



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


DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**DIRECTOR'S
OFFICE**

PHONE
(302) 739-9949

AUTHORIZATION MEMORANDUM & DELEGATION

TO: Shawn M. Garvin,
Secretary

FROM: Steve Smailer  Date:
2024.11.22
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Director, Division of Water

DATE: November 22, 2024

SUBJECT: Approval for Division of Water to issue a Temporary Emergency Variance Authorization Letter for a Temporary Wastewater Storage System for the Winchelsea Subdivision

Winchelsea LLC (Winchelsea) has applied for a Temporary Emergency Variance from restrictions set forth in 7 DE Admin. Code § 7101-6.10 (“Delaware’s *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*”). Specifically, Winchelsea is requesting the ability to immediately operate and maintain a temporary holding tank system that would utilize portions of the Winchelsea Subdivision collection system for storage on a temporary and limited basis.

Pursuant to 7 Del. C. § 6012, the Secretary (or the Secretary’s designee) may grant a Temporary Emergency Variance to any rule(s) or regulation(s) promulgated pursuant to Chapter 60 of Title 7 of the Delaware Code for a period not to exceed 60 days. Based on the following findings of fact, the Division of Water (Division) has determined that Winchelsea’s application for a Temporary Emergency Variance satisfies the requirements of 7 Del. C. § 6012, and further recommends that the Secretary authorize the Division to issue to Winchelsea a Temporary Emergency Variance Authorization Letter in the form attached.

Findings of Fact:

1. The Winchelsea Subdivision consists of 336 dwelling units to be serviced by New Castle County (County) that will be connected to sanitary sewer at Jamison Corner Road. The subdivision was approved by the County and recorded on May 24, 2023. An off-site utility location survey was performed recently that identified a sewer conflict that prevented the connection to the County's central sewer system. The conflict was not identified on County approved sewer plans, and it was not documented in the County's available records. The civil engineer who prepared the original sewer plans was also not aware of the conflict. Winchelsea notified the County of the conflict, and the County has indicated that it does not object to Winchelsea using portions of the Winchelsea Subdivision collection system for temporary storage until the connection to central sewer is completed.
2. Winchelsea relied on the original County approved record and sewer plans, when it scheduled settlements of up to 10 dwellings prior to November 28, 2024. The sewer conflict has delayed the central sewer connection, and it is anticipated to be completed no later than December 20, 2024. The County will not issue a certificate of occupancy for the dwellings unless an approved wastewater treatment and disposal option is in place. Since the sewer connection has been delayed, the only option available that will allow for certificate of occupancy issuance by the County next week is if the Department approves the use of the collection system for temporary storage. Therefore, Winchelsea has requested a temporary emergency variance to operate a temporary holding tank system prior to the issuance of an Operating Permit.
3. Winchelsea is required to obtain a Construction Permit for the wastewater collection and conveyance system for the Winchelsea Subdivision. The original collection and conveyance system plans that were approved by the County have been revised and submitted to the County and the Department. The revised plans include the relocation of the proposed central sewer connection.
4. On November 13, 2024, Winchelsea submitted an application in accordance with Section 6.10 of the Regulations for Operation and Maintenance of a Temporary Holding Tank Permit to utilize four manholes and 443 LF of 8" sanitary sewer collection pipe for temporary storage of wastewater generated by up to 10 dwellings. The application was advertised on November 20, 2024, and the public advertisement period is for 15 days which is after the November 28, 2024 settlement date for up to 10 dwellings as previously committed to by the Developer.

5. Multiple families were scheduled for real estate closings next week based on the originally approved sewer connection plan for this subdivision and have made plans for settlement. One home buyer has already been displaced and is currently living in a hotel pending settlement. The unforeseeable delay caused by the off-site sewer conflict will adversely impact these families if New Castle County does not issue a certificate of occupancy, which cannot be issued unless an approved wastewater disposal option is in place such as the requested temporary holding tank system. Therefore, the temporary holding tank system is necessary for these families to avoid displacement and assure a safe temporary wastewater management solution until the permanent sewer connection can be completed. The off-site sewer conflict was not discovered until off-site utility location efforts were underway prior to initiation of construction for the sewer connection. This unforeseen situation required the need for sewer connection plan revisions and additional approvals and field work that have delayed the connection beyond its originally proposed completion date. Therefore, the Division has determined that Winchelsea's application for a Temporary Emergency Variance satisfies 7 *Del. C.* § 6012(b)(1) & (b)(2).
6. Pursuant to 7 *Del. C.* § 6012(b)(3), an applicant for a Temporary Emergency Variance must show that the conditions set forth in 7 *Del. C.* § 6011(b)(1)-(4) are satisfied. The Division has determined that Winchelsea's November 20, 2024, Temporary Emergency Variance Request Letter documents that Winchelsea's request satisfies the conditions set forth in 7 *Del. C.* § 6011(b)(1)-(4) as follows:
 - a. Winchelsea has made, and continues to make, good faith efforts to comply with Chapter 60 of Title 7 of the Delaware Code by applying for a Construction Permit for the wastewater collection and conveyance system for the Winchelsea Subdivision immediately upon discovering the prior owner failed to obtain one. Winchelsea has also applied for a permit to Operate and Maintain a Temporary Holding Tank System to serve up to 10 dwellings at the Winchelsea Subdivision. Winchelsea is making all reasonable efforts to expedite sewer connection completion and has committed to minimizing the amount of time the temporary holding tank system will be in operation. Winchelsea has stated that the sewer connection is reasonably expected to be completed by December 20, 2024, which would limit temporary holding tank operation to only one month.
 - b. Winchelsea has applied all available technology and alternative methods of control to by contacting the County and identifying an alternative central sewer connection to resolve the sewer conflict. The required field work for resolution will not be completed prior to original settlement dates for the 10 dwellings at the subdivision and, therefore, the alternative method of wastewater control via central sewer disposal is not available in the timeframe necessary to avoid displacement of the families scheduled to move into the above referenced 10 dwellings.
 - c. Winchelsea has contracted a Delaware Licensed Class F waste hauler to pump wastewater from the temporary holding tank system and has indicated the system will be equipped with an alarm system that will notify the waste hauler when a pump out is required. A copy of the contract was provided to the Department. The waste hauler's Holding Tank Maintenance

