



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
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DOVER, DELAWARE 19901

Office of the  
Secretary

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. §§6005(b)(2) and (b)(3)

**Order No. 2022-WH-0021**

*Via Personal Service<sup>1</sup>:*

**Facility Operator**

Donovan Salvage Works, Inc.  
20262 Donovans Road  
Georgetown, DE 19947  
Attn: Derek Stickler

*Via Personal Service<sup>1</sup>:*

**Property Owner**

Herbert Holdings, LLC  
P.O. Box 30  
Georgetown, DE, 19947  
Attn: Michael Herbert, President

*Via Personal Service<sup>1</sup>:*

**Facility Operator Registered Agent**

Michael Herbert  
P.O. Box 30  
20262 Donovans Road  
Georgetown, DE 19947

*Via Personal Service<sup>1</sup>:*

**Property Owner Registered Agent**

Harvard Business Services, Inc.  
16192 Coastal Highway  
Lewes, DE 19958

The Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found Donovan Salvage Works, Inc., facility operator, and Herbert Holdings, LLC, property owner (collectively referred to as “Respondents” or “Donovan”) in violation of 7 Del. C. Chapters 60 and 63 and 7 Del. Admin. C. § 1102: Permits, 7 Del. Admin. C. § 1301: Delaware’s Regulations Governing Solid Waste (“DRGSW”), 7 Del. Admin. C. §1302:

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<sup>1</sup> All service made in person was effected by a DNREC Environmental Crimes Unit Officer.

Delaware's Regulations Governing Hazardous Waste ("DRGHW"), 7 *Del. Admin. C.* §7201: Delaware's Regulations Governing the Control of Water Pollution ("DRGCWP"), and 7 *Del. Admin. C.* § 1352: Delaware's Regulations Governing Aboveground Storage Tanks (RGAST). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order, pursuant to 7 *Del. C.* § 6005.

### **BACKGROUND**

1. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of the improper, inadequate, or unsound management of solid and hazardous wastes, by establishing a program of regulation over the storage, transportation, handling, and disposal of solid and hazardous wastes, and to assure the safe and adequate management of solid and hazardous wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapters 60 and 63.
2. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of impacts from emissions, by establishing a program of regulation over air emissions within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.
3. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from stormwater discharges and process wastewater discharges from industrial facilities, by establishing a program of regulation over stormwater and process wastewater discharges within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.
4. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from effects of improper storage of hazardous substances in aboveground storage tanks, by establishing a program of regulation over proper management of hazardous substances in aboveground storage

tanks and methods to remediate releases that occur within the State of Delaware, pursuant to the authority set forth in *7 Del. C. Chapter 74A*.

5. On April 13, 2022, the Department completed a multi-media compliance inspection of the facility on the property located at 20262 Donovans Road, Georgetown, Delaware to determine if Respondents were in compliance with *7 Del. C. Chapters 60 and 63* and *7 Del. Admin. C. § 1102: Permits, 7 Del. Admin. C. § 1301: DRGSW, 7 Del. Admin. C. § 1302: DRGHW, 7 Del. Admin. C. § 7201: DRGCWP, and 7 Del. Admin. C. § 1352: RGAST*.
6. On April 22, 2022, the Department issued Secretary's Order No. 2022-WH-0004 that identified 31 violations of *7 Del. C. Chapters 60 and 63* and *7 Del. Admin. C. § 1102: Permits, 7 Del. Admin. C. § 1301: DRGSW, 7 Del. Admin. C. § 1302: DRGHW, 7 Del. Admin. C. § 7201: DRGCWP, and 7 Del. Admin. C. § 1352: RGAST* and ordered Respondents to cease and desist all business operations unrelated to those activities specifically directed and approved by the Department.
7. On May 19, 2022, the Department issued Notice of Violation No. 22-HW-14 ("NOV") that identified 45 violations of *7 Del. C. Chapters 60 and 63* and *7 Del. Admin. C. § 1102: Permits, 7 Del. Admin. C. § 1301: DRGSW, 7 Del. Admin. C. § 1302: DRGHW, 7 Del. Admin. C. § 7201: DRGCWP, and 7 Del. Admin. C. § 1352: RGAST*. Respondents received the NOV on May 23, 2022. The NOV required Respondents to immediately comply with the applicable requirements and to submit documentation demonstrating compliance.
8. On July 1, 2022, Respondents requested an additional 90 days to submit compliance documentation. This deadline was September 29, 2022. Respondents agreed to provide monthly updates to the Department regarding progress made to achieve compliance. Respondents failed to provide the monthly updates.

