



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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**NOTICE OF ADMINISTRATIVE PENALTY
ASSESSMENT AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2018-W-0013

***Personally Served by an
Environmental Police Officer***

Issued To:

Ms. Diana Golt – Acting Public Works Director
Kent County Levy Court
555 Bay Road
Dover, DE 19901

This is to notify the Kent County Levy Court (Respondent) that the Department of Natural Resources and Environmental Control (Department) has found that the Respondent has violated 7 *Del. C.* § 6003, 7 *Del. Admin. C.* § 7201 *et seq.*, Delaware Regulations Governing the Control of Water Pollution, hereinafter referred to as the "*Water Pollution Regulations*," as well as conditions of its National Pollutant Discharge Elimination System (NPDES) Permit No. DE 0020338. Accordingly, the Department is issuing the Respondent this Notice of Administrative Penalty Assessment and Secretary's Order (Secretary's Order).

BACKGROUND

The Department is responsible for administering the NPDES permit program and enforcing NPDES permits in accordance with the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (Clean Water Act or CWA), and Chapter 60 of Title 7 of the Delaware Code. Pursuant to this authority, the Department promulgated the *Water Pollution Regulations*.

The Department issued NPDES Permit No. DE0020338 to the Respondent with an effective date of November 1, 2006. NPDES Permit No. DE0020338 permits the Respondent to discharge treated effluent from its Regional Wastewater Treatment Plant in Milford, Delaware,

and imposes various operating and maintenance requirements on Respondent. Through its Regional Wastewater Treatment Plant, the Respondent discharges its treated effluent to "The Gut," a tributary of the Murderkill River.

The Respondent maintains and operates a series of collection systems and pumping stations for the purposes of collecting, pumping, and treating wastewater from homes and businesses throughout the Kent County area (the "sanitary sewage collection system"). From the period of July 2016 through February 2017, as detailed below, the Respondent reported several instances of "sanitary sewer overflows" (SSO), where aspects of the Respondent's sanitary sewage collection system failed and/or were overburdened, causing the Respondent to discharge untreated sewage directly to the ground, stormwater sewers and/or surface waters such as the "St. Jones River."

The Respondent's discharges of untreated sewage onto the ground, into stormwater sewers and into surface waters, constitute violations of 7 Del. C. § 6003, the *Water Pollution Regulations*, and of the terms and conditions of the Respondent's NPDES Permit No. DE0020338. Based upon these violations, the Department issued a Notice of Violation ("NOV") W-17-SWD-02 to the Respondent on March 3, 2017.

FINDINGS OF FACT

During the period from July 2016 through February 2017, the Respondent reported the following SSOs to the Department:

- (1) July 28, 2016 – SSO at Pump Station 3 – 8,000 gallons of untreated sewage discharged to a surface water, the "St. Jones River".
- (2) August 9, 2016 – SSO at Pump Station 13 – 2,500 gallons of untreated sewage discharged to the ground.
- (3) August 23, 2016 – SSO at Rt. 13 in North Dover – 100 gallons of untreated sewage discharged to the ground.
- (4) September 20, 2016 – SSO at Rt. 1, Springhill Drive and Cicada Lane – 60,500 gallons of untreated sewage discharged to the ground and into a surface water, the "Old Baptist Church Branch" (a tributary of "Mispillion River").
 - On September 20, 2016, the Respondent was informed that sewage appeared to be exiting the ground on Rt. 1 at Springhill Road and Cicada Lane. When the Respondent's personnel arrived on site, they determined that an air release valve was either broken or malfunctioning, causing untreated sewage to discharge from under the manhole lid. The sewage ran down a concrete swale in the median of the highway and entered a storm drain that led to a surface water, the "Old Baptist Church Branch." The Respondent dispatched crews to Pump Station 7 and the majority of the flow contributing to the SSO was diverted to a 16" bypass line. This isolated the line contributing to the SSO from forced flow and only gravity flow continued. A vac-truck and a pumper truck were used to capture the remaining flow. It was determined that the air release valve had broken off from the ball valve due to corrosion of the fitting

that held the air release valve in place. The ball valve was closed, which stopped the leak. It is estimated that the SSO occurred for approximately 12 hours. The area was cleaned and limed. The County is in the process of changing out all aluminum fittings used in its sanitary sewage collection system to stainless steel to avoid future equipment failures.

