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June 18, 2025



VIA HAND DELIVERY AND E-MAIL

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

RE: Notice and Statement of Appeal of Administrative Penalty Assessment and Secretary's Order No. 2025-WH-0017

Dear Honorable Members of the Environmental Appeals Board:

This firm represents WKA Fairfax, LLC ("Appellant"). Appellant hereby appeals Secretary's Order No. 2025-WH-0017 (the "Order") issued by the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC") on June 1, 2025 and received by the Appellant on June 2, 2025. The Order is attached hereto as Exhibit A.

This letter provides the "Statement of Appeal" required by Section 2.0 of the Board's procedural regulations.

Background

Through the Order, Appellant has been mandated by DNREC to perform offsite sampling and monitoring in connection with a twenty-year long investigation of the Fairfax Valet Cleaners located in the Fairfax Shopping Center at 3 Fairfax Boulevard, Wilmington, Delaware 19803 (the "Site"). The offsite locations identified in the Order are neither owned nor operated by the Appellant.

Fairfax Shopping Center is owned by Appellant. Over a period of approximately twenty years, Fairfax Valet Cleaners a tenant at the shopping center, was operated by successive dry cleaner tenants until 2020 when the dry cleaner machine and solvents were removed. No known or reported solvent releases occurred at the site. During this twenty-year period, the Fairfax

Shopping Center has been in continuous operation with various tenants ranging from retail, banking to food service without incident.

After twenty years of repeated and various investigations and studies on the Site, there is no definitive data demonstrating that solvents are migrating offsite. Despite this, DNREC is now attempting to mandate that Appellant go beyond the boundaries of the Site and onto the property of others to perform sampling and monitoring in order to prove or disprove the existence of a hypothetical plume of PCE contamination in groundwater offsite.

THE INTEREST WHICH HAS BEEN SUBSTANTIALLY AFFECTED

The Order substantially affects the interests of Appellants because it imposes an illegal mandate upon Appellant that Appellant cannot comply with.

THE DECISION IS IMPROPER

The Order is improper, as explained below.

THE REASONS WHY THE DECISION IS IMPROPER

The Board's rules contemplate that the "Statement of Appeal" provide a "concise" statement of the reasons for the appeal (Sec. 2.1). The reasons the decision is improper are concisely stated as follows:

1. The Order requires Appellant to trespass on property not owned or leased by Appellant and force the owners to allow Appellant to conduct offsite sampling and monitoring. There is no statutory or regulatory authority which authorized DNREC to issue such an Order or that permits or enables Appellant to trespass on the property of another to conduct this sampling and monitoring. Thus, Appellant is legally prohibited from engaging in the actions required by DNREC.
2. DNREC's attempt to justify this illegal mandate under 7 *Del. C.* § 9109(a)(3) is inconsistent with the scope of the statutory authority, thoroughly lacking in causation, meaningful detail and woefully inadequate and seeks to impermissibly expand its authority. In addition, the authority DNREC is seeking to exert raises serious concerns regarding Constitutional rights.

The Board is empowered under 7 *Del. C.* § 6008 to "affirm, reverse or remand to the secretary with instructions..." For the foregoing reasons, Appellant respectfully request that the

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Board utilize this authority and discretion to: reverse the Order as unenforceable and not authorized or permitted by law.

**ESTIMATED NUMBER OF WITNESSES AND TIME INVOLVED IN PRESENTING
THE APPEAL**

Appellant estimates it will call three to five witnesses and will take three to four hours to present the appeal, exclusive of the time needed to cross-examine DNREC witnesses, and for DNREC to present its case or cross-examine Appellants' witnesses. Alternatively, the matter can be decided by briefs submitted by Appellant and DNREC and oral argument if required by the Board.

Enclosed is a check in the sum of \$50.00, which represents payment of the prescribed costs.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Elio Battista, Jr.", written in a cursive style.

ELIO BATTISTA, JR.

