



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

OFFICE OF THE  
SECRETARY

PHONE  
(302) 739-9000

**CONCILIATION ORDER BY CONSENT**

**SECRETARY'S ORDER No. 2020-W-0025**

*Issued Pursuant to 7 Del. C. §6005(b)(2)*

Mr. Preston Lee, President  
Lewes Board of Public Works  
107 Franklin Avenue  
Lewes, DE 19958

Dear Mr. Lee:

This Conciliation Order by Consent and Secretary's Order ("Order") reflects the mutual effort by Lewes Board of Public Works ("BPW") and the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC") (collectively the "Parties") to attain compliance with 7 Del. C. Chapter 60 by Conciliation pursuant to 7 Del. C. §6005(b)(2).

**SECTION I : BACKGROUND**

WHEREAS, BPW owns and operates a municipal wastewater treatment plant called Howard Seymour Water Reclamation Facility ("HSWRF") located at 106 American Legion Road, Lewes, Delaware; and

WHEREAS, DNREC is responsible for the administration of the National Pollutant Discharge Elimination System (NPDES) program in accordance with 33 U.S.C. §§1251 *et seq.* and 7 Del. C. Chapter 60; and

WHEREAS, pursuant to this authority, DNREC issued NPDES Permit DE0021512 (“NPDES Permit”), effective November 1, 2018 to BPW, which authorizes the discharge of treated wastewater effluent from the HSWRF through Outfall 001 to the Lewes-Rehoboth Canal; and

WHEREAS, BPW has contracted White Marsh Environmental Services, Inc. (“WMES”) to operate the HSWRF in accordance with the NPDES Permit and the State of Delaware’s *Regulations Governing the Control of Water Pollution*; and

WHEREAS, due to a malfunction in the HSWRF’s membrane treatment system at 1830 hours on December 19, 2019, the facility began bypassing the full wastewater treatment process at a rate of 300-440 gallons per minute by allowing flow to settle in the equalization (EQ) tank, as well as, another circular tank (former clarifier) before injecting effluent with hydrogen peroxide for disinfection and then pumping out onto the ground surface which flowed into a wetland area on the south side of the facility eventually reaching the Lewes-Rehoboth Canal; and

WHEREAS, on Friday, December 20, 2019, DNREC directed the facility to relocate the bypass pipe to an area west of the treatment facility to increase retention time of partially treated effluent in the wetlands thereby minimizing discharge into the Lewes-Rehoboth Canal; and

WHEREAS, HSWRF, owned by BPW, discharged 3,920,300 gallons of partially treated/undertreated wastewater to the ground and surface waters from December 19 through December 28, 2019, then again for a two-hour period on Wednesday, January 1, 2020 due to a failure of the treatment membranes; and

WHEREAS, Part II.A.3 “Facilities Operation” of the Delaware NPDES Permit No. DE0021512 states: “The Permittee shall at all times maintain in good working 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. Proper operation and maintenance includes, but is not limited to, effective performance (based upon the facilities’ design), adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, when necessary, to achieve compliance with the terms and conditions of this permit;” and

WHEREAS, Section 3.2.4 of the State of Delaware’s *Regulations Governing the Control of Water Pollution* states: “No person shall discharge liquid waste from an existing septic tank or other system where such liquid waste flows to the surface of the ground or into surface water;” and

WHEREAS, DNREC issued a Notice of Violation (NOV) to BPW on February 5, 2020 for the violations referenced herein, that required investigation, corrective action, enhanced monitoring and reporting; and

WHEREAS, BPW and WMES took immediate corrective action to remedy the membrane failure and have been responsive to NOV requirements; and

WHEREAS, both DNREC and BPW agree that the resolution of these compliance issues without further protracted formal enforcement actions is in the best interest of the Parties and can be effectively accomplished *via* this Order designed to comprehensively address the violations described above, as well as, providing DNREC with enforceable assurances that the necessary actions will be timely undertaken and completed.


## **SECTION II: CONCILIATION**

NOW THEREFORE, BPW and DNREC 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:

1. Within thirty (30) days of execution of this Order, BPW shall submit to the Department an update on the current status of the facility operations in continuation of the investigation report that was submitted to the Department on March 5, 2020.
2. Within thirty (30) days of execution of this Order, BPW shall submit to the Department an update to the emergency contingency plan submitted in BPW's NOV response, detailing what specific steps the facility will take to prevent this type of occurrence in the future. The update shall include specific information about steps to be taken for a catastrophic failure of the treatment system, including, but not limited to, steps taken to reduce flow to the facility or divert flow through other Sussex County facilities.
3. BPW shall submit to the Department the final wetland assessment report no later than October 31, 2020.

4. Pursuant to 7 *Del. C* § 6005(b)(3), BPW shall pay an administrative penalty of \$64,000. Payment of penalty shall be remitted within thirty (30) days of execution of this Order by check payable to the State of Delaware, and mailed to: Ms. Kayli Spialter, Esquire, Delaware Department of Justice, 820 North French Street, Wilmington, DE, 19801.
  
5. Miscellaneous Provisions:
  - a. **Binding on Successors:** It is the intention of the parties that this Order shall be binding upon and enforceable against the Parties and their successors, heirs, executors, administrators and assigns.
  - b. **Severability:** In the event that any provision (section, paragraph, or portions thereof) of this Order shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect, or impair the remaining provision(s) (sections, paragraphs, or portions thereof) of this Order, and to this end, the provisions of this Order are hereby declared to be severable.
  - c. **Construction:** The agreement shall be construed according to the intent of the parties to resolve the pending violations and to prevent future violations and harm to the environment. No provision(s) or paragraph(s) of this Order shall be construed based on authorship.
  - d. **Compliance with Law:** Nothing in this Order shall relieve BPW of its obligation to comply with all applicable federal, state or local laws or regulations.
  - e. **Good Faith:** The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Order, provided that nothing in this Order shall be construed to restrict DNREC's regulatory and permitting judgment and discretion, and nothing in this Order shall be construed to require DNREC to pay or appropriate any monies or expend any funds.
  - f. **Entire Understanding:** This Order constitutes the entire agreement and settlement between the Parties. The Parties acknowledge that this Order may not be amended except in writing executed by both Parties.
  - g. **No Third Party Rights:** The Parties to this Order expressly intend that this Order shall create no right(s) in any person or entity not a party to this Order.
  - h. **This Order becomes effective on the date of execution by the Secretary of DNREC.**

Date: 8/6/20

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

Agreed and Accepted:

Date: \_\_\_\_\_

Lewes Board of Public Works

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_