



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

Secretary's Order to Cease and Desist

Issued Pursuant to 7 *Del. C.* § 6018, and 7 *Del. C.* §
9118 **ORDER NO. 2021-WH-0028**

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:

Sarjudas Properties LLC
2706 Concord Pike
Wilmington, DE 19803

Registered Agent:

Rajesh B. Patel
2706 Concord Pike
Wilmington, DE 19803

**Notice to Interested Party
Via Registered Mail, Return Receipt Requested:**

Cumberland Farms, Inc.
165 Flanders Road
Westborough, MA 01581

Registered Agent:
Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

This is to notify Cumberland Farms Inc. and Sarjudas Properties, LLC ("Respondent") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. Admin. C.* § 1375 Delaware's *Regulations Governing Hazardous Substance Cleanup* ("DRGHSC") and 7 *Del. C.* § 7406. Accordingly, the Department is issuing this Secretary's Order to Cease and Desist, pursuant to 7 *Del. C.* § 6018, and 7 *Del. C.* § 9118. This letter shall also serve as notice to Respondent of the violations pursuant to 7 *Del. C.* § 7411.

BACKGROUND

1. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of hazardous substances, by establishing a program of regulation to require prompt containment and removal of such hazardous substances, and to eliminate or minimize the risk to public health or welfare or the environment within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapters 60, 74 and 91.
2. Respondent purchased 1700 Marsh Road, Wilmington, DE ("the Property") from Cumberland Farms Inc. on March 23, 2021. For identification purposes, the New Castle County tax parcel number for the facility is 0608100001. The Property had previously been used as a gas station and had contained underground storage tanks, now removed. A release of petroleum was detected on December 31, 1991, and Cumberland Farms began remedial actions on the Property sometime thereafter. Active remedial measures continue to the present.
3. On September 21, 2020, Department representatives met with a potential Brownfield developer regarding the development of the Property. The Property was certified by the Department as a Brownfield on September 28, 2020.
4. On October 7, 2021, the Department was made aware that it appeared work, including earthen-moving work, was being done at the Property. The Department also discovered at this time that the potential Brownfield developer had opted not to proceed, and that Cumberland Farms, Inc. sold the Property to Respondent.¹
5. On October 8, 2021, a Department representative visited the Property and observed construction activities. The Department representative informed Respondent via email and verbally that, because a release of a hazardous substance(s) had occurred on the Property, a contaminated materials management plan ("CMMP"), in addition to other environmental controls, including but not limited to ensuring soil piles are properly covered and a functional silt fence, were required in advance of any construction activities occurring on the Property.
6. On October 16, 2021, a Department representative visited the Property again and observed that construction activities were continuing, that the silt fence had been knocked down and was not functional, and that the soil piles were not properly covered. In addition, Respondent had still not submitted the required CMMP to the Department.
7. On October 13, 14, and 18, 2021, a Department representative was in contact with Respondent² about the necessity of DNREC approving a CMMP prior to beginning work. Respondent represented that they were in the process of retaining Duffield Associates to

¹ See Deed 202104200046742 between Cumberland Farms, Inc. (Grantor) and Respondent, Sarjudas Properties, LLC (Grantee), recorded on April 20, 2021 with the New Castle County Recorder of Deeds.

² The Department was in contact with Messrs. Rajesh Patel, Jay Sorathiya, and Neel Patel on behalf of Respondent.

develop and submit the CMMP. On October 19, 2021, a Department representative contacted Duffield Associates and learned that they had never been formally engaged by Respondent.

8. As of the Date of this Cease & Desist Order, Respondent has not submitted the required CMMP for Department approval nor taken the required measures to properly cover soil piles or install appropriate silt fencing.

FINDINGS

The Department has found Respondent in violation of 7 Del. Admin. C. § 1375, including but not limited to:

1. **Section 2.1 of DRGHSC, specifically the definition of “facility,” states:**

“means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, aircraft or any site or area where a hazardous substance has been generated, manufactured, refined, transported, stored, treated, handled, recycled, disposed of, released, placed or otherwise come to be located. Where there is or has been a release or threat of release on real property, a portion of the real property may be considered a facility for the purpose of performing a remedy. A facility also includes real property where hazardous substances have migrated to or come to be located since being released.”