EB:s
Enclosure
cc: Travis Groski, Esquire

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EXHIBIT A



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE
(302) 739-9000

NOTICE OF SECRETARY'S ORDER

Pursuant to 7 Del. C. §9109

Order No. 2025-WH-0017

Issued To:

Via Personal Service:

Robert Aerenson
WKA Fairfax 2, LLC
2213 Concord Pike
Wilmington, DE 19803

Registered Agent:

Via Personal Service:

WKA Fairfax, LLC
2213 Concord Pike
Wilmington, DE 19803

Dear Mr. Aerenson:

The Secretary of the Department of Natural Resources and Environmental Control ("DNREC" or "Department") has found WKA Fairfax 2, LLC ("Respondent") to be in violation of Delaware's Hazardous Substance Cleanup Act, 7 Del. C. Chapter 91 ("HSCA"), and of 7 DE Admin. Code 1375, Delaware's Regulations Governing Hazardous Substance Cleanup ("Regulations"). Accordingly, the Department is issuing this Notice of the Secretary's Order pursuant to 7 Del. C. § 9109(a)(3).

BACKGROUND

WKA Fairfax 2, LLC is the owner of the Fairfax Shopping Center and the owner of the Fairfax Valet Cleaners Site (DE-1283) ("Site" or "Facility") located at 3 Fairfax Boulevard, Wilmington, DE 19803. The Site contains an operational dry-cleaning facility that is one of WKA Fairfax 2, LLC tenants.

A Facility Evaluation (FE) was conducted at the Site in November 2002. The Facility Evaluation Reported was submitted to and reviewed by the Department. Based on the FE, the Department found that groundwater and subsurface soil were contaminated with volatile organic compounds (VOCs),¹ including tetrachloroethylene (PCE)² above regulatory standards. The Department issued a letter on December 23, 2002,³ requiring a remedial investigation to be performed to determine the extent of the groundwater contaminant plume.⁴ It would also determine if vapor intrusion was a health concern based on contamination in groundwater, subsurface soil, basement conditions, and soil types.

Mr. Aerenon was issued a letter on October 3, 2006,⁵ requesting that he joins the Voluntary Cleanup Program (VCP).⁶

A formal Notice of Liability (NOL) was issued to Mr. Aerenon on October 27, 2008.⁷ The Department notified him of his liability pursuant to Section 9105 of the DE Hazardous Substance Cleanup Act (HSCA), 7 *Del. C.* Chapter 91 and as the potential responsible party (PRP) to take actions with respect to the Site.

¹ Volatile Organic Compounds (VOCs) are chemicals that **evaporate** easily into the air. Exposure to **volatile organic** compounds through direct contact or ingestion of soil or **groundwater** or inhalation of vapors may be a **health hazard** or **environmental pollutant**.

² Tetrachloroethylene (PCE), also known as perchloroethylene (PERC), is used for dry cleaning and degreasing metals. EPA has classified PCE as likely to be carcinogenic to humans.

³ This letter was addressed to Jenna Connelly, an Environmental Analyst for WIK Associates, Inc., but title to the Facility was held by Weiner, Kristol, Aerenon Joint Venture LLC at this time.

⁴ A body of contaminated groundwater that spreads through an aquifer.

⁵ At the time this letter was sent it was addressed to Mr. Aerenon's Wilmington Real Estate business, which held the same address that WKA Fairfax, LLC and WKA Fairfax 2, LLC now occupy. Title to the Facility was still held by Weiner, Kristol, Aerenon Joint Venture LLC.

⁶ VCP means the remedial process established by the Department under 7 *Del. C.* Ch. 91, into which a party voluntarily enters into, provided the application is approved by the Department, for the purpose of conducting a remedy at a facility.

⁷ Similar to the October 3, 2006, letter, this was addressed to Mr. Aerenon at Wilmington Real Estate; title was still held by Weiner, Kristol, Aerenon Joint Venture LLC.

On June 7, 2010, a Limited Soil Gas and Groundwater Assessment Report was submitted to the Department. The report indicated that chlorinated solvents⁸ were found in on-site and off-site groundwater above HSCA standards.

The Department issued a Conditional No Further Action (CNFA) letter on October 15, 2012,⁹ based on a Limited Indoor Air Quality and Groundwater Modeling Report dated July 2012. The CNFA was issued with the condition that sampling of groundwater was required by December 2013 to confirm the model results. Respondent failed to timely complete the required groundwater sampling by December 2013, and therefore, voided the CNFA.

On April 24, 2023, the Department emailed Mr. Aerenon and its environmental consultant, BrightFields, requesting that by no later than May 16, 2023, they needed to provide the Department with a written path forward for completion of the proposed Membrane Interface Probe (MIP) investigation and delineation of the hazardous substance release at the Site.

