

## OpenGovernment (MailBox Resources)

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**From:** Traver, Sawyer (DOJ)  
**Sent:** Friday, November 18, 2022 8:18 AM  
**To:** OpenGovernment (MailBox Resources); 'Wilson, Xerxes'  
**Cc:** Kassab, William (DOJ); Scott, Devera (DOJ)  
**Subject:** RE: FOIA Petition Concerning the Department of Natural Resources and Environmental Control  
**Attachments:** FOIA Affidavit - X. Wilson Appeal.pdf; 2021.06.22; Kennel v. DNREC; fully executed settlement agreement.pdf; 2021.04.16; UI Appeal.pdf

Ms. LeCates & Mr. Wilson,

Pursuant to our earlier correspondence, please find attached the responsive settlement agreement and an affidavit from DNREC's FOIA Coordinator confirming that all responsive information has been provided. Please let me know if you require anything further.

Best,

**Sawyer M. Traver**

*Deputy Attorney General, Environmental Unit*

Delaware Department of Justice

820 N. French Street, 6<sup>th</sup> Floor

Wilmington, DE 19801

Tel: (302) 577-8908

[sawyer.traver@delaware.gov](mailto:sawyer.traver@delaware.gov)

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**From:** Traver, Sawyer (DOJ)  
**Sent:** Friday, November 4, 2022 9:57 AM  
**To:** OpenGovernment (MailBox Resources) <OpenGovernment@delaware.gov>  
**Cc:** Kassab, William (DOJ) <William.Kassab@delaware.gov>; 'Wilson, Xerxes' <xwilson@delawareonline.com>; Scott, Devera (DOJ) <Devera.Scott@delaware.gov>  
**Subject:** RE: FOIA Petition Concerning the Department of Natural Resources and Environmental Control

Good morning Ms. LeCates,

Attached, please find the Delaware Department of Natural Resources and Environmental Control's ("DNREC's") response to Xerxes Wilson's October 26, 2022 FOIA Petition. As explained in the attached letter, DNREC requests that the Delaware Department of Justice find that Mr. Wilson's Petition is moot, because DNREC will supplement its original response to Mr. Wilson's FOIA request.

Please let me know if you require anything further from DNREC.

Best,

**Sawyer M. Traver**

*Deputy Attorney General, Environmental Unit*

Delaware Department of Justice

820 N. French Street, 6<sup>th</sup> Floor

Wilmington, DE 19801

Tel: (302) 577-8908

[sawyer.traver@delaware.gov](mailto:sawyer.traver@delaware.gov)

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**From:** Scott, Devera (DOJ) <[Devera.Scott@delaware.gov](mailto:Devera.Scott@delaware.gov)>

**Sent:** Tuesday, November 1, 2022 2:47 PM

**To:** OpenGovernment (MailBox Resources) <[OpenGovernment@delaware.gov](mailto:OpenGovernment@delaware.gov)>; 'Wilson, Xerxes' <[xwilson@delawareonline.com](mailto:xwilson@delawareonline.com)>

**Cc:** Kassab, William (DOJ) <[William.Kassab@delaware.gov](mailto:William.Kassab@delaware.gov)>; Traver, Sawyer (DOJ) <[Sawyer.Traver@delaware.gov](mailto:Sawyer.Traver@delaware.gov)>; Gabriellini, Emily (DOJ) <[Emily.Gabriellini@delaware.gov](mailto:Emily.Gabriellini@delaware.gov)>

**Subject:** RE: FOIA Petition Concerning the Department of Natural Resources and Environmental Control

This petition has been assigned to Sawyer Traver, who is copied on this email. Please direct any correspondence to her. Thank you.

Devera B. Scott

Deputy Attorney General

Delaware Department of Justice

102 W. Water Street, 3rd Floor

Dover, DE 19904

(302) 395-2648

(302) 739-4624; fax

State Location Code: D-480

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 **Please consider the environment before printing this message.**

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**From:** OpenGovernment (MailBox Resources) <[OpenGovernment@delaware.gov](mailto:OpenGovernment@delaware.gov)>

**Sent:** Thursday, October 27, 2022 1:01 PM

**To:** Scott, Devera (DOJ) <[Devera.Scott@delaware.gov](mailto:Devera.Scott@delaware.gov)>; 'Wilson, Xerxes' <[xwilson@delawareonline.com](mailto:xwilson@delawareonline.com)>

**Cc:** Kassab, William (DOJ) <[William.Kassab@delaware.gov](mailto:William.Kassab@delaware.gov)>

**Subject:** FOIA Petition Concerning the Department of Natural Resources and Environmental Control

Dear DAG Scott and Mr. Wilson:

Please see attached correspondence.

