



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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**SECRETARY'S ORDER**

*Pursuant to 7 Del. C §6005(b)(2)*

**Order No. 2011-W-0043**

***PERSONALLY SERVED BY AN  
ENVIRONMENTAL PROTECTION OFFICER***

**Issued To:**

Mr. J. Wayne Merritt, Acting General Manager  
New Castle County Department of Special Services  
187-A Old Churchmans Road  
New Castle, DE 19720

RE: Lea Earra Farms Wastewater Treatment Facility

Dear Mr. Merritt:

The Secretary of the Department of Natural Resources and Environmental Control (Department) is issuing this Secretary's Order (Order) to the New Castle County Department of Special Services (Permittee) because the Permittee has not completed the required compliance action of submitting a specific remediation plan for controlling and eliminating nitrate contamination at and surrounding the Lea Earra Wastewater Treatment Facility (Facility). Thus, the Facility remains in violation of 7 Del. Admin. C. §7103 and Permit LTS 3035-92-08.

Since August 2010, the Department's Ground Water Discharges Section (GWDS) has worked with the Permittee in an effort to obtain a detailed remediation plan for the reduction of nitrate concentrations at and around the Facility to achieve voluntary regulatory and permit compliance pursuant to 7 Del. C. §6019. To date, the responses provided by the Permittee to the GWDS contained only preliminary proposals to develop and implement such a remediation plan. This Order is being issued because the Permittee's responses fall short of attaining a cogent evaluation of the elevated nitrate concentrations in the ground water and implementing appropriate remediation activities that would ultimately bring the Facility into regulatory and permit compliance.

*Delaware's Good Nature depends on you!*

Additionally, by letter dated July 29, 2011, the Permittee advised the GWDS that a recent New Castle County Superior Court decision (Case No. N10A-07-009 MMJ – Bass Properties, Inc. v. Public Service Commission of the State of Delaware [PSC] and New Castle County—decided July 14, 2011) has materially adversely affected the Permittee's ability to comply with its permit and the applicable regulations. The Department reviewed this decision and believes that, although the Court ruled against the PSC and the Permittee on jurisdictional grounds, it did not foreclose all alternative remedies available to the Permittee to address legacy issues related to the Facility and did not alter the Permittee's responsibility to attain ongoing regulatory and permit compliance at the Facility.

In view of the above, and pursuant to 7 *Del. C.* §6005(b)(2), the Permittee is ordered to submit to the Department for approval, **within thirty (30) days** of the receipt of this Order, an explicit ground water remediation plan that, when implemented, will depict a three-dimensional perspective and evaluation of the nitrate plume and the hydrogeologic characteristics controlling the plume. The remediation plan must ultimately delineate corrective action that attains timely and effective regulatory compliance. Furthermore, such a plan must be designed so that it can be implemented **no later than thirty (30) days** subsequent to the Department's approval.

This action does not preclude the Department from commencing additional enforcement action pursuant to 7 *Del. C.* Chapter 60.

Date: 1/10/12



Collin P. O'Mara  
Secretary

cc: Robert Phillips, Deputy Attorney General  
Kathleen Stiller, Director, DNREC Division of Water  
Dave Schepens, Ground Water Discharges Section, DNREC  
Ron Graeber, Ground Water Discharges Section, DNREC  
Roy Heineman, Paralegal, Division of Water  
Jennifer Bothell, Enforcement Coordinator, OTS