On May 11, 2023, Mr. Aerenon responded to the Department advising that, "due to cost, timing, and logistical issues" they will be conducting an MIP investigation on-site only and not both on-site and off-site.

On June 1, 2023,¹⁰ the Department sent a letter to Mr. Aerenon requesting an on-site Sampling and Analysis Plan (SAP). The Department stated that the approved SAP for the on-site investigation would be implemented by September 15, 2023, and that no later than December 15, 2023, a report for the implementation and results of the on-site investigation including conclusion and recommendations needed to be submitted to the Department.

In that same June 1, 2023, letter the Department required the previously approved Supplemental Vapor Intrusion Sampling and Analysis Plan (VI SAP) be implemented no later than October 31, 2023. Finally, the Department advised that no later than March 2024, a draft SAP for the next phase of investigation, including on- and off- site soil, groundwater and vapor intrusion

⁸ Chlorinated solvents are a group of organic compounds that contain chlorine, highly toxic, can cause vapor intrusion, used in a dry-cleaning process, and take years or decades to degrade.

⁹ This letter was sent to Mr. Aerenon at Weiner, Kristol, Aerenon Joint Venture LLC, although records indicate that at this time title to the Facility was now held by WKA Fairfax, LLC. The address listed for Weiner, Kristol, Aerenon Joint Venture LLC is the same as that currently occupied by WKA Fairfax, LLC and WKA Fairfax 2, LLC.

¹⁰ According to the New Castle County parcel search, title to the Facility shifted to WKA Fairfax 2, LLC, on December 26, 2019; and such title is still held by WKA Fairfax 2, LLC today. The letter was addressed to Mr. Aerenon as a Managing Member of the LLC.

was required. The Department also required that the approved plan be implemented no later than June 2024.

An SAP to perform MIP and soil sampling was submitted to the Department on July 10, 2023. The SAP did not include conducting MIP and soil sampling off-site. The plan was approved by the Department on July 11, 2023.

On-site MIP drilling and soil sampling of the MIP soil borings was completed in September 2023. On January 9, 2024, the on-site Membrane Interface Probe/Hydraulic Profiling Tool (MIHPT)¹¹ and soil sampling investigation summary report were submitted to the Department.

In January 2024, sub-slab vapor and indoor air samples were collected at the Site and adjacent businesses. Vapor Intrusion samples were not collected off-site.

On July 30, 2024,¹² the Department issued comments on the on-site MIHPT and soil sampling investigation summary report. Said comments required delineation and removal of the PCE contaminated soil, removal of an underground storage tank (UST), and the next phase of investigation including on- and off- site soil, groundwater, vapor intrusion, and preferential pathway investigation¹³ to determine the vertical and horizontal extent of the release.

A Waste Manifest was generated during the MIP investigation and was submitted to the Department on October 22, 2024. The investigative residual soil in the manifest was described as hazardous.

As of May 1, 2025, on- and off- site ground water investigation had still not been completed. Groundwater flow direction had not been determined and no additional off-site soil gas samples, reflective of the heating season conditions (i.e. closed windows, doors), have been collected. Moreover, a confirmation of the groundwater model has not been performed, no groundwater plume delineation and no on-site soil delineation has been completed, no UST removal, and no soil excavation has been performed.

¹¹ MIP is a high-resolution tool that produces qualitative vertical profiles of detector responses to VOCs and hydrostratigraphy.

¹² This letter was also addressed to Mr. Aerenson as a Managing Member of WKA Fairfax 2, LLC.

¹³ Preferential pathway investigation is conducted through site characterization, including analysis of site geology, existing infrastructure, utilities, previous soil disturbances, concentrating on features that could facilitate contaminant transport.

FINDINGS AND REASONS

The December 2002 Facility Evaluation (FE) indicated PCE in on-site soil and on- and off-site groundwater at concentrations significantly higher than the HSCA Screening Levels (SL). The June 7, 2010, Limited Soil Gas and Groundwater Assessment Report showed PCE in on-site groundwater at lower than 2002 concentrations, however, still significantly higher than the HSCA Screening Level. It should be noted that a lower concentration of PCE in the 2010 report may be attributed to the inconsistency with monitoring wells installation at the different depth. Trichloroethene (TCE), which is a more toxic PCE degradation byproduct, was also detected in 2002 and 2009 in on- and off-site groundwater at concentrations significantly above the HSCA Screening Levels.

