(C)

11/20/15 CC: Adm. Planning Health Bldg

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Bureau of Coastal and Land Use Compliance and Enforcement
Chester Office
100 North Road
Chester, NJ 07930
Telephone: (908) 879-3769 Fax: (908) 879-6797

BOB MARTIN
Commissioner

October 22, 2015

RECEIVED
NOV 20 2015
Mount Olive Township Clerk's Office

CERTIFIED MAIL/RRR
7008 1140 0000 1264 1821
Chester Riding Club
Attn: James C. & Emily Maillet
P.O. Box 520
Chester, NJ 07930

Re: Chester Riding Club – Toys 'R' Us Site
Administrative Order and Notice of Civil Administrative Penalty Assessment
NJDEP File #: PEA150002 – 1407-13-0005.2
Block 44, Lot 7, Chester Township, Morris County, NJ
Block 6600, Lots 1 & 7, Mount Olive Township, Morris County, NJ

Dear Mr. & Mrs. Maillet:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department. Contained within the enclosed document is a notice and instructions for requesting an Administrative Hearing. Failure to request a hearing within 35 calendar days as per the enclosed instructions will result in loss of your right to a hearing.

Should you have any questions concerning the enclosed Administrative Order and Notice of Civil Administrative Penalty Assessment, please contact David Sumba of my staff at (908) 879-3769 or via correspondence at the address indicated above.

Sincerely,

Barbara Baus

Barbara Baus, Section Chief
Bureau of Coastal and Land Use Compliance and Enforcement

C: Robin Hayden, Director of Property Administration, Toys 'R' Us
Sarah Jane Noll, Zoning/Planning Administrator, Chester Township
Lisa Lashway, Municipal Clerk, Mount Olive Township
Michael Flora, Investigator, Solid Waste Enforcement
Daniel Greenhouse, DAG, Attorney General's Office, State of New Jersey
Bureau File

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Bureau of Coastal and Land Use Compliance and Enforcement
Highlands Office
100 North Road
Chester, New Jersey 07930
Telephone: (908) 879-3769 Fax: (908) 879-6797

BOB MARTIN
Commissioner

October 22, 2015

CERTIFIED MAIL/RRR
7008 1140 0000 1264 1821

IN THE MATTER OF:	:	
Chester Riding Club, and Surgurdur Farms, LLC,	:	ADMINISTRATIVE ORDER AND NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT
and	:	
James C. and Emily Maillet, individually	:	

NJDEP File #: PEA150002 – 1407-13-0005.2

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter, "AONOCAPA" or "Order") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter, "NJDEP" or the "Department"), the Freshwater Wetlands Protection Act ("FWPA"), N.J.S.A. 13:9B-1 et seq., and duly delegated to the Assistant Commissioner of Compliance and Enforcement and his assignees pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. Surgurdur Farms, LLC, owns property that is the location of the Chester Riding Club, an equestrian facility located at 60 Route 206, Block 44, Lot 7, Chester Township, Morris County, New Jersey and Block 6600 Lot 7, Mount Olive Township, Morris County.

2. Toys R Us – Delaware, Inc., (hereinafter "Toys R Us") owns property located at 703 Bartley–Chester Road, Block 6600, Lot 1, Mount Olive Township, Morris County, New Jersey.

3. Hereinafter, the properties described at paragraphs 1 and 2 above, which are contiguous to one another, shall be referred to as the "site".

4. James C. and Emily Maillet, are principal members of Surgurdur Farms LLC. Hereinafter, Chester Riding Club, Surgurdur Farms LLC, and James C. and Emily Maillet, shall be referred to individually and collectively as the "Respondents".

5. On December 16, 2014 and May 28, 2015, in response to a referral from Chester Township, a representative of the Department's Bureau of Coastal and Land Use Compliance and Enforcement (hereinafter the "Bureau") conducted inspections of the site. Based upon the findings of the aforementioned inspections, it was determined that unauthorized regulated activities pursuant to the FWPA occurred at the site. More specifically, the disturbance of soil, destruction of vegetation, and the placement/dumping of fill material in

the form of horse manure and wood chips, to a depth of approximately four feet, had occurred within approximately 1 acre of forested freshwater wetlands, a portion of which was deposited on Toys R Us property.

