

# ABBOTT LAW FIRM LLC

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June 11, 2020

## VIA EMAIL & FEDERAL EXPRESS

Delaware Environmental Appeals Board  
ATTN: Administrative Assistant to the  
Environmental Appeals Board  
89 Kings Highway  
Dover DE 19901

*Re: Appeal: Decision Dated May 22, 2020*

Ladies & Gentlemen:

Please accept this letter as the appeal to the Environmental Appeals Board (“Board”) of my client, Marshall Jenney (“Jenney”), regarding the decision of the Delaware Department of Natural Resources And Environmental Control (“DNREC”) dated May 22, 2020 (“Decision”). *See* Decision attached. This appeal is being taken pursuant to 7 *Del. C.* §§ 6008 and 7210 and the Environmental Appeals Board Regulations, 7 *Del. Admin. Code* 105 (“Regulations”).

*First*, there was no “persistent failure to provide the requested information needed to complete [DNREC] review within the communicated timeline” as alleged as the sole foundation for denial of Jenney’s application for a Subaqueous Lands Lease Supplemental permit (“Application”) to install a new floating dock and authorizing certain *de minimis* installations (the “Minor Installations”) as alleged. Indeed, the failure to timely act was entirely on the part of DNREC, which took 5 months total (August to October, 2019 [2 months] and October, 2019 to January, 2020 [3 months]) to provide substantive comments on the Application.

*Second*, the erroneous nature of DNREC’s denial of the Application moots the Notice of Violation W-19-WSL-01 dated July 30, 2019. The Minor Installations that were cited in the Notice of Violation should have been approved by DNREC pursuant to the Application, so as to eliminate any alleged violations.

*Third*, Jenney requests that the EAB enjoin DNREC from taking any further actions regarding the Minor Installations during the pendency of this appeal. DNREC has threatened more punitive action against Jenney, but it should stand down while the legal issues are decided.

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*Fourth*, the Decision violates Jenney's Riparian Rights as owner of the foreshore on the Rehoboth Bay to extend docks, piers, and related installations. Items ancillary and related to the recreational uses and purposes for Jenney's dock and pier should have been approved. And DNREC has not cited any valid basis upon which to restrict Jenney's paramount right to make such installations.<sup>1</sup>

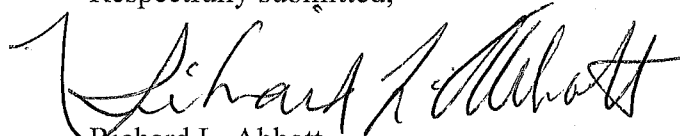
*Fifth*, Jenney provided a full and complete submission which contained all information necessary for DNREC to promptly approve Jenney's permit application. Instead, DNREC acted arbitrarily and capriciously, contrary to the law, and without any valid foundation in fact or law.

*Sixth*, Jenney reserves the right to raise additional arguments regarding factual and legal errors committed by DNREC in its denial of the Application.

Enclosed please my firm check in the amount of \$50 made payable to the Board for the deposit for costs required by the Regulations.

Please advise at your convenience of the scheduling of the public hearing regarding this appeal. Thank you.

Respectfully submitted,



Richard L. Abbott

RLA:cth  
Enclosures  
File No.: 471.02

cc: Mr. Marshall Jenney (w/enclosures) -- Via Email Only  
Evelyn Maurmeyer (w/enclosures) -- Via Email Only

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<sup>1</sup> DNREC, not Jenney, bears the burden of proof to establish why the permit application should not be granted. *Oceanpart Industries, Inc. v. State*, 1993 WL 181297, Jacobs, V.C. (Del. Ch., May 18, 1993)(DNREC must show there is a specific superior public right that would be violated if the installation were permitted).



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
**DIVISION OF WATER**  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LANDS SECTION

TELEPHONE (302) 739-9943  
FAX (302) 739-6304

May 22, 2020

**SENT VIA EMAIL**

Mr. Richard Abbott  
Abbott Law Firm, LLC  
724 Yorklyn Road, Suite 240  
Hockessin, DE 19707

Re: Marshall Jenney Subaqueous Lands Lease Application Tax Parcel number 334-20.17-14.00

Mr. Abbott:

Mr. Jenney's application for a Subaqueous Lands Lease Supplemental to install a new floating dock and to authorize several unauthorized structures has been reviewed in accordance with the requirements of the Subaqueous Lands Act (7 Del. C Ch. 72) and the Regulations Governing the Use of Subaqueous Lands. Based on your persistent failure to provide the requested information needed to complete our review within the communicated timeline, as described in the letter dated January 27, 2020, the Department hereby denies Mr. Jenney's application without prejudice.

Any appeal of this decision to the Environmental Appeals Board must be submitted within 20 days of receipt of this letter, as set forth in 7 Del. C §6008 (c). For more information please visit the website at <https://dnrec.alpha.delaware.gov/environmental-appeals-board/>

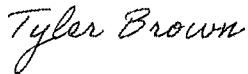
In addition, according to the Notice of Violation (W-19-WSL-01) dated July 30, 2019, Mr. Jenney shall remove the remaining structures that were deemed to be violations. In accordance to the Notice of Violation, the Department is granting an additional 60-day period for obtaining voluntary compliance.

Failure to obtain voluntary compliance before July 21, 2020 will result in further enforcement action against Mr. Jenney including possible monetary fines pursuant to 7 Del. C § 7214. Additionally, the Department, to the extent necessary, reserves the right to take additional enforcement actions regarding this and any other violations by Mr.

*Delaware's good nature depends on you!*

Jenney 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, an action under 7 *Del. C* § 6005(b)(2) seeking 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 an administrative penalty and the recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C* §§ 6005(b)(3) & (c)(1). Nothing in the NOV or this letter shall be deemed to estop, or in any way preclude, any additional enforcement action for this or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

Sincerely,



Tyler Brown  
Section Manager  
Wetlands and Subaqueous Lands Section

cc: Marshall Jenney – Via email  
Evelyn Maurmeyer – Via email