Kindly acknowledge receipt by replying to [Opengovernment@delaware.gov](mailto:Opengovernment@delaware.gov).

Sincerely,

***Tammy L. LeCates***

FOIA Coordinator  
Department of Justice  
102 W. Water Street  
Dover, DE 19904  
(302) 257-3289

**AFFIDAVIT**

STATE OF DELAWARE        )  
  ) SS:  
COUNTY OF NEW CASTLE )

I, Lee Sobocinski, Freedom of Information Act (“FOIA”) Coordinator for the State of Delaware Department of Natural Resources and Environmental Control (“DNREC”), being duly sworn, depose and say that upon information and belief:

1. On or about August 22, 2022, Mr. Xerxes Wilson submitted a FOIA request seeking “any and all settlement agreements (defined as a legal agreement resulting from a lawsuit or a threat of a lawsuit) between DNREC (regarding elected officials, officers, staff or employees) and other parties from Jan. 2019 to present.”

2. The FOIA request further specified that it could be satisfied “with a list of such settlements including the parties involved, date the settlement was reached, monetary cost, [and] what prompted it (whether it was due to pending litigation or a formal complaint regarding workplace harassment or something else noticed to government officials).”

3. On or about October 12, 2022, DNREC responded with a link to its Enforcement Orders page, <https://dnrec.alpha.delaware.gov/secretarys-orders/enforcement/>, which contains the information specified in the FOIA request for each of the DNREC Secretary’s written decisions issued in the FOIA request’s specified timeframe.

4. DNREC consulted with its Deputy Attorneys General regarding whether there existed any other settlement agreements responsive to Mr. Wilson's FOIA request.

5. DNREC's Deputy Attorneys General confirmed the existence of one additional settlement agreement (the "Employee Settlement Agreement"), initially believed FOIA-exempt pursuant to 29 *Del. C.* § 10002(o)(1). 29 *Del. C.* § 10002(o)(1) exempts "[a]ny personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy" from FOIA's definition of "Public record." DNREC, in good faith, believed the Employee Settlement Agreement was non-responsive and exempt from production because the initiating lawsuit arose from a Merit Employee Relations Board ("MERB") hearing. MERB Rule 16.1 specifically states that "grievance records" must be maintained as part of a personnel record and further provides that all such records are confidential and must be maintained as such. DNREC believed that because the Employee Settlement Agreement was the ultimate result of a MERB grievance, it qualified as part of a "personnel file" under 29 *Del. C.* § 10002(o)(1), and that disclosure of the Employee Settlement Agreement would constitute an unwarranted invasion of personal privacy.

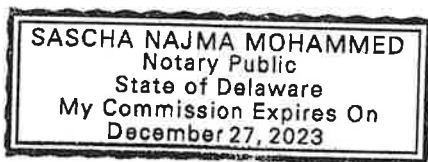
6. Upon further evaluation, however, DNREC has determined that the Employee Settlement Agreement is not subject to MERB Rule 16.1, and is therefore responsive to Mr. Wilson's FOIA request.


7. DNREC is not aware of the existence of any other settlement agreements responsive to Mr. Wilson's FOIA request.

8. Therefore, the information found upon the Enforcement Orders website previously provided to Mr. Wilson, together with the Employee Settlement Agreement, resolve Mr. Wilson's FOIA request.

  
Name: Lee Sobocinski  
Title: FOIA Coordinator

Sworn to and subscribed before me, this 17<sup>th</sup> day of November, 2022,  
as witnessed by my Hand and Seal of Office.



  
Notary Public  
My Commission Expires: 27 December, 2023

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made entered into between John Kennel (“Kennel”), and Delaware Department of Natural Resources and Environmental Control (“DNREC”) (collectively the “Parties”) and is effective as of the last date signed below.