Agreement also requires Winchelsea to provide notification to the hauler when the tank is 75% full. Winchelsea's temporary emergency variance request states that Winchelsea will at all times operate the temporary holding tank system in a manner that prevents overflow and adverse impact on the community until such time that the sewer connection can be completed.

- d. The immediate operation of the temporary holding tank system will allow New Castle County to issue certificates of occupancy for the 10 dwellings. The temporary holding tank system is also necessary to health, safety, and welfare by providing temporary collection and conveyance of wastewater generated by the dwellings until the central sewer connection can be made. Winchelsea has indicated that one home buyer is currently displaced and living in a hotel awaiting the ability to settle upon his home and nine more pre-Thanksgiving closings had been committed to by the developer based on the original project schedule prior to the discovery of the sewer conflict. Winchelsea is asking the Department to consider the welfare of the displaced families in regard to the emergency variance request.

Recommendation and Conditions:

The Winchelsea Subdivision is a County approved subdivision with a County approved sewer connection plan. The infrastructure that will be utilized for proposed holding tank operation is designed to hold/transfer sewage discharged from the homes within the subdivision. Winchelsea has now applied for all necessary holding tank and wastewater infrastructure construction permits required by Division of Water. The temporary holding tank permit application is currently on public notice and, unless a public hearing is requested, it could be issued as soon as December 5, 2024. The wastewater facility construction permit is for a gravity sewer system and, therefore, does not require public notice prior to issuance. Based off of a preliminary review, it is anticipated it also will be issued prior to December 5, 2024. In addition, the Developer has stated that the sewer connection is anticipated to be completed prior to December 20, 2024. As discussed above, there are ten families that will experience hardship/displacement due to the sewer connection delays if this temporary holding tank variance is not approved. Based on the totality of the circumstances, the Division of Water finds that this temporary emergency variance request is short-term in nature and holds minimal environmental risk as long as operational conditions are met. The Division, therefore, recommends that the Secretary approve Winchelsea's request, subject to the following conditions:

1. Winchelsea will respond to comments and revise plans if necessary to obtain the Construction Permit for the wastewater collection and conveyance system and the temporary holding tank for the Winchelsea Subdivision.
2. Winchelsea will immediately notify the Department in writing of any delays in completing the connection to central sewer. The notification shall identify the reason for the delay and include a revised timeline for sewer connection completion.

3. The average flow to the temporary holding tank system shall not exceed 2,400 gallons per day generated by no more than 10 dwellings.
4. Winchelsea shall assure that the holding tank system is pumped as to prevent overflow by a DNREC licensed waste hauler. A contract with a Delaware Licensed Class F waste hauler shall be maintained. In the event any overflow or discharge of wastewater were to occur from the holding tank system, Winchelsea shall report such discharge to the Division of Water immediately.
5. Winchelsea shall submit up to date hauling contracts to the Division of Water. Any changes to the waste hauling contracts shall be reported to the Division of Water with a copy of revised hauling contracts.
6. The temporary holding tank system shall be equipped with a visual and/or audible alarm system that indicates when the tank is 75% full. An alarm which utilizes off-site notification may be used in lieu of the visual and audible alarm system.
7. Winchelsea shall notify the Class F waste hauler when the temporary holding tank system is at 75% capacity so that a pump-out can be scheduled.
8. Winchelsea shall notify the Division of Water upon completion of the connection to the New Castle County's central sewer system.

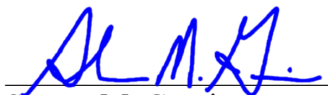
Granting of this temporary emergency variance shall be published within 5 days of variance issuance in accordance with 7 *Del. C.* § 6012(d).

Delegation and Authorization:

The Secretary's hereby authorizes the Division Director of the Division of Water to issue to Winchelsea the Temporary Emergency Variance Authorization Letter in the form attached hereto.

Approved X

Unapproved _____



Shawn M. Garvin
Secretary

11/22/24
Date