Applications.

Other stakeholders also expressed concern that the Ocean Outfall will negatively affect Hen and Chicken Shoals, an important habitat for marine species. The Department appreciates these stakeholders' concerns and values their perspective on protecting the marine environment, a mission the Department shares. The Department, however, must evaluate these concerns in light of the substantial evidence of record showing that the Ocean Outfall will not negatively

affect Hen and Chicken Shoals and that the Ocean Outfall will completely remove the City's discharge from Rehoboth Bay.

There is substantial information in the record demonstrating that the Ocean Outfall's discharge location in the Atlantic Ocean completely avoids Hen and Chicken Shoals. Additionally, the record shows that the Outfall's diffuser and ocean currents will further dilute the treated effluent, greatly minimizing any potential impact on Hen and Chicken Shoals. Thus, balancing the concerns for Hen and Chicken Shoals with the legal requirement that the City remove its discharge from Rehoboth Bay, and considering the substantial evidence demonstrating that the Ocean Outfall will not negatively affect Hen and Chicken Shoals, the Department finds that these concerns do not justify denying the City's Applications.

Some interest groups also suggested that the Department require that the City lengthen the Ocean Outfall's pipeline into the Atlantic Ocean. The Department again appreciates the public concerns about the Ocean Outfall's potential impacts; however, the Department finds, considering the substantial evidence that the pipeline's proposed length protects the marine environment and minimizes potential impacts to the shore, that these concerns do not warrant requiring the City to reevaluate the proposed length and location of the Ocean Outfall. The record shows that the City's consultants performed extensive studies of two potential alignments, both originating from Deauville Beach. Those studies included water quality monitoring and modeling, measuring currents, and a survey of the ocean bottom to ensure that the Ocean Outfall will not affect sensitive habitats and cultural resources, and that the substrate will support the Ocean Outfall pipe and diffuser. This work demonstrates that the Ocean Outfall's proposed alignment and length will protect water quality, natural resources and public health.

The Department also recognizes that it is important to minimize impacts from constructing the Ocean Outfall pipe, including minimizing the amount of required excavation. The City is proposing to do that by installing at least the first 3,000 feet of the Ocean Outfall via directional drilling, which will minimize the open cut portion of the Ocean Outfall's alignment. Increasing the Ocean Outfall's length will require additional open cut excavation that will cause unnecessary impacts to the ocean bottom.

The Department recognizes that there is significant opposition to the Ocean Outfall, and I heard these concerns first hand during my meetings with stakeholders and interest groups. These comments share a common theme, encouraging the Department to require the City to choose a different option than the Ocean Outfall. However, after taking the time to enhance my understanding of the Ocean Outfall, I am confident that the Department has extensively reviewed the Ocean Outfall, that the City carefully evaluated the possible alternatives, and that the Department and City have not overlooked any significant issues regarding the Ocean Outfall. Therefore, the Department is prepared to issue this Order approving the City's Applications.

DECISION TO APPROVE THE CITY'S APPLICATIONS

A) The Applications and the Department's Public Hearing Procedure:

The Department consolidated the six Applications for public notice, which the Department published on October 9, 2016 along with announcing an October 19, 2016 public workshop and a November 15, 2016 public hearing, and opening the public comment period for written comments beginning on October 15, 2016 and ending on December 2, 2016.

At the October 15, 2016 public workshop, the Department's programs responsible for reviewing the Applications presented detailed information on the Applications and answered attendees' questions. City officials and consulting engineers for the Ocean Outfall also

participated in the public workshop. Approximately fifty persons attended the public workshop that lasted two and a half hours.

At the November 15, 2016 public hearing, the Department's hearing officer, Robert P. Haynes, presided and received public comments from nineteen persons. The Department also received sixty-three written comments during the public comment period. The public comments included support for and opposition to the Applications.