**WHEREAS**, Kennel was employed as a Planner IV with DNREC;

**WHEREAS**, on October 24, 2019, DNREC terminated Kennel’s employment;

**WHEREAS**, on August 28, 2019, Kennel filed two grievances (LREP Case Number 19-00141, and MERB Docket Number 19-08-735) through the State of Delaware’s Human Resource Department’s (“DHR”) grievance process challenging his termination (the “Grievances”), and on November 29, 2019, Kennel filed an additional grievance in both of those matters (LREP Case Number 19-00184, and MERB Docket Number 19-12-742);

**WHEREAS**, on September 14, 2018, Kennel filed a charge of discrimination (the “Charge of Discrimination”) with the Equal Employment Opportunity Office (“EEOC”) challenging his termination in Case Number 530-2018-03291;

**WHEREAS**, on May 1, 2019, Kennel filed a second charge of discrimination (the “Second Charge of Discrimination”) with the Delaware Department of Labor (“DDOL”) in Case Number: KEN022519/17C-2019-00274;

**WHEREAS**, on January 10, 2020, Kennel filed a third charge of discrimination (the “Third Charge of Discrimination”) with the EEOC in Case Number 530-2020-01374;

**WHEREAS**, on September 4, 2019, the EEOC dismissed Charge Number 530-2018-03291, and issued a right to sue to Kennel;

**WHEREAS**, on December 4, 2019, Kennel filed a lawsuit in the U.S. District Court for the District of Delaware, titled *Kennel v. DNREC*, C.A. No. 1:19-cv-2222-CFC-CJB, alleging DNREC’s termination of Kennel was improper (the “Lawsuit”);

**WHEREAS**, the Parties, without any admission of liability or wrongdoing, seek to amicably resolve Kennel’s termination from DNREC; and

**NOW, THEREFORE**, in consideration of the promises, mutual releases and agreements contained herein and other good and valuable consideration, the receipt, validity, and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are hereby incorporated into this Agreement.
2. **Settlement Payment.** To settle all claims outlined in the above recitals, DNREC shall pay a sum equal to ninety four thousand sixty six Dollars (\$94,066.00) (the “Payment”). The payment shall be made within thirty (30) days following the Parties’ execution of this Agreement. The Payment shall be issued as follows:

- a. to Kennel by direct deposit in the amount of twenty three thousand six hundred Dollars (\$23,600.00) representing lost wages and issued as a regular payroll check with appropriate taxes withheld and a W-2 issued at the end of the year; and
  - b. to “Kate Butler Law LLC” by check to 1509 Gilpin Avenue, Suite 3, Wilmington, Delaware 19806 in the amount of seventy thousand four hundred sixty six Dollars (\$70,466.00) representing attorneys’ fees and costs and issued with a 1099-MISC to Kate Butler LAW LLC.
3. **Kennel’s Retirement.** DNREC agrees to rescind Kennel’s termination and accept Kennel’s retirement from DNREC’s employment as of October 24, 2019.
4. **Pension Credit.** DNREC agrees to add one year of pension credit to Kennel’s state service for the purposes of Kennel’s pension calculator only.
5. **Tax Implications.** Kennel and Kennel’s counsel are exclusively responsible for any tax implications or liability associated with the payments made pursuant to Paragraph 2. As required by law, the State of Delaware will issue the appropriate IRS Form(s) and 1099 for any payments made pursuant to Paragraph 2. Kennel acknowledges that he has not relied on any advice from DNREC or the State of Delaware concerning tax liability, if any, for the amounts to be paid in this Agreement.
6. **Personnel File.** DNREC agrees to remove Kennel’s termination and pre-termination letters from his personnel file.
7. **Release of Claims.** In consideration of the benefits and promises memorialized in this Agreement, Kennel, including his respective heirs, legal representatives, agents, attorneys, successors and assigns, does voluntarily and knowingly agree to waive, release and forever discharge the State and DNREC, their respective heirs, legal representatives, political subdivisions, agents, attorneys, insurance providers, successors and assigns, and all persons, associations or corporations who are or might be claimed to be liable to Kennel from any and all claims, liability, demands, costs, charges, expenses, actions, causes of action, judgments, and executions, past, present and future, known or unknown, asserted or unasserted, whether or not ascertainable at the time of execution of the Agreement arising from or in any way related to Kennel’s employment with DNREC. Further, Kennel recognizes and acknowledges that, by entering into this settlement and signing this Release, he is forever barred from filing any such claims in the future regarding the claims alleged in the federal lawsuit, in the grievances filed with DHR, or in the Charges of Discrimination filed with the EEOC and the DDOL or any other claims related to his employment with DNREC.
8. **Dismissal of Grievance and Lawsuit.** Within two (2) business days of this Agreement being executed, Kennel shall write separately to DHR, the EEOC, DDOL, and the United States District Court for the District of Delaware, copying DNREC, and advise those adjudicating bodies that the parties have executed an agreement resolving the respective matter pending before them, and that Kennel will be dismissing those pending matters with prejudice once he receives the Settlement Payment. Within two (2) business days of Kennel receiving the