9. On September 3, 2022, Respondents submitted limited documentation and a brief status update. The submitted documentation and update did not address a significant number of the identified violations and did not demonstrate adequate progress being made to achieve compliance.
10. On September 29, 2022, Respondents submitted a second response to the NOV. While this response was more comprehensive than the previous submission, it was not adequate to demonstrate compliance with all violations cited in the NOV.
11. On September 30, 2022, representatives from the Department's solid waste program, scrap tire program, and hazardous waste program conducted a follow-up compliance assessment to determine if any of the cited violations had been satisfactorily corrected.
12. As of the date of this Order, 18 of the violations cited in the NOV have been corrected. The corrected violations are Violation Nos. 2, 4, 5, 8, 12, 13, 14, 15, 17, 19, 20, 21, 25, 37, 38, 43, 44, and 45. The semiannual reports referenced in Violation No. 39 were submitted; however, the Department remains concerned about the compliance certifications submitted. As such, the violation is not considered corrected.

## **FINDINGS OF FACT AND VIOLATIONS INCLUDING**

### **Solid Waste**

13. 7 *Del. Admin. C.* § 1301, DRGSW Section 3 defines "disposal" as:

*“‘Disposal’ means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or upon any land or water.”*

- DRGSW Section 3 defines "solid waste" as:

*“‘Solid Waste’ means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved*

*material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under 7 Del. C Ch. 60, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.”*

DRGSW Section 3 defines “refuse” as:

*“‘Refuse’ means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, scrap tire(s), offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.”*

DRGSW Section 3 defines a “landfill” as:

*“‘Landfill’ means a natural topographic depression and/or man-made excavation and/or diked area, formed primarily of earthen materials, which has been lined with man-made and/or natural materials or remains unlined and which is designed to hold an accumulation of solid wastes.”*

DRGSW Section 3 defines a “facility” as:

*“‘Facility’ means all contiguous land, structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations thereof).”*

DRGSW Section 4.1.1.1 states:

*“No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under subsection 2.3, without first having obtained a permit from the Department.”*

7 Del. C. § 6003(a)(4) states:

*“(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity: ...*

*(4) In a way which may cause or contribute to the collection, transportation, storage, processing, or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes... ”*

During the compliance inspection, two main categories of solid waste disposal were observed: waste piles and waste berms. The observed waste piles and waste berms typically consisted of the following wastes or some combination thereof: plywood scraps, pieces of milled dimensional lumber, plastic, vehicle parts, insulation, glass, textile fabric, tires, and soil. Waste piles were discovered in various locations throughout the salvage yard and waste berms were found in various locations along the salvage yard/forest interface.

The following waste piles and berms are listed in sequence of discovery.

- a) Waste pile #1 was mostly comprised of scrap tires, plastic, carpet, metal, textile fabric, and soil. This waste pile measured approximately 125 feet in circumference with a peak height of 10 feet and was located adjacent to the southwest corner of the smelter building.
- b) Waste pile #2 was mostly comprised of what appeared to be soil commingled with plastic, vehicle parts, textile fabric, milled dimensional lumber, cars, appliances, and outdoor furniture. This waste pile measured approximately 300 feet in circumference with an average height of five feet and was located adjacent to, and on, the concrete crushing pad.
- c) Waste pile #3 was mostly comprised of soil commingled with vehicle parts and vehicle remnants. This waste pile measured approximately 100 feet in circumference with a peak height of eight feet and was located northeast of the pole building which sits adjacent and east of the smelter building.
- d) Waste pile #4 was mostly comprised of soil commingled with vehicle parts, plastic remnants, glass, and textile fabric. The footprint of this waste pile measured approximately 262 feet with a peak height of 12 feet and an average height of five feet.

