

HEARING OFFICER'S REPORT

TO: The Honorable Gregory Patterson
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest, Public Hearing Officer
Department of Natural Resources and Environmental Control

RE: Reconsideration of Notice of Administrative Penalty Assessment and
Secretary's Order 2024-W-0007 (Jan. 21, 2025), pursuant to 7 *Del. C.* §6005

DATE: June 26, 2025

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual administrative public hearing was held on Wednesday, April 23, 2025, at 10:00 a.m., via the State of Delaware Department of Natural Resources and Environmental Control ("DNREC," "Department")'s State of Delaware Zoom Platform, to receive testimony from Nicholas Griseto and Terry Griseto, on behalf of James Thompson and Company, Inc. ("Respondent," "Thompson & Co.," "Grisetos") and to further build the hearing record ("Record") for the Secretary's reconsideration of the decision previously set forth in the *Notice of Administrative Penalty Assessment and Secretary's Order No. 2024-W-0007*, issued Jan. 21, 2025, hereinafter referred to as the "Original Order" and attached hereto as Appendix "A" ("Reconsideration"). This Reconsideration is being made pursuant the Department's authority under 7 Del. C. §§6005, 6006-6009, and all other relevant statutory authority.

On January 21, 2025, the Department issued the Original Order (the subject matter of this Reconsideration), formally serving notice upon the Respondent that DNREC had found Thompson & Co. in violation of 7 *Del. C.* Chapter 60, 7 DE Admin. Code 7101, *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems* ("On-Site Regulations"), DNREC Permit No. 359148-04, and 7 DE Admin. Code 7201, *Regulations Governing the Control of Water Pollution* ("Water Pollution Regulations"). The Original Order set forth the Department's background information, findings, numerous statutory, regulatory, and Permit violations of Thompson & Co., and the corrective actions required of the Respondent in this matter.

The Original Order formally assessed an administrative penalty of \$110,000 against the Respondent for the violations identified therein. The Respondent was instructed to submit one check to the Department in the amount of \$110,000, in full payment of the administrative penalty, within thirty (30) days from their receipt of said Order. Pursuant to 7 *Del. C.* §6005(b)(3), the Respondent requested a public hearing be held by the Department for Reconsideration of the Secretary's decision set forth in the Original Order. As noted above, the Department held the administrative public hearing in this matter on April 23, 2025.

This Hearing Officer's Report ("Report") provides a thorough review of the Record generated in this matter and offers recommendations to aid the Secretary in his final decision regarding this Reconsideration matter.

BACKGROUND

On March 17, 2015, the Department's Division of Water issued Spray Irrigation Permit No. 359148-04 ("Permit") to Respondent (also referred to herein as the "Permittee," as the Respondent remains the Department's formal Permittee of Record at this time) to operate and maintain an on-site wastewater treatment and disposal system ("OWTDS"). The OWTDS is located at 301 S. Church Street, Greenwood, Delaware ("Site," or "Facility"), and is permitted to land apply screened wastewater from fabric finishing, fabric dying, fabric rinsing, burlap bleaching, boiler blow down, and water conditioner backwashing, in accordance with Permit requirements. The OWTDS consists of a sediment ditch with bar screens, two sediment pits, 3.4-million-gallon aerated storage lagoon, along with appropriate pumps, piping, and meters. Wastewater from the storage lagoon is permitted for discharge to approximately 45.15 acres for disposal via a spray irrigation system. The Permit, issued for a five-year period (originally set to expire on March 16, 2020), includes terms and conditions designed to protect public health and the environment.

In accordance with Part II.B.1 of the Permit, the Permittee submitted a permit renewal application to the Department on November 26, 2019. The Record reflects that the existing Permit was “administratively extended” by the Department, allowing its terms and conditions to continue and remain fully effective and enforceable, until such time that a decision was made on the permit renewal application.

In April of 2023, the Permittee ceased spray irrigation (as Thompson and Co. no longer performed fabric finishing, fabric dying, fabric rinsing, and burlap bleaching at the Facility at that time). The Record reflects that, to date, the Respondent has not submitted a formal request to the Department to formally terminate the Permit, nor provided the Department a wastewater facility closure plan, in accordance with the On-Site Regulations. As a result, the Department considers the Permit to remain active, and as such, contends the Permittee remains obligated to maintain continued compliance with all operational and maintenance requirements of the same.

The Record reflects that the Permittee’s monitoring and reporting results for March – April 2023 were submitted to the Department late, and the May – June 2023 results were not submitted at all. On August 18, 2023, the Department issued a Manager’s Deficiency Warning Letter to the Permittee, requiring monthly sampling/monitoring and reporting of results, in accordance with Part I.I.2 of the Permit.