B) The Department Staff Recommendations:

Following the close of the public comment period, Mr. Haynes requested a Technical Response Memorandum ("TRM") from each of the Department's technical programs involved in reviewing the City's Applications. These included experts in the following programs: (1) The Division of Water, Surface Water Discharges Section ("SWDS") on the NPDES permit; (2) Office of the Secretary's Environmental Finance Branch ("EFB") on the construction permit; (3) Division of Watershed Stewardship, Shoreline and Waterway Management Section ("SWMS") on the coastal construction permit; (4) the Division of Water, Wetlands and Subaqueous Lands Section ("WSLS") on the applications for a Subaqueous Lands Act permit and water quality certification; (5) Office of the Secretary's Delaware Coastal Programs ("DCP") for a federal consistency determination; (6) the Division of Watershed Stewardship, Watershed Assessment and Management Section ("WAMS") on the water quality issues; and (7) the Division of Fish and Wildlife ("DFW") on the Ocean Outfall's potential impact on terrestrial wildlife and the Atlantic's Ocean's marine environment, including on piping plover, dunes and vegetation, seals, Atlantic and Short-Nosed Sturgeon, sea turtles, marine mammals, sharks, and benthic organisms, and the State's Natural Heritage Site.

These programs prepared TRMs that recommended issuance of the approvals for the Ocean Outfall, subject to conditions stated therein designed to ensure protection of the environment.

C) The Hearing Officer's Report:

Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which attaches the TRMs, including the regulatory programs' draft permits and approvals. The Report sets forth the complete procedural history of the Applications. The Report also recounts the Department's regulatory efforts to improve Rehoboth Bay's water quality.

The Report, as discussed above, describes how the TMDLs and PCS required the City (and others) to stop discharges of nutrients into Rehoboth Bay (and other waters within the Inland Bays' watershed). The Report reviews the City's efforts to both appeal the TMDLs and comply with the Department's regulations. The Report describes how the City chose the Ocean Outfall and developed the EIS, which the Department's ROD approved.

The Report discusses the public comments opposed to the Applications, including those that claimed problems with the City's EIS and the Department's ROD. As an initial matter, the Report determined that none of the City's Applications required an EIS as a component of the application or the Department's review. Additionally, while the Report cites the City's prior EIS and the ROD as sources of important supplemental support for the Applications, the EIS and ROD were not prepared in support of the Applications. Rather, the City prepared the EIS to support its financing application, and the ROD detailed the Department approval of the City's financing application.

The Report determines that the Applications meet all of the Department's regulatory requirements based upon the recommendations of the Department's experts, as set forth in their

TRMs and the draft permits and approvals that contained conditions that will protect the environment. The Report sets forth that the Department's role is to review the Applications based upon the Department's regulatory standards in its regulations, which do not require that the City perform a renewed investigation into whether better alternatives to the Ocean Outfall are possible. The Report describes that the selection of the method for how the City removes its discharge of treated wastewater from Rehoboth Bay and disposes of its treated wastewater is up to the City's managerial discretion.

FINDINGS OF FACT

The Department finds that the record supports adopting the Report and the Department experts' recommendations. The Department finds that the record supports issuing the requested regulatory approvals needed to construct and operate a 3.5 million gallon per day pumping station at the City's WWTP. This station will pump treated effluent through an approximately 18,000' long force main to the outfall structure in the Atlantic Ocean. Once the Ocean Outfall is completed, the City would no longer use the Lewes-Rehoboth Canal discharge location, which the City is obligated to cease using no later than June 1, 2018.

The June 1, 2018 deadline requires prompt action to accomplish the needed construction. The City's Applications meet all the Department's regulatory requirements and approval of them is consistent with technical expert recommendations. The Department finds that the Ocean Outfall can be constructed and operated in compliance with the Department's approvals, which will provide environmental protection of the Atlantic Ocean's water quality and marine life, Delaware's beaches, and the public health of Delaware's visitors and residents.

The Department's regulations and orders require the City to find a replacement location for its WWTP's discharges, because of concerns for Rehoboth Bay's water quality and in order

for the City to comply with the TMDLs. These concerns have not changed. Every day that the City continues to discharge its treated wastewater into Rehoboth Bay will harm Rehoboth Bay's water quality, because of the nutrients in the City's treated wastewater.

The City's WWTP already treats its wastewater to the highest reasonable nutrient removal levels based upon a tertiary treatment known as a Biological Nutrient Removal ("BNR") system. The City's treatment reduces nutrient concentrations to 6-10 mg/Liter for nitrogen and under 0.5 mg/Liter for phosphorous. The Department's new NPDES permit for the Ocean Outfall will require the same level of treatment as is in the current NPDES permit for the Lewes-Rehoboth Canal discharge location.

