



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

Resource Protection Section
Compliance and Enforcement Branch

PHONE
(302) 739-9945

NOTICE OF VIOLATION
W-24-RPS-02
Certified Mail - Return Receipt Requested

February 23, 2024

CERTIFIED MAIL 7010 1870 0003 5030 7730
RETURN RECEIPT REQUESTED

Terry Griseto, Vice President of Finance and Administration
James Thompson and Company, Inc.
Greenwood, DE 19950

Dear Terry Griseto:

Pursuant to the authority in 7 *Del. C.* § 6019, the Delaware Department of Natural Resources and Environmental Control, Division of Water, Resource Protection Section, Compliance and Enforcement Branch (herein “the Department”) is pursuing compliance by way of this **Notice of Violation (NOV)**. This NOV is being issued to James Thompson and Company, Inc. (herein “Permittee”) for violating 7 *Del. C.* Chapter 60, 7 DE Admin. Code 7101 - State of Delaware *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems* (On-Site Regulations), and State Permit 359148-04 (herein the “Permit”).

BACKGROUND

On March 17, 2015, the Department issued the Permit to the Permittee to operate and maintain an on-site wastewater treatment and disposal system (OWTDS). The OWTDS is located at 301 S Church St, Kent County, Delaware, and is permitted to land apply screened wastewater from fabric finishing, fabric drying, fabric rinsing, burlap bleaching, boiler blow down, and water conditioner back washing. The Permit was issued for a five-year period, expiring on March 16, 2020. In accordance with Part II.B.1 of the Permit, pertaining to its expiration, the Permittee submitted an application for permit renewal on November 26, 2019. In accordance with Part II.B.1 of the Permit, the Permit was administratively extended, allowing its terms and conditions to continue and remain fully effective and enforceable, until a decision is made on the permit renewal application. On December 6, 2023 the Permittee shared with the Department that the property they are operating on is under new ownership as of November 21, 2023 and that fabric processing operations have changed. Therefore, the previous renewal application is null and void.

The Permit includes effluent limitations along with operational, monitoring, and reporting requirements. Part I.I.2 of the Permit's monitoring and reporting requirements requires monitoring results from the previous month to be summarized and reported to the Department no later than the 28th day of the month following the completed reporting period. Monitoring and reporting results for March – April 2023 were late and May – June 2023 were not submitted. Therefore, the Department issued a Manager's Deficiency Warning Letter to the Permittee on August 18, 2023 requiring monthly sampling/monitoring and reporting of results in accordance with Part I.I.2 of the Permit. To date the Permittee has not complied with the Manager's Deficiency Warning. Monthly monitoring and reporting results have not been submitted since April 2023 and sampling efforts have not resumed. Therefore, the following violations apply.

VIOLATIONS

Spray Irrigation Operations Permit (No. 359148-04)

I. Law: 7 DE Admin. Code §7101 6.8.5.1

“Monitoring results obtained during the previous one (1) month/quarter shall be summarized and reported on an approved monitoring report form(s) postmarked no later than the 28th day of the month following the completed reporting period...”

AND

Part I.I.2 of the Spray Irrigation Operations Permit

“Monitoring results obtained during the previous one month/quarter shall be summarized for each month/quarter and reported on an approved Spray Effluent Monitoring Report Form postmarked no later than the 28th day of the month following the completed reporting period...”

Fact:

The Permittee failed to submit monthly Discharge Monitoring Reports prior to the 28th day of the month following the completed reporting period for March, April, May, June, July, August, September, October, November, and December of 2023.

II. Law: 7 DE Admin. Code §7101 6.8.1.7

“Groundwater monitoring shall be performed on a quarterly basis unless otherwise required by the Department.”

Law: 7 DE Admin. Code §7101 6.8.1.8

“Groundwater sampling shall include the following parameters unless otherwise required by the Department...”

AND

Part I.G.6 of the Spray Irrigation Operations Permit

“Groundwater samples shall be taken from each monitoring well for the facility...”

Fact:

The Permittee failed to conduct groundwater sampling / monitoring for May, June,

July, August, September, October, November, and December of 2023.

III. Law: 7 DE Admin. Code §7101 6.8.2.3

“All influent and effluent samples shall be tested for the following parameters unless otherwise specified in the permit...”