Department staff performed a site inspection of the Facility on December 6, 2023. At that time, the Department reviewed the Respondent’s operations and monitoring data, pursuant to the Permit issued in this matter. On December 27, 2023, Joshua Barth, Environmental Scientist IV with the Department’s Division of Water, Compliance and Enforcement Branch, Resource Protection Section, sent correspondence to the Permittee, Terry Griseto, thanking her for her cooperation and assistance during DNREC’s site visit on December 6, 2023. In that correspondence, Mr. Barth confirmed for the Record numerous findings of the December 6, 2023, inspection, including, but not limited to, the following: (1) the Facility housekeeping was acceptable; (2) dye operations had ceased in April 2023; (3) boilers have been disconnected, and thus there was no more processed/non-processed wastewater directed toward the lagoon; and (4) the water currently within the lagoon was strictly from stormwater runoff.

Mr. Barth further confirmed in his December 27, 2023, correspondence that “[o]ther discussion topics” between the Department and Ms. Griseto on December 6, 2023, included the following:

...the property and building being under new ownership as of November 21st. For this reason, concerns were raised regarding permit ownership/responsibility. The Department will be responding to these concerns soon. The failure to submit monthly discharge monitoring reports was also discussed. A Notice of Violation will be issued outlining what needs to be done to restore compliance with discharge monitoring requirements.

The Department’s correspondence between Mr. Barth and Ms. Griseto is attached hereto as Appendix “B” and is expressly incorporated herein.

On February 23, 2024, the Department’s Division of Water, Resource Protection Section, Compliance and Enforcement Branch, under the authority of 7 Del.C. §6019, issued *Notice of Violation No. W-24-RPS-02* (“NOV”) to the Permittee, citing violations of 7 Del.C. Ch. 60, 7 DE Admin. Code 7101, *On-Site Regulations*, and the Permit. It should be noted that the NOV was incorporated into the Original Order as its Appendix “A” and thus is automatically a part of the present Record by reference. For ease of review, however, the Department’s NOV is also separately attached hereto as Appendix “C” and is expressly incorporated herein.

The Department’s NOV provided the permitting history of the Permittee, referenced the discussion that took place between the Department and the Permittee on December 6, 2023, and stated that the Permittee’s permit renewal application was now considered “null and void,” since the Facility’s operations and ownership had changed subsequent to the permit renewal application having been submitted by the Permittee on November 26, 2019. Given this, an updated permit renewal application would be required, detailing the following: (1) operational changes; (2) the Permittee’s and new Owner’s intent to request permit termination; and (3) an agreement between the new Owner and the Permittee, detailing property and/or permit transfer, including the roles and responsibilities of both parties pertaining to real property ownership and facility operations.

The NOV further stated that, upon receipt of the above information from the Respondent, the Department would then modify the existing Permit to include the new owner(s), permit responsibilities, updated facility operations, and would, if applicable (based on the Permittee's revised application), include steps necessary to terminate permit coverage. Additionally, the NOV set forth numerous other corrective actions required of the Permittee at that time, to bring the Permittee into compliance with the existing Permit and current Delaware law.

On June 8, 2024, Terry Griseto sent an email to Mr. Barth, providing specific responses to the actions required of the Permittee, per the aforementioned NOV. The email detailed the Permittee's compliance efforts to date and provided numerous reporting documents that were owed to the Department at that time. Additionally, Ms. Griseto provided to the Department copies of both the Sheriff's Sale Notice and the Title Search/Recorded Deed to document the change of ownership at the Facility.

Ms. Griseto further advised in her email the following information:

[T]he situation between James Thompson & Co. and Alphatex is not an amicable [one]. My understanding was that if they foreclosed on the property that they would be responsible for the lagoon and all decisions or testing required....If there is any additional information that is needed, please let me know. Unfortunately, I am unsure how to complete and answer some of these questions since I am not an operator but I will do the best I can.

The email correspondence between Ms. Griseto and Mr. Barth, dated June 8, 2024, is attached hereto as Appendix "D" and is expressly incorporated herein. The Sheriff's Sale Notice and the Title Search/Recorded Deed, as referenced within the Respondent's email, is attached hereto as Appendix "E" and is expressly incorporated herein as well.