- Section 2.1 of DRGHSC, specifically the definition of “certified brownfield,” states:**

“means a brownfield, as defined in 7 Del. C. § 9103(3) and § 9123(3), that the Secretary has certified upon finding that there is an actual, threatened or perceived release of hazardous substances at the real property that is the subject of the brownfield certification.”

- Section 12.8.2 of DRGHSC states:**

“No person shall perform any work or construction activities that may interfere with the remedial action at the facility or Certified Brownfield, unless authorized by the Department as part of the remedial action, without doing all of the following:

12.8.2.1 Providing notice to the Department of any such planned work or construction activities;

12.8.2.2 Providing copies of all plans and a description of the planned work or construction activities to be performed at the facility or Certified Brownfield;

12.8.2.3 Providing an explanation of how and why the planned work or construction activities will not interfere with any part of the remedy; and

12.8.2.4 Obtaining the Department's prior written approval for any work or construction activities to be performed at the facility or Certified Brownfield."

Section 12.8.3 of DRGHSC states:

For the purpose of Section 12.8, "work or construction activities" shall include:

12.8.3.1 Any building, constructing, drilling, digging, excavating, grading, filling, landscaping, earthmoving, agricultural or any other land disturbing activities;

12.8.3.2 Storage, bulk or not, of inventory, equipment, or materials which limit access to remedial activities; or

12.8.3.3 Any activities that may cause additional or new releases or exacerbation of site conditions.

On October 8, 2021, a Department representative observed construction activities on the Property. Prior to commencing construction activities Respondent did not: 1) provide notice to the Department of construction activities; 2) provide copies of all plans and a description of the planned work or construction activities to be performed to the Department; 3) provide an explanation of how and why the planned work or construction activities will not interfere with any part of the remedy; and 4) obtain the Department's prior written approval for any work or construction activities to be performed. Thus, the Department has concluded that Respondent is in continuing violation of the above cited provisions of DRGHSC.

2. 7 Del. C. § 7402, specifically the definition of “responsible party,” states:

“means any person who:

a. Owns or has a legal or equitable interest in a facility or an underground storage tank;

b. Operates or otherwise controls activities at a facility;”

7 Del. C. § 7402, specifically the definition of “facility,” states:

“means any location or part thereof that contains or had previously contained 1 or more underground storage tanks.”

7 Del. C. § 7406 (Release of substances prohibited; correction of substance release; Department Intervention) states:

“(b) Responsible parties shall take measures for the prompt control, containment, and removal of the released regulated substances to the satisfaction of the Department.”

On October 8, 2021, a Department representative informed Respondent that a CMMP must be approved of by the Department prior to commencing construction activities on the Property. The Department representative further informed Respondent that a silt fence would have to be installed and soil piles covered to prevent soil from moving offsite. On October 16, 2021, a Department representative observed that the silt fence had been knocked down and a dirt pile partly uncovered. Furthermore, Respondent has not submitted the required CMMP to the Department for approval. Thus, the Department has concluded that Respondent is a “responsible party” under § 7402 and that Respondent is in continuing violation of § 7406(b).

ORDER

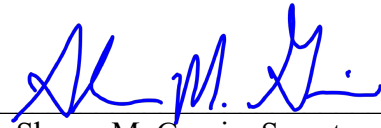
IT IS HEREBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 Del. C. § 6018, and 7 Del. C. § 9118, that Respondent:

1. Upon receipt of this Order, immediately cease and desist all construction activities at 1700 Marsh Road.

The Department reserves the right to take additional enforcement actions regarding these and any other violations at the facility.

If you have any questions, please contact David Lerner, P.G. at (302) 395-2600, or email David.Lerner@Delaware.gov.

Date: 10/28/21



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