- Waste pile #4 was located approximately 100 feet east of waste pile #3 and extended right up to the northern salvage yard/forest interface.
- e) Waste pile #5 was mostly comprised of soil commingled with plywood scraps, plastic grating, insulation, vehicle parts, milled dimensional lumber, and textile fabric. The footprint of this waste pile measured approximately 225 feet with a peak height of 11 feet and was located approximately 50 feet east of pile #4.
  - f) Waste pile #6 (Recreational Vehicle Deconstruction Area) was mostly comprised of construction and demolition like debris (C&D debris) which appeared to be remnants from recreational vehicle deconstruction operations. This waste pile was comprised mostly of plywood scraps, milled dimensional lumber, insulation, metal, plastic sheeting, fiberglass boats, and wall paneling. This waste pile measured approximately 312 feet in circumference with a peak height of 12 feet and was located approximately 150 feet east/northeast of pile #5.
  - g) Waste pile #7 (Railcar Deconstruction Area) contained various C&D debris, most of which appeared to be remnants from railcar dismantling operations. This waste pile was mostly comprised of railcar parts and pieces, including but not limited to, railcar seats, insulation, railcar frames, plywood scraps, and exterior metal paneling. The footprint of this waste pile measured approximately 400 feet and was located approximately 50 feet east of pile #6. Located directly east of waste pile #7, two assembled railcars were observed each measuring approximately 80 feet long and 10 feet wide.
  - h) Waste berm #1 was mostly comprised of soil commingled with remnants of plastic, textile fabric, metal, tires, concrete block, and vehicle parts. This waste berm measured approximately 250 feet long with an average height of four feet and was located at the salvage yard/forest interface, north of waste piles #6 and #7.
  - i) Waste pile #8 contained multiple heaps of soil commingled with vehicle parts, textile fabric, garbage bags, tires, milled dimensional lumber, and plastic. The footprint of this waste pile measured approximately 135 feet with an average height of four feet and was

- located approximately 150 feet southeast of waste pile #7 at the salvage yard/forest interface.
- j) Waste berm #2 was mostly comprised of soil commingled with remnants of insulation, plastic, textile fabric, metal, and vehicle parts. This waste berm measured approximately 62 feet long with an average height of four feet and was located at the salvage yard/forest interface, east of waste pile #8.
  - k) Waste pile #9 (Cable Pile) mostly consisted of an entangled mass of cables. This waste pile was approximately 10 feet in diameter with a peak height of five feet and was partially submerged in water. Waste pile #9 was located at the northeast corner of the property within the forested/wetland area.
  - l) Waste pile #10 (Ground/Shredded Waste Pile) contained approximately one cubic yard of what appeared to be ground or shredded C&D-like waste and was located immediately north of waste pile #9.
  - m) Waste berm #3 was mostly comprised of soil commingled with tires, concrete, brick, concrete block, textile fabric, metal, cable, acrylonitrile butadiene styrene (ABS) pipe, and vehicle parts. This waste berm measured approximately 200 feet long with an average height of two feet and was located at the northeast salvage yard/forest interface just west/northwest of waste pile #10.
  - n) Waste pile #11 was a shallow pile of C&D-like debris mostly comprised of remnants of plastic, insulation, plywood, milled dimensional lumber, metal, vehicle parts, and tires. The footprint of this waste pile measured approximately 312 feet with an average height of eight to twelve inches and was located approximately 100 feet south of waste pile #6.
  - o) Waste pile #12 was mostly comprised of soil commingled with plastic grating, plastic bags, carpet, fragments of milled dimensional lumber, insulation, carpet, and tires. The footprint of this waste pile measured approximately 200 feet with an average height of two feet and was located approximately 75 feet east of the concrete crushing pad at the southern salvage yard/forest interface.