The Record reflects that Department staff inspected and performed additional surveying and groundwater monitoring activities at the Facility on several occasions from July 9, 2024, through December 10, 2024. On July 12, 2024, the Department specifically notified both the Respondent and the current property owner, Alphatex, LLC (“Alphatex”), via email, of the discovery of an unauthorized discharge from the Facility’s lagoon, found during a site visit by Department staff on July 9, 2024. Said email put both the Respondent and Alphatex on notice at that time that active lagoon management, in accordance with the Permit, was required to eliminate the ongoing discharge and prevent future unauthorized discharge from occurring.

In a subsequent site visit on August 1, 2024, the unpermitted discharge was noted to be continuing at the Facility. Department staff further noted the discovery of a slow leak coming from the pump shed and actively draining into a floor drain; at that time, however, staff could not determine to where that floor drain discharged. Department staff returned to the Facility for another site visit on September 30, 2024, at which time evidence of recent discharge was noted to be present. Due to evaporation, dry weather and the unpermitted discharge, lagoon levels had dropped, and the discharge had slowed dramatically. Department staff further noted that active discharge would resume if lagoon levels increased again following rain events, unless the Respondent was to actively manage lagoon levels or cap the outflow pipe. A review of the Facility’s logbook by Department staff during the September 30, 2024 site visit confirmed that the Respondent had still not been monitoring lagoon levels (since no entries had been made since January 2024), and that the lower lagoon level was a result of the unpermitted discharge and lack of rain/evaporation (as the spray totalizer showed no spray irrigation activities had occurred since April 2023).

On October 2, 2024, the Department issued *Secretary’s Order to Cease and Desist* (Order No. 2024-WH-0041), finding both “James Thompson & Company, Inc.,” and “Alphatex, LLC” (referenced therein as “Respondents”), in violation of 7 Del. C. Ch. 60 and 7 DE Admin. Code 7101. This Cease-and-Desist Order (hereinafter referred to as the “C&D Order”), ordered both Thompson & Co. and Alphatex to “...cease and desist all operation in violation of the Spray Irrigation Permit, including, but not limited to, all unpermitted releases from the wastewater lagoon.” The C&D Order is attached hereto for review as Appendix “F” and is expressly incorporated herein.

On November 7, 2024, a *Notice of Liability for the James Thompson & Company, Inc. Site (DE-0070)* (“NOL”), issued by the Department’s Division of Waste and Hazardous Substances, Remediation Section (“DWHS-RS”), was sent via certified mail (return receipt requested) to both “James Thompson and Company, Inc.” and “Alphatex LLC.” The purpose of the NOL was to notify the above recipients that, as the current and/or former owner and/or operator of the Site, they were both potentially responsible parties (“PRP”) as defined under 7 *Del.C.* §§ 9103(23) and 9105 of the *Delaware Hazardous Substance Cleanup Act* (“HSCA”). The NOL (with enclosed *PFAS Investigation Summary Report, August 2024*) is attached hereto for review as Appendix “G” and is expressly incorporated herein.

On November 25, 2024, the Grisetos received direct correspondence from Cross & Simon, LLC (counsel to Alphatex, described therein as owner of the property located at 301 South Church Street, Greenwood, Delaware 19950, also referred to as, “the Premises”). Said correspondence formally put the Grisetos on notice that they were not allowed to enter the Premises or its surrounding real property, for any reason, as they “have no rights” to do so. Their counsel further advised that, if Respondents “...are witnessed trespassing upon the Premises or its surrounding real property, Alphatex, LLC, will contact law enforcement.” Cross & Simon, LLC’s correspondence, attached hereto for review as Appendix “H” and expressly incorporated herein, ends with the admonition, “[p]lease guide yourself accordingly.”

Thereafter, the Record continues to reflect active communication between the Department and Alphatex only. Specifically, on December 3, 2024, Alphatex notified the Department that the discharge pipe from the lagoon had been plugged. The Department performed a site visit on December 10, 2024, and observed that a plug was in place, but that additional corrective action may be required. No subsequent activity or communication by the Department is reflected in the Record until January 21, 2025, at which time the Department issued the Original Order central to this Reconsideration matter.

On January 30, 2025, pursuant to 7 Del.C. §6005(b)(3), the Respondent submitted a written request for the Department to hold a public hearing in Reconsideration of the Secretary's decisions set forth in the Original Order. Respondent's formal request for the public hearing is attached hereto as Appendix "I" and is expressly incorporated herein. Accordingly, the public hearing for this matter was scheduled to be held on Wednesday, April 23, 2025.