6. On June 15, 2015, the Bureau issued a Notice of Violation ("NOV") to the Respondents requiring that corrective actions be implemented to address the FWPA violation described in paragraph 5. The NOV was received by the Respondents on or about June 26, 2015.

7. On July 20, 2015 and September 16, 2015, a Bureau representative conducted follow-up inspections at the site and determined that the restoration work had commenced, but had not been completed. Specifically, several stockpiles of manure, estimated at approximately 5,000 square feet collectively, and 8 feet in height at their highest, remained within a freshwater wetland located on the property owned by the Respondents. The restoration work on the property owned by Toys R Us parcel had been completed.

8. As a result of inspections conducted on December 16, 2014, May 28, 2015, July 20, 2015, and September 16, 2015, the Department has determined that the Respondents failed to comply with applicable requirements as follows:

   Requirement: Pursuant to N.J.A.C. 7: 7A- 2.2(a), the following activities are regulated when performed in a freshwater wetland and State open waters and require prior permit approval from the Department: the removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind; the drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or surface water, regardless of the duration of such alteration; the dumping, discharging, or filling with any material; the driving of pilings; the placing of obstructions, including depositing, constructing, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland; or the destruction of plant life which would alter the character of a freshwater wetlands, including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or the cutting of trees; and the placement of any portion of a residential development project as defined at N.J.A.C. 7:7A-1.4.

   Description of Noncompliance: the performance of unauthorized regulated activities within freshwater wetlands. More specifically, the regulated activities involve the unauthorized disturbance of soil, destruction of vegetation, and placement/dumping of fill material in the form of manure and wood chips within approximately 1 acre of freshwater wetlands.

9. Based on the facts set forth in these FINDINGS, the Department has determined that Respondents have violated the FWPA, N.J.S.A. 13:9B-1 et seq., and the regulations promulgated pursuant thereto.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

10. Within 20 calendar days of receipt of this document, the Respondent shall submit a restoration proposal to the Bureau for review and approval outlining the full restoration of the site. The restoration proposal must include details as to how the Respondents will restore the freshwater wetlands to pre-disturbance condition. The restoration proposal shall include the following:

    a. Removal of all remaining manure and wood chip material and restoration of all disturbed areas to pre-disturbance grades, manure shall be disposed of in accordance with all applicable waste management

requirements;

b. A description of the stabilization measures to be implemented upon removal of the unauthorized fill material, i.e., the application of wetland seed mix and straw mulch.

c. A schedule for implementation and completion of all aspects of the restoration work;

d. The restoration plan must insure 85% vegetative coverage of the wetland seed mix after three complete growing seasons. Should the restoration proposed, as implemented, fail to achieve this requirement, the Respondents may be required to implement additional corrective actions at the Bureau's direction.

11. Should the Bureau determine that the restoration proposal is inadequate or incomplete, the Bureau will provide comments to the Respondents or a consultant on their behalf. Within 10 calendar days of receipt of Bureau's comments for revisions, if any, the Respondents shall submit a revised restoration proposal that conforms to the Bureau's comments. The determination as to whether or not the restoration proposal as resubmitted conforms to the Bureau's comments shall made solely by the Bureau.

12. This Order shall be effective upon receipt by the Respondents or someone on the Respondents' behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT
AND
NOTICE OF RIGHT TO A HEARING

13. Pursuant to N.J.S.A. 58:16A-63(d), N.J.S.A. 13:9B-21, PL 2007, Chapter 246 (adopted on January 4, 2008), N.J.A.C. 7:7A-16.1(d), and based upon the above FINDINGS the Department has determined that a civil administrative penalty is hereby assessed against the Respondents in the amount of $51,000.00. The Department's rationale for the civil administrative penalty is set forth in the attachment, and incorporated herein.

14. Pursuant to N.J.A.C. 7:7A-16.12 and N.J.S.A 58:16A-63 the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the economic benefit (in dollars) which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act.

15. Pursuant to N.J.S.A. 52:14B-1 et seq., N.J.S.A.13:9B-21(b) and N.J.S.A 58:16A-63 the Respondents are entitled to request a hearing. The Respondents shall, in their request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.