The soil gas data from the 2010 Limited Soil Gas and Groundwater Assessment Report indicated that there is an elevated risk associated with vapor intrusion due to release of PCE at the Site. The soil gas risk assessment presented a risk which was driven by the on-site soil gas sample that is located at the eastern property line. The January 2024 On-Site Membrane Interface Probe/Hydraulic Profiling Tool (MIHPT) & Soil Sampling Investigation Summary Report indicated presence of PCE in soil at concentrations significantly higher than the HSCA Screening Levels.

Based upon the test results, the Department has determined that additional groundwater and soil sampling, and vapor intrusion investigation must be performed to comply with the HSCA, 7 DE Admin. Code 1375, Section 9.4.1.1 which requires "Characterizing the nature and extent of the release or the potential release of hazardous substances." The investigations and sampling performed thus far have not characterized the nature and extent of the release in all impacted media such as soil, soil gas, and groundwater both on- and off-site. A comprehensive Remedial Investigation is needed to perform a Human Health Risk Assessment, Ecological Risk Assessment and Feasibility Study. After review of said investigation, a determination will be made by the Department regarding the necessary remedial actions.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent has violated HSCA and the Regulations and is hereby ordered to:

1. Within 90 days of Respondent's receipt of this Order, enter into an Agreement with the Department to satisfy requirements under HSCA related to the hazardous substance release at the Site.
2. Within 60 days of executing the Agreement, submit a Work Plan that shall include soil and groundwater sampling; vapor intrusion and preferential pathway investigation to determine the vertical and horizontal extent of the release. At the minimum the Work Plan should include:
 - a. delineation of soil contamination;
 - b. delineation of groundwater plume;
 - c. installation of permanent monitoring wells, additional monitoring wells may be required based on the gathered groundwater data; and
 - d. sampling of indoor air and sub-slab or soil gas of all inhabitable structures within the delineated plume with concentrations of groundwater above the human health risk due to vapor intrusion.
3. Within 30 days of issuance of the Department's comments, submit a final Work Plan.
4. Within 90 days of the approval of the Work Plan implement the Work Plan.
5. Within 90 days of the Department's request, complete any additional work such as installation of additional monitoring wells, soil samples or soil gas samples.
6. Within 1 year (365 days) of this order, submit a comprehensive Remedial Investigation Report including a Human Health Risk Assessment and Ecological Risk Assessment.
7. Within 30 days of the Department issuing comments, submit the Remedial Investigation Report addressing comments.
8. Within 30 days of the Department issuing comments, submit a final Remedial Investigation Report.
9. Submit a Feasibility Study evaluating remedial alternatives.
10. Implement an approved Final Plan of Remedial Action upon issuance by the Department.

Failure to comply with the above may result in penalties assessed against you in an amount up to \$10,000.00 per day. Additionally, you may be liable for any remedial costs incurred by the State resulting from your non-compliance. Liability for such remedial costs will be in an amount at least equal to, but not greater than 3 times the amount of, those incurred remedial costs.

PUBLIC HEARING AND APPEAL RIGHTS

This Secretary's Order affects Respondent's legal rights and is effective and final upon receipt by Respondent. Pursuant to Section 6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Secretary's Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* § 6005(b)(3), request a public hearing on the Secretary's Order within **30 days** of receipt of the Secretary's Order. A public hearing pursuant to 7 *Del. C.* § 6005(b)(3) would be conducted pursuant to 7 *Del. C.* § 6006, and the Secretary's order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* § 6008, by any person substantially affected.

To request a public hearing pursuant to 7 *Del. C.* § 6005(b)(3), please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Telephone: (302) 739-9000

To submit an appeal to the Environmental Appeals Board pursuant to 7 *Del. C.* § 6008, you must file your written statement of appeal and submit a check, made payable to: "Environmental Appeals Board," for the \$50.00 filing fee, 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
Telephone: (302) 739-9000

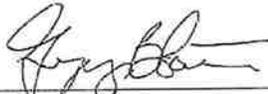
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For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at 7 DE Admin. C. § 105.

If you have any questions, please contact, or have your attorney contact Travis Groski, Esq., Deputy Attorney General at 302-395-2500.

June 1, 2025

Date



Gregory Patterson, Secretary

cc: Timothy Ratsep, Division Director
Travis Groski, Esq., Deputy Attorney General