Respondent was formally notified of the scheduling of the administrative public hearing by written correspondence sent by this Hearing Officer via certified mail (return receipt requested) on March 26, 2025. Public notice of this hearing was published in both the *Delaware State News* and the *News Journal* on April 2, 2025. It should be noted that the Department's public notices included translations into Spanish and Haitian Creole. Notice of the public hearing was also placed on the State of Delaware Public Meeting Calendar at that time as well. A copy of the correspondence formally notifying the Respondent of the scheduling of the public hearing (with proof of the certified mail attached thereto) is attached hereto as Appendix "J" and is expressly incorporated herein.

Accordingly, the Department held the administrative public hearing in this matter, pursuant to 7 Del.C. §6006-6009, on April 23, 2025. Department staff, members of the public, and the Grisetos (as the sole Respondent) were in attendance, as well as Devera Scott, Esq., DAG, who appeared on behalf of the Department. A copy of the court reporter's transcript from Veritext Legal Solutions, which documents the Exhibits entered into the Record and the Respondent's testimony offered for the Secretary's review, is attached hereto as Appendix "K" and is expressly incorporated herein.¹

¹ Due to technical difficulties beyond the control of both the Department and the Zoom platform itself, the very beginning of the 04/23/2025 administrative public hearing (consisting only of general introductions and opening remarks by this Hearing Officer) was unable to be transcribed by the court reporter. The court reporter was able to begin the transcription of the proceeding immediately after Terry Griseto began to testify, missing only her introductory remarks concerning this matter. As the substantive portion of her testimony was able to be recovered, transcribed, and entered into the Record, the Department's statutory requirement to provide an official transcript in this matter was satisfied.

Following the date of the public hearing, the comment period remained open for five (5) business days, through April 30, 2025. Pursuant to Ms. Griseto’s testimony provided at the public hearing, the Respondent provided additional documentation to this Hearing Officer via email immediately following the public hearing on April 23, 2025, which was immediately incorporated into the Record being generated in this matter. No further documentation was received by this Hearing Officer for incorporation into the Record prior to its close on April 30, 2025. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents²:

- (1) *DNREC Notice of Administrative Penalty Assessment and Secretary’s Order No. 2024-W-0007* (Jan. 21, 2025), referenced herein as “Original Order” and attached hereto as Appendix “A”;
- (2) Correspondence (December 27, 2023) from Joshua Barth, Environmental Scientist IV, DNREC Division of Water, Resource Protection Section, Compliance and Enforcement Branch, to Respondent, Terry Griseto, attached hereto as Appendix “B”;
- (3) *DNREC Notice of Violation No. W-24-RPS-02* (February 23, 2024), referenced herein as “NOV” and attached hereto as Appendix “C”;
- (4) Email (June 8, 2024) from Respondent, Terry Griseto, to Joshua Barth, as previously identified herein, attached hereto as Appendix “D”;
- (5) Copies of the Sheriff’s Sale (November 21, 2023) and Title Search documentation (prepared April 11, 2025) reflecting the sale and transfer of ownership of the Facility, as previously identified above, attached hereto as Appendix “E”;

² Many of the documents listed above were previously incorporated into the Record at the time of the public hearing held by the Department on April 23, 2025. To ensure clarity for the Record generated in this matter, all documents that comprise the Record to date are identified as such herein and are expressly incorporated into the Record at this time.

- (6) *DNREC Secretary's Order to Cease and Desist* (10/02/2024), issued pursuant to 7 *Del.C.* §6018, Order No. 2024-WH-0041, as previously identified herein, attached hereto as Appendix "F";
- (7) *Notice of Liability for the James Thompson & Company, Inc., Site (DE-0070)* (November 7, 2024), with enclosure (*PFAS Investigation Summary Report, August 2024*), from DNREC's DWHS-RS, to both Thompson & Co. and Alphatex, LLC, via Certified Mail (return receipt requested), attached hereto as Appendix "G";
- (8) Correspondence (November 25, 2024) from Cross & Simon, LLC, to Respondent (Terry Griseto and Nicholas Griseto), attached hereto as Appendix "H";
- (9) Respondent's written request for DNREC to hold a public hearing (January 30, 2025), pursuant to 7 *Del.C.* §6005(b)(3), attached hereto as Appendix "I";
- (10) Correspondence (March 26, 2025) from this Hearing Officer to the Respondent (and the Respondent's Registered Agent), providing formal notice of the scheduling of the public hearing for April 23, 2025, sent via Certified Mail (return receipt requested), attached hereto as Appendix "J";
- (11) Official verbatim Court Reporter's transcript from Veritext Legal Solutions (April 23, 2025), attached hereto as Appendix "K"; and
- (12) Email thread (April 23, 2025) reflecting (1) the Respondent's provision of additional documentation and statements for inclusion into the Record generated in this matter; and (2) this Hearing Officer's provision of same to Devera Scott, Esq., DAG, for her review. A copy of this email thread is attached hereto as Appendix "L."

