



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Compliance and Enforcement  
Mail Code 401-04B  
PO Box 420  
Trenton, NJ 08625-0420  
(609) 984-3285  
FAX # (609) 292-9938

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

NOV 20 2013

### HAND DELIVERED

Theodore Fiore, President  
T Fiore Recycling Corporation  
Theodore Fiore, Individually  
411 Wilson Avenue  
Newark, NJ 07105

RE: Administrative Order and Notice of Civil Administrative Penalty Assessment  
T Fiore Recycling Corporation  
PROGRAM INTEREST ID # 422572  
PROGRAM: Water Quality / Compliance Activity # PEA 130003  
Newark City, Essex County

Dear Mr. Fiore:

There is enclosed for service upon you an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued by the Department pursuant to the provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*

Notice is hereby given that the T Fiore Recycling Corporation and Theodore Fiore (T Fiore) are entitled to request an administrative hearing. Any hearing request must include a copy of the cover letter and enforcement document for which a hearing is being requested, a complete Administrative Hearing Request Checklist and Tracking Form for Enforcement Documents (Tracking Form), with documentation and all information specified and must be delivered within twenty (20) calendar days after receipt by T Fiore Recycling Corporation and T Fiore of this Administrative Order and Notice of Civil Administrative Penalty Assessment to:

Office of Legal Affairs  
Attn: Adjudicatory Hearing Requests  
Department of Environmental Protection  
P.O. Box 402  
Trenton, New Jersey 08625-0402

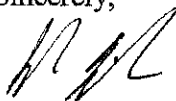
with a copy to be filed at the same time with:

Richard T. Paull, Acting Bureau Chief  
Northern Bureau of Water Compliance and Enforcement  
7 Ridgedale Avenue  
Cedar Knolls, New Jersey 07927

If no request for a hearing is received within twenty (20) calendar days of T Fiore Recycling Corporation and T Fiore's receipt of the Administrative Order and Notice of Civil Administrative Penalty Assessment, it shall become a final Order upon the twenty-first (21) calendar day following its receipt by T Fiore Recycling Corporation and T Fiore and the penalty shall be due and payable. Please be advised that an untimely or incomplete hearing request will be denied and that the Department does not have the jurisdiction to extend the twenty (20) day deadline.

If you have any questions concerning this Administrative Order and Notice of Civil Administrative Penalty Assessment, please contact Theophilus Ashie, Northern Bureau of Water Compliance and Enforcement (NBWCE) at the address above or by telephone at (973) 656-4099.

Sincerely,



John Giordano, Assistant Commissioner  
Compliance and Enforcement

Enclosure

c: Marcedius T. Jameson, Director  
Richard T. Paull, Acting Bureau Chief, NBWCE  
Raghu Murthy, DAG  
Glen Van Olden, HEP Soil Conservation District  
Tim Doolan, NJ Turnpike Authority  
Bureau of Non-point Pollution Control  
Newark Health Department  
Theophilus Ashie, NBWCE



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

IN THE MATTER OF : ADMINISTRATIVE ORDER AND
T FIORE RECYCLING : NOTICE OF CIVIL ADMINISTRATIVE
CORPORATION AND : PENALTY ASSESSMENT
THEODORE FIORE, INDIVIDUALLY

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:D-1 et seq. and the New Jersey Water Pollution Control Act (hereinafter the "Act"), N.J.S.A. 58:10A-1 et seq., and the New Jersey Pollutant Discharge Elimination System regulations, N.J.A.C. 7:14A-1 et seq., and duly delegated to the Assistant Commissioner of Compliance and Enforcement, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1. Theodore Fiore owns and operates the T Fiore Recycling Corporation and is a responsible corporate official. The T Fiore Recycling Corporation operates a demolition and recycling facility located at 411 Wilson Avenue, Lots 69.03, 69.04, 69.05, 69.06, Block 5020, Essex County, New Jersey. The Program Interest (PI) Number is 422572. T Fiore Recycling Corporation and Theodore Fiore shall collectively be referred to as "T Fiore."
2. T Fiore transports and processes demolition materials at the said location.
3. On July 10, 2007, the Department received a Request for Authorization to discharge stormwater associated with industrial activity under the Basic Industrial Stormwater General Permit (General Permit) from T Fiore Recycling Corporation. Subsequently, the Department conducted a site visit on July 11, 2007 and based on the findings of that inspection determined that T Fiore was not eligible for authorization under the general permit due to exposure of source material and industrial activity to stormwater. Pursuant to N.J.A.C. 7:14A-6.13(m)1, the Department denied T Fiore Recycling Corporation's Request for Authorization by letter dated July 27, 2007 and T Fiore Recycling Corporation was required to apply for a NJPDES individual stormwater permit

