



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. Aerenson 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. Aerenson 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, Aerenson 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. Aerenson'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, Aerenson 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. Aerenson at Wilmington Real Estate; title was still held by Weiner, Kristol, Aerenson 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:

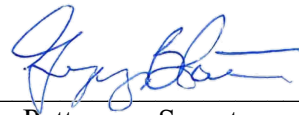
Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Telephone: (302) 739-9000

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