Following opening remarks from this Hearing Officer at the administrative public hearing of April 23, 2025, Terry Griseto offered her testimony for the benefit of the Record in this matter. Ms. Griseto provided a brief background on how Thompson & Co. had ceased operations in April of 2023, were no longer generating revenue, and that it was her understanding that “everything was sold.” Her testimony continued by noting that, subsequently, foreclosure occurred on the Respondent’s property, and Respondent realized that the new owners were not taking the necessary steps to transfer ownership of the existing Permit. Ms. Griseto further testified that, at that point, they “...tried to reach out, you know, to DNREC for direction, because we’re unclear as to how to move forward with it” (App. K, p. 6). Moreover, when she first spoke with Mr. Barth about this situation, he said that “...he was also unclear, because he had not dealt with a situation where there was a foreclosure of land that the lagoon sat on and how that transfer actually was to take place.” *Id.* Shortly thereafter, Respondent learned that Mr. Barth moved to a different division within the Department, and someone else had taken over her case. Ms. Griseto was asked if they could provide the Department with “an amicable letter to transfer ownership” but she stated there was no way to provide such documentation, given the situation that existed between the Respondent and Alphatex, LLC, was not an amicable one.

Ms. Griseto concluded her testimony at the public hearing by again stating:

...we’ve been at a loss as to what to do – to address this....If we reached out, we tried to ask, “What – what do we do with the lagoon since we don’t own the land? We don’t have access to it. How do we move forward?”I’m not sure how to transfer that ownership to the new landowner that took possession. It wasn’t like it was a friendly sale and we were going to, you know, file whatever documents are necessary to – to move this forward. It wasn’t that situation. So I don’t know....how we transfer the ownership of it. (Id., pp.7-8)

Nicholas Griseto then reiterated the testimony provided by Terry Griseto and offered to provide additional documentation for the benefit of the Record regarding the aforementioned communication between Respondent and Mr. Barth, the Sheriff’s Sale and Title Search performed in this matter, and the correspondence from Alphatex’s counsel forbidding Respondent’s access to the Facility and surrounding property.

The Record remained open for five (5) business days following the administrative public hearing of April 23, 2025, to accommodate the submission of additional documentation for inclusion into the Record. Mr. Griseto sent an email to this Hearing Officer shortly after the hearing had concluded on April 23, 2025, which provided the additional documentation, as well as the following additional statements from Respondent, for inclusion into the Record:

1. *Thompson & Co. ceased operations at the property in April 2023.*
2. *Thompson & Co. had the property sold to 2 different buyers splitting the property in August 2023 only to have Ernie not give clear title and then foreclosed on property.³*

A copy of Mr. Griseto's April 23, 2025, email, providing both the additional documentation and verbatim statements referenced above, is attached hereto as Appendix "L," and is expressly incorporated herein. It should be noted that the documents provided by Mr. Griseto immediately following the public hearing (previously identified herein as Appendices B, D, E and H), were incorporated into the Record and provided to DNREC counsel, pursuant to Ms. Scott's request made at the time of the public hearing to review the same. No additional testimony, comment or further documentation was received by this Hearing Officer prior to the Record closing on April 30, 2025.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the Respondent's request for Reconsideration of the Original Order, as referenced above. This Reconsideration is being made pursuant the Department's authority under 7 Del. C. §§6005, 6006-6009, and all other relevant statutory authority. I find that the Respondent's request for Reconsideration, as well as the Department's holding of the April 23, 2025, administrative public hearing to further build the Record for the Secretary's review, is consistent with the statutory provisions authorizing the Department to make such Reconsideration, and that proper notice regarding this matter was provided as requested by law.

³ The above statements were incorporated into the Record, per the Respondent's request to add to the testimony provided at the Department's administrative public hearing earlier that same day. As such, they are considered additional verbatim testimony from the Respondent. The actual identity of the individual referred to therein as "Ernie" is unknown, however, as the Record developed in this matter does not reflect anyone by that name.

I also find that the Department is responsible for the administration and enforcement of Delaware's Spray Irrigation Program, in accordance with 7 *Del.C.* Chapter 60, 7 DE Admin. Code 7101, 7 DE Admin. Code 7201, and the Permit originally issued to Respondent, effective March 17, 2015. The Record developed in this matter reflects that the Original Order set forth the Department's background findings regarding the Respondent's permitting history with DNREC, the numerous statutory, regulatory, and Permit violations of Thompson & Co., and the corrective actions required by the Department to bring the Respondent into compliance. It should be noted that the Original Order issued by the Department identifies the Respondent in this matter solely as Terry Griseto, as "VP of Finance and Administration, James Thompson and Company, Inc."