Settlement Payment, Kennel and DNREC shall submit a joint letter to DHR copying the Merit Employee Relations Board (“MERB”) stipulating to dismiss with prejudice Kennel’s two grievances against DNREC. Within two (2) business days of Kennel receiving the Settlement Payment, Kennel shall send a letter to the EEOC, copying DNREC, requesting that Charge Number 530-2020-01374 be dismissed with prejudice. Within two (2) business days of Kennel receiving the Settlement Payment, Kennel and/or his legal representative shall send a letter to DDOL, copying DNREC, requesting that Charge Number KEN022519/17C-2019-00274 be dismissed with prejudice. Within two (2) business days of Kennel receiving the Settlement Payment, Kennel and DNREC shall file a stipulation of dismissal with prejudice for the Lawsuit. Kennel warrants that he has no other outstanding claims against DNREC.

9. **No Admission.** This Agreement does not constitute admission of wrongdoing or liability by either Party. The Parties expressly deny any improper conduct or wrongdoing.

10. **Who is Bound.** The Parties are bound by this Agreement. Anyone who succeeds to the Parties’ rights and responsibilities, such as their assigns and successors, are also bound. This Agreement is made for the Parties’ benefit, as well as for the benefit of anyone who signs this Agreement, and all who succeed to their rights and responsibilities, such as their predecessors, successors, subsidiaries, parents, parent companies, affiliates, partners, officers, directors, shareholders, agents, representatives, servants, employers, employees, heirs, executors of their estates, and insurers.

11. **Confidentiality of this Agreement.** The Parties agree that the existence or substance of this Agreement shall be confidential and not disclosed, except to governmental authorities as required by law. The Parties to this Agreement further agree that the terms of the settlement are to be kept confidential to the extent permitted by law, *provided, however*, that: (1) Kennel shall be permitted to discuss the terms of this Agreement with his tax and/or legal representatives, subject to the condition that each such other person has read, understands, and agrees to be bound by the provisions of this section; and (2) the Parties recognize that DNREC may, from time to time as part of their official duties, be required to disclose information about this Agreement, and its terms and conditions, during the normal course of its business, including pursuant to a lawful request pursuant to the Freedom of Information Act, 29 *Del. C.* ch. 100 (“FOIA”). Such disclosures will not be considered to breach this provision. The Parties mutually agree they will not in any way publicize or cause to be publicized to any third party, or any news or communications media, the terms or conditions of this Agreement. If otherwise asked about this case and how it was resolved, the Parties shall respond as follows: “the case was resolved by agreement of the Parties and the terms and conditions are confidential,” or a similar statement.

12. **Non-Disparagement.** The Parties specifically agree not to engage in any act, make any statement, nor engage in any other form of communication that is intended, or may reasonably be expected, to harm the reputation, business affairs, practices or performances of any other party about the facts and circumstances giving rise to all matters addressed in this Agreement.

13. **Attorneys’ Fees.** Court costs, attorneys’ fees, and expenses, including any costs, fees and expenses incurred in seeking to enforce this Agreement, shall be borne solely by the Party

incurring the same. Neither Party shall be construed a "prevailing party" for purposes of fee shifting within the meaning of any federal, state, or local statute, court rule, or common law.