The Department finds that the City provided the required information to support its NPDES permit application, its wastewater facilities construction permit application, its coastal construction permit application, its combined subaqueous lands permit and water quality certification application, and its application for a federal consistency determination. Further, although not required as part of the Department's review of the pending Applications for regulatory approvals, the City's prior EIS provided very useful data and information to supplement the data and information included with the Applications.

The Department considered the public comments that oppose the Applications, although as noted above, these public comments generally raised issues with the City's selection process, including the EIS and its approval in the ROD. As noted in the Report, however, the Department's review of the Applications does not require that the City prepare an EIS for the applications or otherwise defend its selection process, which instead properly resides within the City's purview.

The Department also does not have authority in its laws to usurp the City's managerial discretion and impose on the City an alternative discharge location or method in the context of reviewing the Applications, particularly where the Applications satisfy the Department's regulatory requirements for approval. The Department's regulatory role, beginning with the TMDLs, provides the City discretion to choose the replacement location and method for the current discharge location, subject to the Department's determination that the City's selected location or method satisfies the regulatory requirements. This Order finds that the City's selected method, the Ocean Outfall, satisfies the regulatory requirements, and the Department's finding is well supported by the record in this proceeding, which includes many public comments and expert recommendations.

The Department finds that the City's and the Department's experts provided sufficient support demonstrating that the Ocean Outfall satisfies the regulatory requirements. The record shows that the Ocean Outfall can discharge the highly treated wastewater into the Atlantic Ocean in a manner consistent with protecting the Atlantic Ocean's water quality and marine life. In addition, Rehoboth Bay's water quality will improve with the removal of the City's discharge of treated wastewater into the Lewes-Rehoboth Canal, and the Department finds that the Ocean Outfall will allow the City to comply with the June 1, 2018 deadline to cease using the current discharge location.

The new discharge location is also subject to review by federal agencies. The record contains support for the Applications from the federal agencies' experts, who determined that the Ocean Outfall would not affect marine species, and the aquatic environment. Thus, this Order's approvals will protect the environment and public health of the Atlantic Ocean where the new

discharge will occur and will improve Rehoboth Bay's water quality by ending the City's discharges into the Bay's fragile water body.

The public comments in opposition to the Ocean Outfall raise the risk of harming the recreational use of the beaches if there was ever a problem with the Ocean Outfall's discharge. The Department is also concerned about the risk of harming the Atlantic Ocean's water quality and the beach tourism that is dependent on the water quality. The Department evaluated expert assessments that even during the very remote risk of a "worst-case scenario" in which the City's WWTP fails to treat the wastewater, such a discharge would not harm the Atlantic Ocean's water quality. The EIS also supports this assessment.

The SWDS TRM also cites the federal agency comments on the Ocean Outfall to support that the proposed discharge will not unduly impact marine life. The SWDS TRM's summary of the comments is set forth below:

The public comments raised concerns about marine life and the SWDS responded as follows: As required by applicable portions of Section 6.31.3 of the Delaware Regulations Governing the Control of Water Pollution (RGCWP), the SWDS provided notice to the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) of our tentative determinations and intent to reissue the NPDES Permit for the Rehoboth Beach WWTP. No comments were received from the USFWS during the public comment period. The NMFS submitted comments regarding the NPDES Permit reissuance via letter from Kimberly B. Damon-Randall, Assistant Regional Administrator for Protected Resources, dated November 3, 2016. The letter indicated that the Protected Resources Division (PRD) of the Greater Atlantic Regional Fisheries Office (GARFO) considered the effects of construction of the ocean outfall and the potential effects of discharges from the proposed outfall on the listed species under the Endangered Species Act (ESA). The PRD stated that, "the construction of a new ocean outfall and all interrelated and interdependent activities (i.e., discharges from the facility) are not likely to adversely affect species listed under the ESA because the facility achieves a high rate of dilution during discharge activities, complies with state water quality standards, and discharge streams are localized in the

environment.” The letter further stated that, “the waters where the Rehoboth WWTP is permitted to discharge, currently, and has proposed to discharge into the ocean environment, in the future, are not known spawning, feeding, or aggregating areas for any species listed by us, and thus, the overlap of species with the species with the effluents prior to complete dilution is minimal[sic]. As such, and impacts are expected to be insignificant and/or discountable, as was concluded during ESA section 7 consultation.

The DFW’s TRM is consistent with the NMFS’ assessment of the Ocean Outfall's potential impact on marine life.