I further find the Original Order assessed an administrative penalty of \$110,000 against the Respondent for the violations identified therein and instructed the Respondent to submit one check to the Department in full payment of the administrative penalty within thirty (30) days from the receipt of said Order. It should be noted that it was not until the issuance of the Original Order on January 21, 2025, that any Administrative Penalty was assessed against the Respondent for the violations documented by the Department in this matter. It should also be noted that the Original Order did not provide any itemization of the \$110,000 administrative penalty by the Department in any way, other than to say that it was "...for the violations identified in this [Original Order]" and as a result of the Secretary's consideration of the factors as set forth in 7 *Del. C.* §6005(b)(3).

Pursuant to 7 *Del.C.* §6006, the testimony offered by the Respondent at the public hearing, along with the exhibits and other documentation incorporated into the Record by this Hearing Officer, as specifically identified herein, constitute the Record generated in this matter. For the Secretary's review, this Report will now present a review of the issues raised by the Respondent's testimony as provided at the public hearing of April 23, 2025, as well as the issues surrounding the actions taken by the Department in this matter, as reflected in the Record.

- 1. Respondent states that all monitoring and reporting documentation that is able to be submitted to the Department at this time has been done; however, the corrective actions required of the Respondent, as set forth in the Original Order, are not able to be accomplished at this time, as (1) the Respondent is no longer an owner and/or operator of the Facility; (2) the Respondent no longer has legal access to the Facility and/or surrounding real property; and (3) the situation between the Respondent and Alphonex is not amicable.**

I find that the Respondent's testimony concerning the above issue, as provided at the public hearing on April 23, 2025, is directly supported by the Record in this matter.

As previously noted above, the Respondent initially advised the Department of the sale of the property during a site visit to the Facility on December 6, 2023. In Mr. Barth's correspondence to Ms. Griseto on December 27, 2023 (*see* App. B), the Department acknowledged concerns raised by the Respondent on December 6, 2023, regarding permit ownership and responsibility, and advised that "...the Department will be responding to these concerns soon." The Record reflects no further communication between the parties following the December 27, 2023, correspondence until the Department's issuance of the NOV on February 23, 2024.

The NOV stated the Respondent's application for permit renewal (submitted to DNREC back on November 26, 2019) was "null and void," since Facility operations and ownership had changed subsequent to the submission of the permit renewal application⁴. The NOV further stated an updated permit renewal application was now required to be submitted, along with "...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." Only upon the Department's receipt of such documentation would the existing Permit be modified to include the new owner and new responsibilities, etc.

⁴ The NOV is the first time that the Record reflects the Department was considering the permit renewal application to be null and void. From the time of submittal of the permit renewal application back on November 26, 2019, up through the date of the NOV on February 23, 2024 (approximately five years and three months), the Record indicates that 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." (*see* NOV, p.1)

The NOV also set forth numerous other corrective actions required of the Permittee at that time (*see* App. C). No additional instruction or guidance as to how the Respondent may accomplish the required corrective actions was provided by the Department at that time.

Ms. Griseto's testimony is further supported in the Record by her email to Mr. Barth on June 8, 2024 (*see* App. D), which provided specific responses to the corrective actions required of the Permittee as set forth in the NOV. The email detailed the Permittee's compliance efforts to date and provided numerous reporting documents that were owed to the Department at that time, along with additional documentation reflecting the change of ownership at the Facility. Most importantly, Ms. Griseto's email advised the Department that the situation between James Thompson & Co. and Alphatex was not an amicable one. Her email further stated it was the Respondent's understanding that, if the new owners foreclosed on the property, then they would be responsible for the lagoon and all decisions or testing required. Moreover, Ms. Griseto's email ended with a specific request for the Department to let her know if any additional information was needed from her, further noting that she was "...unsure how to complete and answer some of these questions since [she was] not an operator but [would] do the best [she could]." The Record does not reflect any direct response to this email by the Department, nor does it reflect any additional instruction or guidance offered to the Respondent by the Department to determine an alternative path forward at that time.

2. Despite engaging in direct communications with both the Respondent *and* Alphatex regarding ongoing operations and maintenance requirements at the Facility, the Department did not include Alphatex as a named "Respondent" in the Original Order.

Despite the fact that the Respondent remains the sole Permittee of Record in this matter, I find that the Record provides support for both the Respondent *and* Alphatex to have been included by the Department as Co-Respondents in the Original Order, thereby allowing them to share in the responsibilities and obligations of the Permit issued in this matter.