AND

Part I.G.3 of the Spray Irrigation Operations Permit

“Effluent samples shall be taken from the sampling port valve in the pump house and tested for the following parameters...”

Fact:

The Department has not received monthly effluent samples. The Permittee failed to conduct effluent sampling from May, June, July, August, September, October, November, and December 2023 per the Permit conditions.

IV. Law: 7 DE Admin. Code §7101 6.8.3.1

“Three (3) composite soil samples from each major soil series must be collected and analyzed for the parameters below...”

AND

Part I.G.8 of the Spray Irrigation Operations Permit

“Composite soil samples representing each soil series within the wetted spray field shall be taken separately from both soil depths of 0-12 inches and 12-24 inches. A minimum of one composite sample for each of the both aforementioned depths is required for every 20 acres of each soil series...”

Fact:

The Department has not received the annual soil sample results for 2023. The Permittee has failed to submit annual soil results per the Permit conditions.

V. Part I.G.7 of the Spray Irrigation Operations Permit

“Samples shall be taken from each lysimeter for the facility. Lysimeter locations are depicted on the Site Map found on Page 5 of the Permit. Samples must be tested for the following parameters...”

Fact:

The Department did not receive lysimeter results for Quarter 2, 3, and 4 of 2023. The Permittee failed to submit lysimeter results per the Permit conditions.

VI. Law: 7 DE Admin. Code §7101 6.3.2.3.13.12

“Surface water bodies adjacent to wastewater spray irrigation sites must be monitored by the wastewater treatment facility...”

AND

Part I.G.4 of the Spray Irrigation Operations Permit

“Surface water samples shall be obtained from both upstream and downstream locations of the tributary of Cart Branch. The surface water samples shall be obtained at the two (2) locations approximately depicted on the Site Map on Page 5 of the Permit. Surface Water samples shall be collected semi-annually, during the first week of May and during the first week October...”

Fact:

The Department only received surface water sample results for March 2023. Therefore, the Permittee is not compliant with the issued Permit.

VII. Law: 7 DE Admin. Code §7101 3.32.6.5.4

The permittee shall report to the Department in writing as soon as possible but within five (5) days of the date the permittee knows or should know of any noncompliance unless extended by the Department.

AND

Part II.A.3 of the Spray Irrigation Operations Permit

“...If for any reason the Permittee does not comply with, or will be unable to comply with, any affluent limitations or other conditions specified in this permit, the Permittee shall provide the Department with the following information in writing within 5 days of becoming aware of any actual or potential non-compliance”

Fact:

The Department did not receive notification of non-compliance for June, July, August, September, October, November, or December regarding the failure to perform sampling / submit Discharge Monitoring Reports.

VIII. Law: 7 DE Admin. Code §7101 6.5.6

“Permits may be transferred to a new owner or operator. The permittee must notify the Department by requesting a change of ownership of the permit before the date of transfer...The legal documentation must be provided with the application. The application must be received 30 days before the transfer.”

Law: 7 DE Admin. Code §7101 6.5.6.1

“No person shall transfer a permit from one (1) person to another unless 30 days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department, and any conditions of the transfer approved by the Department are complied with by the transferor and the transferee.”

Law: 7 DE Admin. Code §7101 6.5.6.2

“The notice to the Department shall contain a written agreement between the transferor and the transferee, indicating the specific date of proposed transfer of permit coverage and acknowledging responsibilities of current and new permittees for compliance with and liability for the terms and conditions of this permit. The notice shall be signed by both the transferor and the transferee.”

AND

Part II.B.4 of the Spray Irrigation Operations Permit

“No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another unless 30 days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department, and any conditions of the transfer approved by the Department are complied with by the transferor and the transferee.

The notice to the Department shall contain a written agreement between the transferor and the transferee, indicating the specific date of proposed transfer of permit coverage and acknowledging responsibilities of current and new Permittees for compliance with and liability for the terms and conditions of this permit. The notice shall be signed by both the transferor and transferee.”