16. If no request for a hearing is received within 35 calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the 36th calendar day following its receipt, and the compliance measures shall be due and the penalty shall be payable.

17. If a timely request for a hearing is received, payment of the penalty is due when the Respondents receives a notice of the denial of the request, or, if the hearing request is granted, when the Respondents withdraws the request or abandons the hearing, or, if the hearing is conducted, when the Respondents receives a final decision from the Commissioner in this matter.

18. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

GENERAL PROVISIONS

19. This AONOCAPA is binding on the Respondents, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

20. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.

21. This AONOCAPA is issued only for the violations identified in the FINDINGS herein above and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.

22. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve the Respondents of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.

23. The Respondents are not entitled to approval of any permit application(s) submitted pursuant to requirements contained herein. In the event the Department determines that regulated activities do not meet the requirements for permit approval, full restoration of the unauthorized disturbance will be required.

24. Pursuant to N.J.A.C. 7:7A-16 and N.J.S.A 58:16A-63 any person who violates the provisions of the Act, or any code, rule regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be subject, upon order of the court, to a civil penalty not to exceed $25,000 per day. Each day during which the violation continues constitutes an additional, separate and distinct offense.

25. Pursuant to N.J.S.A.13:9B-21(f), any person who willingly or negligently violates the provisions of the FWPA, or any code, rule, regulation, administrative order or court order, promulgated or issued pursuant thereto, is guilty of a crime of the fourth degree. In addition, pursuant to N.J.S.A 58:16A-63, any person who purposely, knowingly or recklessly violates any provision of the FHACA or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree.

DATE: 10/21/15

Marcedius T. Jameson, Director
Water and Land Use Compliance and Enforcement

PENALTY RATIONALE

On January 4, 2008, Public Law 2007, Chapter 246, known as the Environmental Enforcement Enhancement Act (EEEA), was signed into law. EEEA modified the enforcement provisions of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-21d, Section 21 of P.L. 1987, c. 156) and The Flood Hazard Area Control Act (N.J.S.A 58:16A-63d, Section 12 of P.L. 1972, c. 185). The EEEA states: "...the commissioner is authorized to assess a civil administrative penalty of not more than $25,000 for each violation of the provisions ... or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, duration, and conduct; provided however, that prior to the adoption of the regulation, the commissioner may, on case-by-case basis, assess civil administrative penalties up to a maximum of $25,000 per day for each violation, utilizing the criteria set forth herein."

FRESHWATER WETLANDS PROTECTION ACT VIOLATION

"The Legislature of New Jersey has found and declared that freshwater wetlands protect and preserve drinking water supplies by serving to purify surface water and groundwater resources; that freshwater wetlands provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property through the absorption and storage of water during high runoff periods and the reduction of flood crests; that freshwater wetlands serve as a transition zone between dry land and water courses, thereby retarding soil erosion; that freshwater wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the State's fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife; and that freshwater wetlands maintain a critical baseflow to surface waters through the gradual release of stored flood waters and groundwater, particularly during drought periods."

"The Legislature therefore determines that in this State, where pressures for commercial and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands; that it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance ... ."

The Legislature then established the protection of freshwater wetland transition areas. N.J.S.A. 13:9B-16 states that transition areas are lands adjacent to a freshwater wetlands that serve to minimize adverse impacts on the wetland and are an integral component of the wetlands ecosystem which provide an ecological transition zone from uplands to freshwater wetlands. Transition areas provide temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and a sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

Inspections and investigation, as detailed in the FINDINGS of this AONOCAPA, identify that unauthorized regulated activities have occurred within a freshwater wetland transition area.