- (5) September 30, 2016 – Heavy rainfall throughout Kent County caused SSOs at the following pump stations:
 - Pump Station 3 – 25,000 gallons of untreated sewage discharged to a surface water, the “St. Jones River”;
 - Pump Station 4 – 3,500 gallons of untreated sewage discharged to the ground;
 - Pump Station 6 – 7,000 gallons of untreated sewage discharged to the ground;
 - Pump Station 7 – 5,000 gallons of untreated sewage discharged to the ground.
- (6) January 5, 2017 – SSO at Rt. 9 and S. Little Creek Road – 1,000 gallons of untreated sewage discharged to the ground.
- (7) January 8, 2017 – SSO was discovered across from Postlethwait Middle School. When the flow was diverted to address this SSO, it caused an SSO at Pump Station 3, because Pump Station 3 became overloaded.
 - SSO near Postlethwait Middle School – 1,000 gallons of untreated sewage discharged to the ground;
 - SSO at Pump Station 3 – 10,000 gallons of untreated sewage discharged to a surface water, the “St. Jones River”.
- (8) January 30, 2017* – The Respondent was installing a stopple valve at the Postlethwait site and had to divert flow in order to take all flow and pressure off of the line. This caused SSOs at both Pump Station 3 and Pump Station 15.
 - SSO at Pump Station 3 – 150,000 gallons of untreated sewage discharged to a surface water, the “St. Jones River”;
 - SSO at Pump Station 15 – 500 gallons of untreated sewage discharged to the ground (all material that spilled on the ground was recovered).
- (9) February 6, 2017* – SSO at Pump Station 3 – 2,000 gallons of untreated sewage discharged to the ground.
- (10) February 7, 2017* – SSO at Pump Station 3 – 700,000 gallons of untreated sewage discharged to a surface water, the “St. Jones River”.
 - While completing pipeline repair work near Pump Station 4 across from the Postlethwait Middle School, flow had to be diverted to other force mains. Because of the high flows in the other lines, the flow at Pump Station 3 was

*All SSOs marked with an asterisk are related to the replacement pipe project near Postlethwait Middle School.

backed up and overflowed directly into the "St. Jones River." As a result of the large quantity of untreated sewage that was discharged directly into the "St. Jones River," the Department issued a Secretary's Order for the closure of certain shellfish harvesting. The Department estimated that the spill at Pump Station 3 occurred for approximately 12 hours, with a total discharge of 700,000 gallons of untreated sewage to the "St. Jones River."

- (11) March 14, 2017 – SSO at Pump Station 3 – 8,000 gallons of untreated sewage discharged to a surface water, the "St. Jones River."
- Excessive rainfall (approx. 2.45 inches) caused increase in inflow and infiltration at Pump Station 3, causing an SSO and discharge of 8,000 gallons of untreated sewage to the "St. Jones River."

STATUTORY AND REGULATORY VIOLATIONS

The Respondent's above detailed SSOs constitute violations of the following 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 any way which may cause or contribute to discharge of a pollutant into any surface or ground water." The Respondent's unpermitted discharges of untreated sewage from its sanitary sewage collection system onto the ground, into stormwater sewers, and into surface waters, as detailed above, constitute violations of 7 Del. C. § 6003(a)(2).

(2) 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 except as authorized pursuant to a permit...." The Respondent's unpermitted discharges of untreated sewage from its sanitary sewage collection system onto the ground, into stormwater sewers, and into surface waters, as detailed above, constitute violations of Section 3.2.1 of 7 Del. Admin. C. § 7201.

(3) 7 Del. Admin. C. § 7201- 3.2.4 of the *Water Pollution Regulations*, states, in relevant part: "No person shall discharge liquid waste from an existing septic system or other system where such liquid waste flows to the surface of the ground or into surface water." The Respondent's unpermitted discharges of untreated sewage from its sanitary sewage collection system onto the ground, into stormwater sewers, and into surface waters, as detailed above, constitute violations of Section 3.2.4 of 7 Del. Admin. C. § 7201.

(4) 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 pursuant to a permit. . . ." The Respondent's unpermitted discharges of untreated sewage from its sanitary sewage collection system, a point source, onto the ground, into stormwater sewers, and into surface waters, as detailed above, constitute violations of Section 3.2.3 of 7 Del. Admin. C. § 7201.

NPDES PERMIT VIOLATIONS

The Respondent's failure to maintain its sanitary sewage collection system constitutes a violation of the following condition of its NPDES Permit No. DE0020338:

- (1) Part II, A.3 of the Respondent's NPDES Permit No. DE0020338 provides that the Respondent "*shall at all times maintain in good order and operate as efficiently as possible, all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of this permit.*"

The Respondent failed to maintain an air release valve utilized in its sanitary sewage collection system that resulted in an SSO on September 20, 2016, on Rt. 1 at Springhill Road and Cicada Lane, where 60,500 gallons of untreated sewage discharged to the ground and into a surface water, the "Old Baptist Church Branch." It was determined that the air release valve had broken off from the ball valve due to corrosion of the fitting that held the air release valve in place. The Respondent's failure to maintain the air release valve is a violation of Part II A.3 of its NPDES Permit No. DE0020338, which lists specific requirements for maintaining in good order and operating as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the Respondent to achieve compliance with the terms and conditions of its permit.