Fact:

During the site inspection on December 6, 2023, a Department environmental scientist (Joshua Barth) was notified that the property owned by the Permittee was sold at an auction on November 21, 2023. As the Department understands, the Permittee would still be operating on the property but as a tenant and that the new owner owns the building, the land, and the lagoon. Joshua Barth was also notified that spray operations have ceased, and that the Permittee does not plan to resume spray operations due to operational changes. No process wastewater effluent is being created or directed toward the lagoon.

Since the current Permit expired March 16, 2020, a permit renewal application was submitted by the Permittee on November 26, 2019. However, facility operations and ownership have changed since the submission of the permit renewal application. Therefore, an updated permit renewal application is required that details operational changes, the Permittee’s and owner’s intent to request permit termination (if applicable), and an agreement between the new owner and the Permittee detailing property and/or permit transfer including roles and responsibilities of both parties pertaining to real property ownership and facility operations. The Department will subsequently modify the Permit to include the new owner(s), permit responsibilities, updated facility operations, and (if applicable based on the revised application) include steps necessary to terminate permit coverage.

Conclusion:

The Permittee is required to sample groundwater, lysimeters, effluent, soil, and surface water. The Permittee has failed to complete sampling as required. Furthermore, the Permittee is required by the Permit to submit monthly monitoring reports postmarked no later than the 28th day of the month. The permittee has failed to complete this task from March 2023 to December 2023. The Permittee also notified the Department during a site inspection that the property which the Permittee operates is now under new ownership and that the authorized discharge has been eliminated from their operations due to facility operation changes. The actions required below are to ensure the Permittee's compliance with the Permit and Delaware law, as well as provide the Permittee with an updated permit outlining the new ownership and operational changes:

ACTIONS REQUIRED

Pursuant to 7 Del. C. §6019, the Department is pursuing voluntary compliance by way of this notice. The Permittee may correct the violations documented herein and come into compliance with the On-Site Regulations, and the Permit, by taking the following action(s):

1. The Permittee shall submit all monthly Discharge Monitoring Reports by 11:59pm on the 28th of each month, in accordance with Part I.I.2 of the Permit. Each DMR submission shall be sent electronically via email: DNREC.Groundwater.Reporting@delaware.gov. This action shall resume ***within 60 days of receipt of this NOV.***
2. The Permittee shall resume sampling and monitoring as outlined within the Permit. This action shall resume ***within 30 days of receipt of this NOV.***
3. The Permittee shall resume the submission of past and future Non-Compliance Notifications per the Permit. Months that are non-compliant with 2023 Discharge Monitoring Reports are June, July, August, September, October, November, and December. Months that are not compliant with 2024 Discharge Monitoring Reports are January. One notification for all non-compliance over the past months shall include a description of the non-compliance and its cause, the monitoring periods of non-compliance, and steps taken or planned to prevent non-compliance in the future. This action shall be completed within ***30 days of receipt of this NOV.***
4. The Permittee shall submit an updated application for permit renewal that details operational changes, as well as the Permittee's and owner's intent to request permit termination (if applicable). Documentations shall also include roles and responsibilities of both parties pertaining to ownership of real property and facility operations. This action shall be submitted to the Department ***within 90 days of receipt of this NOV.***
5. The Permittee shall submit a property sale, lease agreement, and/or permit transfer agreement/notification to the Department so new operations and ownership may be reviewed. This action shall be submitted to the Department ***within 30 days of receipt of this NOV.***

NOTICE

This letter shall serve as official Notice of the above violations of 7 Del. C. Chapter 60, the On-Site Regulations, as well as the Permit.

The Department, to the extent necessary, reserves the right to take enforcement regarding these and other violations by the Permittee. 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, a Cease and Desist Order pursuant to 7 Del. C. §6018, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 Del. C. §§6005(b)(3) & (c)(1). Nothing in this NOV shall be deemed to estop, or in any way preclude any additional enforcement action for these 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.

Should you have any questions regarding this Notice, please feel free to contact Joshua Barth at (302) 739-9945 or email at Joshua.Barth@delaware.gov.

Sincerely,

Scott Figurski

Scott Figurski
Program Manager II
Resource Protection Section

ENC: State of Delaware Spray Irrigation Operations Permit, Permit Number 359148-04

CC: Jennifer Roushey, DNREC
Marlene Baust, DNREC
Elizabeth LaSorte, DNREC
Scott Figurski, DNREC