14. **Severability.** If any term or provision of this Agreement shall be held to be invalid or unenforceable for any reason, then such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms or provisions hereof, and such term or provision shall be deemed modified to the extent necessary to make it enforceable.

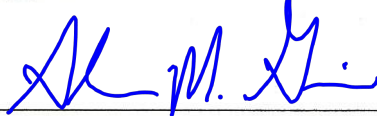
15. **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware, without regard to the conflict of law principles of any jurisdiction. Any and all disputes arising from or relating to this Agreement shall be brought in a court of competent jurisdiction in the State of Delaware and both parties waive any objections they may have with regard to the exercise of personal jurisdiction by such courts.

16. **Entire Agreement.** This Agreement constitutes the full and complete agreement of the Parties with respect to the matters contained herein. The Parties hereby acknowledge and agree that there are no promises, representations, terms, conditions, agreements, or other understandings, either verbal or written, relating to the subjects expressly addressed in this Agreement, and that all agreements among the parties hereto and pertaining to the subject matters hereof are hereby merged into and are expressly set forth in this Agreement. This Agreement may not be modified, altered, or changed except upon express written consent of both Parties.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which counterparts shall be deemed to be one instrument upon execution of a counterpart by all signatories to this Agreement, and shall be treated in all respects as a fully and duly executed original and enforceable instrument. In addition, copies of signed documents, including pdfs or other electronic versions thereof, shall be treated in all respects as originals.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement on the date(s) noted below:

 6/14/2021  
\_\_\_\_\_  
John Kennel Date

 6/22/21  
\_\_\_\_\_  
Department of Natural Resources Date  
And Environmental Control

Shawn M. Garvin

Printed Name of DNREC Signatory

State of Delaware  
Department of Labor  
Division of Unemployment Insurance



**NOTICE OF HEARING**

Lower Authority Appeals  
4425 N. Market St.  
PO Box 9950  
Wilmington, DE 19809

Appeal Docket # 11216295

Claimant Name & Address

**JOHN M. KENNEL  
2204 MILLTOWN RD.  
WILMINGTON DE 19808**

Employer Name & Address

**ST OF DE DEPT. OF NATURAL RESO  
89 KINGS HIGHWAY R & R COMPLEX  
DOVER DE 19901**

Social Security # \*\*\*-\*\*-5326

**IMPORTANT**

**TELEPHONE HEARING:** The Claimant and the Employer are to call 302-739-4598 at the time and date listed below. Please leave your name and telephone number. Please read the Statement of Issues below and the enclosed instructions for further information.

**EVIDENCE:** If a party has evidence they intend to present during the hearing, those documents\* **MUST** be delivered to **BOTH** the Appeals Referee **AND** to the opposing party no later than 24 hours prior to the start of the hearing. **EMAIL .PDF** documents to [Kathryn.Gantz@Delaware.gov](mailto:Kathryn.Gantz@Delaware.gov) or **FAX 302-739-6918. PLEASE INCLUDE THE APPEAL DOCKET NUMBER.**

**\*( format is .pdf or .jpeg. Please REDUCE the size of any photos.) We are unable to accept video or ZIP files.**

This hearing will be held at the following date and location, concerning an appeal to a decision given by a Claims Deputy.

Deputy Decision Date:	Hearing Location:	Date and Time:
<b>04/07/2021</b>	<b>Hearing conducted by telephone Please use (302) 739-4598</b>	<b>06/28/2021 2:00 PM</b>

This appeal has been filed by the Claimant on **04/16/2021**

Statement of Issues: **The claimant submitted a pay authorization request that is considered out of sequence and s/he is ineligible for benefits.**

Date of Mailing: **06/11/2021**

By: Kathryn M. Gantz  
Appeals Referee  
Division of Unemployment

To Claimant: You must continue to file for benefits as instructed as long as you are unemployed.

**¡IMPORTANTE! Hay información adicional en la parte posterior de este documento.**

Notices to:  
Claimant  
Employer  
Local Office  
A. DEPUTY

**\*\*SEE OTHER SIDE FOR INSTRUCTIONS\*\***

UC 301  
Document 60-06/96/02/02