The Department has actively engaged in ongoing communication with both the Respondent and Alphatex since 2023 (and, at times, solely with Alphatex) concerning the violations that the Department has documented at the Facility. On July 12, 2024, the Department sent an email specifically notifying both the Respondent *and* the current property owner, Alphatex, of the discovery of an unauthorized discharge from the Facility’s lagoon (the discharge was found by Department staff during a site inspection visit on July 9, 2024). Furthermore, the email of July 12, 2024, put *both* the Respondent and Alphatex on notice at that time that active lagoon management, in accordance with the Permit, was required to eliminate the ongoing discharge and prevent future unauthorized discharge from occurring (*see* App. A, *Findings of Fact*, p.3).

The Record continues to reflect active communication not only between the Department and the Respondent, but also with Alphatex, concerning ongoing compliance issues at the Facility and the surrounding real property. On October 2, 2024, the Department issued the aforementioned C&D Order, pursuant to 7 *Del. C.* §6018, finding *both* “James Thompson & Company, Inc.,” *and* “Alphatex, LLC” (specifically referenced therein by the Department as “Respondents”), in violation of 7 *Del. C.* Ch. 60 and 7 DE Admin. Code 7101, and demanded *both* those Respondents to “...cease and desist all operation in violation of the Spray Irrigation Permit, including, but not limited to, all unpermitted releases from the wastewater lagoon” (*see* App. F).

Subsequently, on November 7, 2024, the Department’s DWHS-RS issued the NOL to *both* Respondents (as previously identified in the C&D Order), via certified mail (*see* App. G), formally placing *both* entities on notice that:

As the current and/or former owner and/or operator of the Site, James Thompson and Company, Inc., and Alphatex LLC are potentially responsible parties (PRP) as defined in [7 Del.C.] §§9103(23) and 9105 of [the Delaware Hazardous Substance Cleanup Act] HSCA (see App. G, p.1).

As previously noted herein, on November 25, 2024, the Respondent received formal notice from Alphatex's counsel that they had no legal access to the Facility or its surrounding real property, for any reason (*see* App. H). Thereafter, the Record continues to reflect active communication between the Department and Alphatex *only*. On December 3, 2024, Alphatex notified the Department that the discharge pipe from the lagoon had been plugged. The Department performed a site visit on December 10, 2024, and observed that a plug was in place, but that additional corrective action may be required. No subsequent activity or communication by the Department to either the Respondent or Alphatex is reflected in the Record until January 21, 2025, at which time the Department issued the Original Order, identifying only Terry Griseto as the Respondent in this matter.

While this Report is not the proper platform to provide legal argument as to whether or not the Department should have included Alphatex as a named Respondent in the Original Order, I find that the Record reflects that Alphatex was engaging in active lagoon management (at the very least, in December of 2024), in accordance with the requirements and obligations set forth in the Permit, approximately one month prior to the issuance of the Original Order. Despite this, the Department did not include Alphatex as a Respondent in this matter.

3. The Original Order assessed an Administrative Penalty of \$110,000 against the Respondent without setting forth any specificity or itemization to reflect how the Department calculated same.

The Record generated in this matter reflects a very detailed effort on the part of Department staff to document the numerous violations associated with the Permit at issue in this matter. It should be noted that the validity of the violations themselves is not being contested by the Respondent at this time; rather, it is the matter of whether the Respondent should bear sole responsibility for the same.

It is logical that any outstanding violations that took place prior to the Respondent's sale of the business should, of course, be the sole responsibility of the Respondent. Thereafter, however, the situation becomes definitively less clear, especially during the time that the Department was engaged in direct communication with both the Respondent *and* Alphatex regarding the Facility's ongoing violations. By the end of November 2024, the Grisetos had been formally advised that they no longer had legal access to the Facility's premises. Thus, any operational or maintenance work that was ongoing at the Facility after November of 2024 would have been performed by Alphatex.

I find that the Record deserves more clarity regarding how the Department calculated the lump sum penalty assessed solely against the Respondent in this matter to be \$110,000. I further find that, until such time as the Department provides a detailed itemization of the penalty assessment set forth in the Original Order (i.e., specifically noting the owner of the Facility at the time the violation(s) were discovered, the identity of the owner that performed the maintenance and/or repair work in an attempt to correct the violation, the cost(s) associated with the violation remaining outstanding, etc.), it is not possible for the Secretary to fully reconsider this aspect of the Original Order.