4. The Department received T Fiore's Individual Stormwater Permit application dated August 9, 2007 on August 14, 2007 and determined that it was technically incomplete.
5. Letters requesting the required technical information were sent to T Fiore on November 7 and December 20, 2007 respectively. T Fiore failed to respond to the letters or provide the information to complete the application.
6. Consequently, on February 9, 2011, the Department issued an AONOCAPA to T Fiore Recycling Corporation for the facility's failure to apply and obtain both Individual Stormwater (RF) and Construction (5G3) permits. T Fiore Recycling Corporation filed a Hearing Request to the AONOCAPA on March 1, 2011.
7. The Department performed an inspection of the property referenced in paragraph 1 above on September 15, 2011 and documented that T Fiore was discharging stormwater without a NJPDES permit as required by the New Jersey Water Pollution Control Act. As a result, the Department issued T Fiore Recycling Corporation a Notice of Violation (NOV) on September 29, 2011 for the unpermitted discharge of pollutants to the waters of the State. T Fiore Recycling Corporation failed to submit a written response to the NOV to the Department.
8. The Department performed an inspection of the property referenced in paragraph 1 above on February 8, 2012 and documented that T Fiore was discharging stormwater without a NJPDES permit as required by the New Jersey Water Pollution Control Act. As a result, the Department issued T Fiore Recycling Corporation a Notice of Violation on February 13, 2012 for the unpermitted discharge of pollutants. T Fiore Recycling Corporation failed to submit a written response to the NOV to the Department.
9. The Department performed an inspection of the property referenced in paragraph 1 above on January 3, 2013 and documented that T Fiore was discharging stormwater without a NJPDES permit as required by the New Jersey Water Pollution Control Act. As a result, the Department issued T Fiore Recycling Corporation a Notice of Violation on January 10, 2013 for the unpermitted discharge of pollutants. T Fiore Recycling Corporation failed to submit a written response to the NOV to the Department.
10. The Department performed an inspection of the property referenced in paragraph 1 above on March 25, 2013 and documented that T Fiore was discharging stormwater without a NJPDES permit as required by the New Jersey Water Pollution Control Act. As a result, the Department issued T Fiore Recycling Corporation a Notice of Violation on March 25, 2013 for the unpermitted discharge of pollutants. T Fiore Recycling Corporation failed to submit a written response to the NOV to the Department.
11. Subsequent to the issuance of the AONPCAPA, T Fiore has failed to comply with the Order and has continued to discharge contaminated stormwater to the ground and surface waters of the State without a valid NJPDES permit from the NJDEP in violation of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*, and the New Jersey

Pollutant Discharge Elimination System (NJPDES) regulations, specifically N.J.A.C. 7:14A-2.1(d) despite Notices of Violation issued thereafter.

12. To date the Department has not received complete applications from T Fiore for the RF and the 5G3 permits.
13. No person shall discharge any pollutant except in conformity with a valid New Jersey Pollutant Discharge Elimination System ("NJPDES") permit issued pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*
14. Based on the facts set forth in these FINDINGS, the Department has determined that the T Fiore has continued to violate the Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*, specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 *et seq.*, specifically N.J.A.C. 7:14A-2.1.

#### ORDER

#### NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

15. T Fiore shall comply with the Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1.1 *et seq.*
16. T Fiore shall permanently cease all unpermitted discharges of pollutants to the waters of the State without valid Individual Stormwater and 5G3 Construction permits issued by the State and shall submit completed Requests for Authorization for the stormwater permits.
17. This Order shall be effective upon receipt by T Fiore or someone on the violator's behalf authorized to accept service.

#### NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

18. Pursuant to N.J.S.A. 58:10A-10.d and N.J.A.C. 7:14-8.1 *et seq.*, and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against T Fiore in the amount of \$320,000. The Department's rationale for the civil administrative penalty is set forth in the attachment, and incorporated herein.
19. Pursuant to N.J.S.A. 58:10A-10.d and N.J.A.C. 7:14-8.13, the Department may amend the civil administrative penalty amount for any economic benefit which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of this Act.
20. Payment shall be made by cashier's or certified check payable to Treasurer, State of New Jersey and shall be submitted along with the specified portion of the enclosed Enforcement Invoice to:

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

NOTICE OF RIGHT TO A HEARING

21. T Fiore is entitled to request an administrative hearing. T Fiore shall, pursuant to N.J.A.C. 7:14-8.4(a) in its request for a hearing, furnish the Department with all of the information specified in the enclosed Administrative Hearing request checklist and Tracking Form. This information must be delivered to the Office of Legal Affairs at the address referenced in the cover letter to this document within twenty (20) calendar days from receipt of this Notice of Civil Administrative Penalty Assessment. A copy of the Administrative Hearing request shall be filed at the same time to the address referenced in paragraph twenty-five (25) below.
22. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
23. If a timely request for a hearing is received, payment of the penalty is due when T Fiore receives a notice of the denial of the request, or, if the hearing request is granted, when the T Fiore withdraws the request or abandons the hearing, or, if the hearing is conducted, when T Fiore receives a final decision from the Commissioner in this matter.

GENERAL PROVISIONS

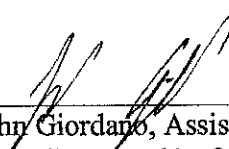
24. This AONOCAPA is binding on T Fiore, its principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
25. T Fiore shall submit copies of all documents required by this Administrative Order and Notice of Civil Administrative Penalty Assessment by certified mail, return receipt requested or by hand delivery to:

Richard T. Paull, Acting Bureau Chief  
New Jersey Department of Environmental Protection  
Northern Bureau of Water Compliance and Enforcement  
7 Ridgedale Avenue  
Cedar Knolls, New Jersey 07927

26. 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.

27. This AONOCAPA is issued only for the violations identified in the FINDINGS hereinabove 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.
28. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve T Fiore of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
29. Pursuant to N.J.S.A. 58:10A-10.d, NJDEP is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which the violation continues shall constitute an additional, separate and distinct offense.
30. Pursuant to N.J.S.A. 58:10A-10.e, any person who violates the provisions of N.J.S.A. 58:10A-1 et seq., or any code, rule, or regulation promulgated pursuant thereto shall be liable to a penalty of not more than \$50,000 per day to be collected in a civil action, and any person who violates an administrative order issued pursuant to N.J.S.A. 58:10A-10.b, including this Administrative Order, or a court order issued pursuant to N.J.S.A. 58:10A-10.c, or who fails to pay a civil administrative penalty assessed pursuant to N.J.S.A. 58:10A-10.d in full after it is due is subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violations. Each day during which the violation continues constitutes an additional, separate and distinct offense.
31. Pursuant to N.J.S.A. 58:10A-10.f, any person who purposely, knowingly, or recklessly violates this act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor more than \$250,000 per day of violation, or by imprisonment, or by both.

DATE: 11.20.2013

  
\_\_\_\_\_  
John Giordano, Assistant Commissioner  
Compliance and Enforcement

## Appendix A

### PENALTY RATIONALE

**Violator:** T Fiore  
**Municipality:** Newark

**PI #:** 422572  
**County:** ESSEX

The AONOCAPA corresponds to the violations listed in the AONOCAPA, and has been calculated pursuant to the New Jersey Water Pollution Control Act (ACT), N.J.A.C. 7:14-8.1 *et seq.*, as specified below for the NOV's of September 29, 2011, February 13, 2012, January 10, 2013 and March 25, 2013.

#### N.J.A.C. 7:14 – 8.5 – Civil Administrative Penalty Determination

Discharge of contaminated stormwater to the waters of the State without a valid Individual Stormwater NJPDES permit.

Seriousness: Pursuant to N.J.A.C. 7:14-8.5(g)2, the seriousness factor is considered to be **moderate** since T Fiore's continuous unpermitted discharge of contaminated stormwater directly to surface and ground water has caused or has the potential to cause substantial harm to human health or the environment..