Pursuant to N.J.A.C. 7:7A-16.1(e), each violation of any applicable law and/or condition [of a permit or approval] shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

The Department has determined that the base, or daily, FWPA penalty shall be determined by totaling the points assigned as follows: (1) **Type of Violation**- conducting a regulated activity without a permit or violation of a permit condition (2) **Conduct**; (3) **Seriousness** – a. Freshwater wetland resource value; b. Size of disturbance; (4)**Duration.**

FWPA PENALTY CALCULATION FOR CONDUCTING REGULATED ACTIVITIES WITHOUT A PERMIT

1. **Type of violation**: Conducting a regulated activity without a permit

2. **Conduct of the Respondents:** Conduct has been determined as follows:

Minor: Any conduct not identified as major or moderate =1 Point

Moderate: Any unintentional but foreseeable act or omission = 2 Points

Major: Any intentional, deliberate, purposeful, knowing or willful act or omission ***= 5 Points***

The conduct of the Respondents is considered to be **Major** due to the fact that the Respondents conducted the same type of violation, in which the Respondents unlawfully disposed of manure within a freshwater wetland transition area and riparian zone at a property owned by Dr. Charles Marotta, Block 44, Lot 20.04, Chester Township, NJDEP File # PEA130002 – 1407-13-0005.1. On October 1, 2013 a NOV was hand delivered to the Respondents. An Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA"), dated November 24, 2014, which assessed a penalty in the amount of $33,000, was issued to the Respondents for the violation at the Marotta property. The Respondents did not appeal the AONOCAPA. Therefore, in consideration of the foregoing, the violation identified herein has been determined to be a knowing and willful act by the Respondents.

3. **Seriousness of violation:**

a. Resource Value:

Exceptional resource value wetlands ***= 5 Points***

Intermediate resource value wetlands = 4 Points

Ordinary resource value wetlands = 3 Points

Exceptional resource value transition area only = 2 Points

Intermediate resource value transition area only = 1 Point

The resource value of the freshwater wetlands is exceptional due to the fact that the site drains to a trout production tributary of Drake's Brook.

b. Acreage of freshwater wetland and/or freshwater wetland transition area disturbance:

Greater than 7 acres = 7 Points
Greater than 4 acres up to and including 7 acres = 6 Points
Greater than 2 acres up to and including 4 acres = 5 Points
Greater than 1 acre up to an including 2 acres = 4 Points
Greater than 0.5 acre up to an including 1 acre ***= 3 Points***
Greater than 0.25 acre up to and including 0.5 acre = 2 Points

Up to and including 0.25 acre = 1 Point

The area of freshwater wetland transition area impacted is estimated to be 1 acre.

The total number of points from above is **13** and the amount of daily penalty utilizing the FWPA Penalty Assessment Table shown below from N.J.A.C. 7:7A-16.8(d) is calculated as **$17,000.00.**

FWPA PENALTY ASSESSMENT TABLE

Total Points	Penalty Amount
17	$25,000
16	$23,000
15	$21,000
14	$19,000
13	***$17,000***
12	$15,000
11	$13,000
10	$11,000
9	$10,000
8	$ 9,000
7	$ 8,000
6	$ 6,000
5	$ 5,000
4	$ 4,000
3	$ 3,000

4. Duration of violation:

Pursuant to N.J.A.C. 7:7A-16.1(d), for all violations under this subchapter, each day during which the violation continues constitutes an additional, separate and distinct offense for which a separate penalty may be assessed.

The Department is using its discretion to assess **3 days** of violation for conducting regulated activities within a freshwater wetlands without a FWPA permit.

3 days of violation at **$17,000.00** per violation = **$51,000.00 FWPA Civil Administrative Penalty**

Administrative Hearing Request Checklist and Tracking Form

I. Document Being Appealed: **EA ID #** PEA150002 – ID# 1407-13-0005.2

_____
Date Document Issued

II. Person Requesting Hearing:

_____	_____
Name/Company	Name of Attorney (if applicable)
_____	_____
Address	Address
_____	_____
_____	_____
Telephone #	Telephone #

III. Please Include the following information as part of your request:

A. The date the alleged violator received the Enforcement Document.
B. A **copy of the Enforcement Document** and a list of all issues being appealed.
C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
D. The defenses to each of the findings of fact in the enforcement document;
E. Information supporting the request;
F. An estimate of the time required for the hearing;
G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

1. New Jersey Department of Environmental Protection
   Office of Legal Affairs
   Attention: Adjudicatory Hearing Requests
   401 E. State Street, P.O. Box 402
   Trenton, New Jersey 08625

2. Armand Perez, Region Supervisor
   Bureau of Coastal and Land Use Compliance and Enforcement
   100 North Road
   Chester, New Jersey 07930

IV. Signature: _____ Date: _____