CONCLUSIONS

Based on the foregoing, the Department concludes that the Respondent has violated 7 Del. C. § 6003, Sections 3.2.1, 3.2.3, and 3.2.4 of the *Water Pollution Regulations*, and Part A.3 of its NPDES Permit No. DE0020338.

SECRETARY'S ORDER ASSESSING ADMINISTRATIVE PENALTY AND COSTS

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 noted above, the Department is hereby assessing Respondent an administrative penalty of **\$32,000.00**.

In addition to the administrative penalty assessment, the Respondent is hereby assessed costs in the amount of **\$4,130.00**, pursuant to 7 Del. C. § 6005(c), which the Department incurred in abating the noted violations.

Respondent shall pay the assessed administrative penalty and reimburse the Department's costs within **thirty (30) days** of its receipt of this Secretary's Order. The Respondent shall remit two checks, made payable to the "State of Delaware" in the amounts of \$32,000.00 and \$4,130.00. The checks shall be directed to: William J. Kassab, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions against the Respondent regarding the violations cited herein as well as other violations, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking civil penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking civil penalties for continuing violations, an 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 administrative penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING & APPEAL RIGHTS

This Secretary's Order is effective and final upon Respondent's receipt thereof.

Pursuant to § 6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may file an Appeal with the Environmental Appeals Board within **twenty (20) days** of Respondent's receipt of this Secretary's Order.

In the alternative, pursuant to § 6005(b)(3) of Title 7 of the Delaware Code, Respondent may request a Public Hearing on this Secretary's Order within **thirty (30) days** of its receipt thereof. The Public Hearing will be conducted pursuant to 7 *Del. C.* § 6006, and the Secretary's order following the Public Hearing may be subject to appeal, pursuant to 7 *Del. C.* § 6008, by any person substantially affected by the Secretary's order issued following the Public Hearing.

To request a Public Hearing pursuant to 7 *Del. C.* § 6005(b)(3), the Department must receive your written Public Hearing Request within **thirty (30) days** of your receipt of this Secretary's Order. You must submit your Public Hearing 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 file an Appeal with the Environmental Appeals Board pursuant to 7 *Del. C.* § 6008, the Environmental Appeals Board must receive your written Statement of Appeal within **twenty (20) days** of your receipt of this Secretary's Order. You must submit your written Statement of Appeal 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

There is a \$50.00 deposit for Appeals to the Environmental Appeals Board. You must include a check for \$50.00, made payable to, "Environmental Appeals Board," with your Statement of Appeal. If unable, because of financial hardship, to make the \$50.00 deposit, specify the circumstances and reasons for not submitting the deposit in your Statement of Appeal. (7 Del. Admin. C. § 105-2.3). For additional information on filing an Appeal with the Environmental Appeals Board, please refer to the *Environmental Appeals Board Regulations*, 7 Del. Admin. C. § 105.

In the event you do not file an Appeal with the Environmental Appeals Board or request a Public Hearing within the deadlines specified above, you may lose your right to contest this Secretary's Order and you will be required to pay the Administrative Penalty and Costs within **thirty (30) days** of your receipt of this Secretary's Order. In the event of nonpayment of the Administrative Penalty and Costs after all legal appeals have been exhausted, pursuant to 7 Del. C. §§ 6005(b)(3) & (c), the Department may bring a civil action against you for collection of the Administrative Penalty and Costs, and the validity, amount and appropriateness of such Administrative Penalty shall not be subject to review.

PRE-PAYMENT

The Respondent may prepay the administrative penalty of **\$32,000.00** and the Department's costs in the amount of **\$4,130.00**, in the manner described above. **By doing so, the Respondent waives its right to a hearing and the opportunity to appeal or contest this Secretary's Order.**

DATE: _____

2/20/18



Shawn M. Garvin, Secretary
Department of Natural Resources and
Environmental Control

cc: William J. Kassab, Deputy Attorney General
Virgil R. Holmes, Director, DNREC Division of Water
Bryan Ashby, Program Manager II, Division of Water

WAIVER OF STATUTORY RIGHT TO A HEARING

The **Kent County Levy Court** hereby **waives its right to a hearing and its opportunity to appeal or contest Secretary's Order No. ,** and agrees to the following:

1. The **Kent County Levy Court** will pay the administrative penalty in the amount of **\$32,000.00** by sending a check payable to the "State of Delaware" within 30 days of receipt of Secretary's Order No. . The check shall be directed to William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19901;
2. The **Kent County Levy Court** will reimburse the Department's costs in the amount of **\$4,130.00**. The reimbursement shall be paid within 30 days of receipt of Secretary's Order No. . The check shall be made payable to the "State of Delaware" and shall be directed to William J. Kassab, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19901; and
3. The **Kent County Levy Court** further agrees to abide by all of the terms and conditions of Secretary's Order No. .

Kent County Levy Court

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)