Conduct: Pursuant to N.J.A.C. 7:14-8.5(h)2, the conduct factor is considered to be **Major** since T Fiore's failure to apply for the NJPDES permit is considered an intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

The calculated penalty pursuant to 7:14-8.5(f) for the above violation at MODERATE seriousness and MAJOR conduct assessed at the top of the range is \$40,000 due to T Fiore's history of continuing non-compliance and repeated failure to obtain the permit.

**\$40,000 X 4 Violations = \$160,000**

Discharge of contaminated stormwater to the waters of the State without a valid 5G3 Construction General NJPDES permit.

Seriousness: Pursuant to N.J.A.C. 7:14-8.5(g)2, the seriousness factor is considered to be **moderate** since T Fiore's continuous unpermitted discharge of contaminated stormwater directly to surface and ground water has caused or has the potential to cause substantial harm to human health or the environment..

Conduct: Pursuant to N.J.A.C. 7:14-8.5(h)2, the conduct factor is considered to be **Major** since T Fiore's failure to apply for the NJPDES permit is considered an intentional, deliberate, purposeful, knowing or willful act or omission by the violator.



The calculated penalty pursuant to 7:14-8.5(f) for the above violation at MODERATE seriousness and MAJOR conduct assessed at the top of the range is \$40,000 due to T Fiore's history of continuing non-compliance and repeated failure to obtain the permit.

\$40,000 X 4 Violations = **\$160,000**

TOTAL PENALTY = **\$320,000**



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
COMPLIANCE AND ENFORCEMENT

INVOICE NO.  
131881550

Program Interest
T FIORE RECYCLING CORP
411 WILSON AVE
Newark, NJ. 07105
422572

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 320,000.00

Billing Date
11/20/13

Due Date
12/11/13

NJEMS Bill ID
000000120536500

Summary	
Total Amount Assessed	320,000.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	0.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
<b>Total Amount Due</b>	<b>320,000.00</b>

REMINDER:

- . SEE BACK OF INVOICE FOR DEP CONTACT INFORMATION
- . MAKE CHECKS PAYABLE TO: TREASURER - STATE OF NEW JERSEY
- . WRITE PROGRAM INTEREST ID ON YOUR CHECK (SEE BOTTOM STUB)
- . RETURN THE BOTTOM STUB WITH YOUR PAYMENT
- . MAIL PAYMENT AND STUB TO NJ DEPARTMENT OF TREASURY (SEE BOTTOM STUB)

See Back Of Page for Billing Inquiries

INVOICE NO.  
131881550

D9901F (R 3/14/02)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
COMPLIANCE AND ENFORCEMENT

INVOICE NO.  
131881550

NJEMS Bill ID
000000120536500

Program Interest ID
422572

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
11/20/13

Due Date
12/11/13

Amount Due
\$ 320,000.00

For name and/or address change, check box and write corrections on the back of this invoice.

**DO NOT FOLD, BEND OR MARK**

Enter the Amount of your payment →

\$
----

**RETURN THIS PORTION**

with your check made payable to:

TREASURER - STATE OF NEW JERSEY  
and mail to:

NJ DEPARTMENT OF TREASURY  
DIVISION OF REVENUE  
PO BOX 417  
TRENTON, NJ 08646-0417

95



T FIORE RECYCLING CORP  
ATTN: THEADORE FIORE  
457 WILSON AVE  
Newark

NJ 07105-4809

EP1010101010101010040202050702111110320000000002591318815501959



# State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Northern Bureau of Water Compliance & Enforcement  
7 Ridgedale Avenue  
Cedar Knolls, New Jersey 07927-1112

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

BOB MARTIN  
Commissioner

## ADMINISTRATIVE HEARING REQUEST CHECKLIST AND TRACKING FORM

I. Document Being Appealed: **EA ID # PEA130003 -PI 422572**

\_\_\_\_\_  
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. Richard T. Paull, Acting Chief  
Northern Bureau of Water Compliance & Enforcement  
7 Ridgedale Avenue  
Cedar Knolls, NJ 07927
- 3. All co-permittees (w/attachments)

IV. Signature: \_\_\_\_\_

Date: \_\_\_\_\_