



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

Office of the
Secretary

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**SECRETARY'S ORDER
TO
CEASE AND DESIST**

Issued pursuant to 7 *Del.C.* §6018

ORDER NO. 2019-WS-0027

**Issued to: Delaware Solid Waste Authority
1128 South Bradford Street
Dover, DE 19901**

This is to notify the Delaware Solid Waste Authority (Respondent) that, pursuant to 7 *Del.C.* §6018, the Delaware Department of Natural Resources and Environmental Control (DNREC) is issuing Respondent this Secretary's Order to Cease and Desist (Order) for violations of 7 *Del.C.* Chapters 40 and 60 and 7 Del. Admin. C. §5101, DNREC's *Sediment and Stormwater Regulations* (DSSR).

BACKGROUND

In Delaware, the DSSR are utilized to implement Federal requirements as they relate to construction activities in the state. Specifically, any land disturbance activity greater than one (1) acre associated with a federally-regulated construction activity must obtain permit coverage under the National Pollutant Discharge Elimination System (NPDES) in accordance with 40 *Code of Federal Regulations* (CFR) §122.26. The Environmental Protection Agency (EPA) has granted delegation to DNREC to implement this permitting through a Construction General Permit (CGP). In order to obtain coverage under this GCP, an applicant must file a Notice of Intent (NOI) to begin construction and be issued an approved Sediment and Stormwater Plan (Plan) from DNREC.

Unless exempted, no person shall engage in land-disturbing activities without submitting a sediment and stormwater management plan to the appropriate plan approval authority and obtain a permit to proceed. 7 Del.C. §4003(a). Respondent has engaged in land-disturbing construction activity at the Pencader Corporate Center, 407 Corporate Boulevard, Newark, Delaware without following the appropriate procedures.

Respondent has not filed an NOI and has not submitted a Plan. Respondent sought an exemption, pursuant to 7 Del.C. §6451(4), claiming that it would be exempt from federal Clean Water Act Permitting requirements, even where the federal requirements are administered pursuant to state regulations. DNREC denied the exemption, and found that a limited exemption for the installation of recycling facilities would not apply to a major construction project involving land disturbance, and thus erosion, sedimentation, and stormwater concerns. The DSWA enabling Act requires that the construction of solid waste facilities be undertaken in compliance with the requirements of applicable regulations. 7 Del.C. §6406(a)(30). In this instance, DSWA is subject to the same criteria as any private developer or other regulated party. Thus, Respondent is required to file an NOI and to submit a Plan for approval from DNREC prior to commencing any land disturbance. To date, Respondent has not complied.

FINDINGS

Respondent is in violation of 7 Del.C. §4003(a) and 7 Del. Admin. C. §5101 of *the Sediment and Stormwater Regulations*, by engaging in land-disturbing activities without submitting a sediment and stormwater management plan to the appropriate plan approval authority and obtaining a permit to proceed. These continuing violations are serious and present an immediate and imminent threat to public health and to the environment.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing findings and pursuant to 7 *Del.C.* §6018, that Respondent shall immediately cease and desist all land-disturbing activities at the construction site referenced above. Further, Respondent may not resume any land-disturbing activities at the construction site until Respondent has complied with the mandated requirements of Chapter 40 of Title 7 and the *Sediment and Stormwater Regulations*.

DNREC reserves the right to take or continue any additional enforcement actions regarding these and/or any other violations which may be discovered, including, but not limited to, one or more of the following: a criminal prosecution pursuant to 7 *Del.C.* §6013; an action pursuant to 7 *Del.C.* §6005(b)(1) seeking civil penalties for past violations; an action pursuant to 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; the imposition of administrative penalties pursuant to 7 *Del.C.* §6005(b)(3); and an action for recovery of the DNREC's costs and attorney's fees pursuant to 7 *Del.C.* §§6005(c)(1).

Date: _____

6/5/19



Shawn M. Garvin, Secretary