In conclusion, the Record reflects that the Department has failed to provide the Respondent with sufficient instruction or guidance as to how they are expected to fully accomplish the corrective actions required, given the fact that the same are currently unachievable at this time, for the reasons noted herein. Further, I find the current context of the corrective action requirements being placed solely upon the Respondent by the Department in this matter to be irrational. The fact that all the corrective action requirements are to remain solely the Respondent's responsibility until such time as the above-described executed written agreement is provided to the Department is, in the present case, not sensible. The Original Order does nothing more than create a demand that is impossible to satisfy, with no alternate path offered by the Department for the Respondent to follow that could potentially lead to a satisfactory resolution of this matter.

The Record reflects a great deal of effort on the part of Department staff in documenting the numerous violations of the Respondent and reveals a desire on the part of DNREC to hold the Permittee to the requirements and obligations of their Permit. A balanced review of the Record, however, reveals flaws regarding the actions (and, at times, omissions) of both the Department and the Respondent over the course and scope of this enforcement matter.

Of course, Permittees such as the Respondent must be held to the requirements set forth in their permits. This Reconsideration should not be construed in any way as a release of all requirements and obligations arising from the Respondent's Permit. Without holding Permittees to such obligations, the Department would be unable to carry out its mission to ensure the wise management, conservation, and enhancement of the State's natural resources, and to protect public health and the environment.

At the same time, however, there are situations where the Department must be able to work flexibly with Permittees about documented violations and required corrective actions. When standard permitting processes fail, the Department must find ways to help bring the Permittee into successful compliance – especially in cases such as this, where the Respondent has not demonstrated any sort of active avoidance regarding compliance, but instead has been repeatedly asking the Department for assistance in determining a viable path forward.

Upon having reviewed the Record generated in this matter, I recommend the Secretary adopt the following recommendations regarding this Reconsideration matter:

1. The Department has jurisdiction, as provided for under 7 Del.C. Ch. 60, and all other relevant statutory authority, to make a final determination on the aforementioned pending Reconsideration matter, after holding the administrative public hearing on April 23, 2025, and reviewing the Record generated in this matter;
2. The Department has carefully considered the factors required to be weighed in issuing a final decision in this Reconsideration matter, and finds that the Record supports the same;

3. For the reasons set forth above, the Original Order issued by the Department on January 21, 2025, is hereby *vacated*, and the enforcement matter is hereby *remanded, in its entirety*, to the Department's Division of Water and the Division of Waste and Hazardous Substances for further handling. The Department's Divisions are hereby instructed to work under the direction of the Department's Enforcement Coordinator, to develop a viable path forward for both the Respondent and the Department regarding the outstanding violations in this matter, and then work with all entities involved to determine each of their respective responsibilities and obligations moving forward, including, but not limited to, operations, maintenance and sampling reporting, and, if applicable, closure obligations, to ensure a successful resolution of this case;
4. The aforementioned Divisions are further instructed to continue to develop the Record being generated in this matter to provide additional clarity and further support therein for the following issues: (1) providing a viable path forward for the Respondent in the present case, so that they are enabled to potentially achieve a resolution of this current matter; (2) engaging in additional internal discussion as to the inclusion of additional owners and/or operators in future enforcement actions so that all potential Respondents that may share responsibility for the violations that have been and may continue to be documented by the Department in this matter; (3) evaluating all operational and/or closure obligations for both the Respondent in this matter and, if applicable, the current owner of the Facility, in light of the current Respondent's lack of access rights; and (4) providing a detailed itemization of any future administrative penalties assessed against any Respondents in this matter, as suggested herein;
5. The Department has reviewed and carefully considered all factors required to be weighed in making its final decision in this Reconsideration matter, and finds that the above actions are consistent with the Department's Civil Rights policy, and consistent with the Record developed in this matter;

6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall serve and publish its Order on its internet site.

/s/Lisa A. Vest
LISA A. VEST
Public Hearing Officer

\\ahear\Admin.Hrg.Thompson & Co.

Attachments:

App. A: DNREC Original Order (01/21/2025)
App. B: Barth ltr. to Respondent (12/27/2023)
App. C: NOV (02/23/2024)
App. D: Respondent email to Barth (06/08/2024)
App. E: Sheriff's Sale (11/21/2023 and Title Search (04/11/2025)
App. F: C&D Order (10/02/2024)
App. G: NOL (11/07/2024)
App. H: Cross & Simon ltr. to Respondent (11/25/2024)
App. I: Respondent Req. for public hearing ltr. (01/30/2025)
App. J: Ltr. to Respondent from Hearing Officer (03/26/2025)
App. K: Court Reporter transcript of 04/23/2025
App. L: Email thread from Respondent (04/23/2025)