The public comments also sought land application of the treated wastewater, including a comment submitted by Tidewater Utilities ("Tidewater") that requested that the Department consider its offer to use its facilities as a land application alternative. The Department, however, has no authority to direct the City to enter into a contract with Tidewater based upon its offer.

The continued use of the current discharge location harms the fragile Lewes-Rehoboth Canal’s and Rehoboth Bay's water quality and aquatic environment. The Center for the Inland Bays' comments highlighted this harm and cited the annual discharge⁴ of 17,000 pounds of nitrogen and 1,180 pounds of phosphorous, which are nutrients that adversely affect Rehoboth Bay's water quality. Public comments pointed out that the Ocean Outfall will discharge the same amount of nutrients into the Atlantic Ocean, but these comments fail to appreciate that discharges must meet the receiving-waters’ water quality requirements. The City’s proposed discharge of treated effluent from the Ocean Outfall meets the Atlantic Ocean's water quality standards, but the same discharge does not meet the Rehoboth Bay’s water quality requirements.

The Department's experts conclude that the Ocean Outfall's discharges will not adversely affect the Atlantic Ocean's water quality or its marine environment. The Department recognizes that experts may have differing opinions on this finding, but the Department determines that its

⁴ The current NPDES permit allows the discharge up to 24,300 lbs. of nitrogen and 5,308 lbs. of phosphorous.

experts, experts in federal agencies that have reviewed the proposed Ocean Outfall, the City's experts, and public comments on the Applications support approving the Applications. Additionally, in response to concerns raised about the Ocean Outfall, the Department has also included numerous conditions in the approvals that will further minimize the Ocean Outfall's potential impacts.

CONCLUSIONS AND REASONS

Based upon the above findings of fact, the Department concludes that it should issue the regulatory approvals for Ocean Outfall. The City satisfied the regulatory requirements for all the Applications submitted for the required regulatory approvals for these projects.

The Department concludes that the public comments submitted in opposition to the Applications and the Ocean Outfall do not support denying the Applications. The Department finds that the Applications meet the Department's regulatory requirements, and the record supports the Department's decision to issue the approvals for the Ocean Outfall. Furthermore, the Department's, the City's, and the federal agencies' experts provide ample support for the Department's findings based upon their assessment of the Ocean Outfall's potential environmental impact.

Many of the public comments in opposition to the Ocean Outfall seek to have the Department reconsider the ROD and its prior financing decision. The Department, however, finds that the public comments do not warrant revisiting its financing decision, and the Department's experts recommended approval of the Applications after consideration of these public comments.

The Department concludes that the record supports that the applicable Department regulatory programs should issue the approvals consistent with this Order and the draft permits and approvals submitted with their TRMs.

In sum, the Department enters the following conclusions and ordering paragraphs:

1. The Department has jurisdiction under its state and delegated federal authority pursuant to *7 Del. C.* §§ 6001, 6003 and 6006, and applicable Department regulations to make a determination on the NPDES permit application, the wastewater facilities construction permit application, the coastal construction permit application, the combined subaqueous lands permit and water quality certification application, and the federal consistency determination application;
2. The Department provided proper public notice of the applications and of the public hearing, and held a public hearing in a manner required by the law and its regulations pursuant to Sections 6003, 6004, and 6006 of Title 7 of the Delaware Code;
3. The Department considered all timely and relevant public comments in making this determination and Order, and the Report established the record to support this decision;
4. The appropriate regulatory programs shall issue to the City the approvals consistent with the draft approvals provided in the TRMs as approved herein;
5. Pursuant to the Coastal Zone Management Act (*16 U.S.C.* § 1451 *et seq.*), *15 C.F.R.* § 930.62, and *7 Del. Admin. C.* § 108-3.2.4, the Department's concurrence with the City's federal consistency determination is conclusively presumed;
6. The conditions and terms in the approvals attached to the TRMs shall allow the City to move forward to construct the treated effluent pumping station, force main, and Ocean Outfall in order to comply with the TMDLs' required elimination of the WWTP's current discharge location by the June 1, 2018 deadline; and

7. The Department shall publish this Order on its website and provide such public notice of the Order as required by the law, applicable regulations, and as the Department determines is appropriate.

A handwritten signature in blue ink, appearing to read "Shawn M. Garvin", written over a horizontal line.

Shawn M. Garvin
Secretary