Disposal of solid waste without the appropriate permit is a violation of DRGSW Section 4.1.1.1 and 7 *Del. C.* § 6003(a)(4).

14. DRGSW Section 7.1.1 states in part:

*“No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations.”*

7 *Del. C.* § 6003(a)(4) states:

*“(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity: ...*

*(4) In a way which may cause or contribute to the collection, transportation, storage, processing, or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes...”*

Department representatives inquired as to what company Donovan utilizes to transport its solid waste (i.e., trash) off-site. Donovan representatives indicated they self-transport their own waste to the Delaware Solid Waste Authority landfill in Georgetown, Delaware. Donovan has a solid waste transporter permit (DE-SW-1737) that was issued on October 1, 2019 and expires on June 30, 2024. However, the permit only authorized Donovan to transport scrap tires. Donovan submitted a solid waste transporter permit application signed by Michael R. Herbert on July 30, 2019 in which Donovan selected only one type of waste to be transported, which was scrap tires. Further, Donovan included a written comment in the permit application that it will only be transporting scrap tires. As such, Donovan did not have a solid waste transporter permit that authorized the transportation of other solid wastes, including municipal solid waste or industrial waste generated at the facility. Transporting solid waste without the appropriate permit is a violation of DRGSW Section 7.1.1 and 7 *Del. C.* § 6003(a)(4).

**Scrap Tires**

15. On October 22, 2019, Donovan was issued a Group 2 Scrap Tire Facility Permit (DE-ST-000128-01). Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition A.1 states:

*"Operations shall be conducted in accordance with all federal, state, county, and municipal environmental statutes, ordinances, and regulations, including, but not limited to: DRGSW; 7 Del. Admin. Code §1302, Delaware's Regulations Governing Hazardous Waste; 7 Del. Admin. Code §7201, Delaware's Regulations Governing the Control of Water Pollution; 7 Del. Admin. Code §7401, Delaware's Surface Water Quality Standards; and 7 Del. Admin. Code §1100, Delaware's Regulations Governing the Control of Air Pollution."*

At the time of the compliance inspection, Donovan was in violation of regulations including but not limited to 7 Del. Admin. C. § 1301: DRGSW and 7 Del. Admin. C. § 1302: DRGHW. By failing to maintain compliance with the stated regulations, as detailed in the NOV and this Order, Donovan is in violation of Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, A. 1.

16. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition A.2 states:

*"Operations at the scrap tire facility shall be conducted in accordance with this permit and the Scrap Tire Facility Permit Application, including the Operations Manual. Operations shall be conducted in a manner protective of public health and the environment."*

At the time of the compliance inspection, Donovan representative Derek Stickler indicated that the fence surrounding the property was not continuous. On January 18, 2019, Donovan submitted to the Department a scrap tire facility permit application and operations manual indicating that the facility was secured during non-business hours by a locked fence. By failing to have a continuous fence securing the scrap tire facility,

Donovan is in violation of Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, A. 2.

17. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition A.3 states:

*"Operations shall be conducted in accordance with the siting and design standards set forth in DRGSW Section 12.5."*

DRGSW Section 12.5.1.4.1 states:

*"All grasses, weeds, brush, debris, and other combustible material must not be present in or on the scrap tire facility."*

At the time of the compliance inspection, within Donovan's Group 2 Scrap Tire Facility there was a tire shredder. Having a tire shredder, which is operated by utilizing diesel, a combustible material, is a violation of Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, A. 3.

18. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition A.4 states:

*"At no time shall the volume of tires stored in the scrap tire management facility exceed 901 square feet by 10 feet high."*

At the time of the compliance inspection, Donovan's designated Group 2 Scrap Tire Facility exceeded the permitted volume of 901 square feet by 10 feet high. This is a violation of Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, A. 4.

19. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition C.4 states:

*"Waste materials other than scrap tires are prohibited from being placed in the scrap tire facility. If prohibited waste materials are noticed, these waste materials shall be immediately removed, containerized and lawfully disposed."*

At the time of the compliance inspection, Donovan had waste, other than scrap tires, such as plastics, discarded car parts, and metals mixed in with tire shreds/scrap tires in the designated Group 2 Scrap Tire Facility. This is a violation of Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, C.4.

20. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, I. General Conditions, E.11.c., Health and Safety states:

*"First aid equipment shall be immediately available at the site."*

At the time of the compliance inspection, Donovan was unable to immediately locate the first aid equipment. This is a violation of Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, I. General Conditions, E.11.c., Health and Safety.

21. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, I. General Conditions, E.14 states:

*"Failure to comply with any condition of this permit or any provisions within the aforementioned documents is a violation of this permit."*

At the time of the compliance inspection, Donovan failed to comply with the permit conditions of Scrap Tire Facility Permit, DE-ST-000128-01, in violation of I. General Conditions, E. 14.

22. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, III. Reporting, C states:

*"The owner/operator shall report any instance of noncompliance with this permit to the CAPS within seven (7) calendar days of its discovery. The owner/operator shall take immediate action to correct the noncompliance or notify the Department pursuant to Section V of this permit, of its intent to close the scrap tire facility."*

Donovan failed to report non-compliance with its issued scrap tire facility permit to the Department within seven days. This is a violation of Donovan's Group 2 Scrap Tire Facility Permit, DE-ST-000128-01, III. Reporting, C.

23. Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, C.2 states:

*“No scrap tires shall be stored outside of the scrap tire facility unless enclosed by a building.”*

At the time of the compliance inspection, Donovan had scrap tires stored in at least eight additional areas in addition to the designated Group 2 Scrap Tire Facility. The areas observed were:

- a) **Area 1** - This area is located outside next to the smelter structure. There were approximately nine large off-the-road (OTR) scrap tires on rims that had cut treads, vegetation growing through the rim, and metal sticking out of the tread and sidewall. There were also ten tractor trailer scrap tires on rims that had dry rot and tread separating from the sidewall. In addition, there was a pile of solid waste located adjacent to the scrap tires that had car passenger tires mixed in with the rest of the solid waste.
- b) **Area 2** - This area is located inside of the smelter structure. There were 34 tires located in this area. The pile is comprised of new, used and scrap tires. Department representatives inspected the tires and two tires were identified as scrap tires.
- c) **Area 3** - The piles described in this area are in the vicinity of the concrete crushing pad. There was a grey 30 to 40-yard roll-off that contained cut tires. There were also scrap tires on the sides of the roll-off and on the ground adjacent to the roll-off.  
  
In addition, there was another pile of cut tires that were comprised of tractor trailer tires, car passenger tires and OTR tires. These cut tires were located on the ground.
- d) **Area 4** - This area is located adjacent from the concrete crushing pad. This pile contained approximately 175 scrap tires. Most of the scrap tires in this area were on rims. The tires had cuts, nicks, bulges, or were blown out.
- e) **Area 5** - This area is located next to waste pile #4. It contained seven scrap tires. Of the seven scrap tires, six of the scrap tires were on rims. The tires had worn tread, nicks, cuts, and bulges.

- f) **Area 6** - This area is located near waste pile #6. This pile was comprised of approximately 40 tractor trailer scrap tires, 10 car passenger scrap tires, and one OTR scrap tire. The tires had nicks, cuts, or were blown out.
- g) **Area 7** - This area is located next to the deconstructed Amtrak railcar debris. There are OTR, tractor trailer, and car passenger scrap tires. The scrap tires in this area were cut.
- h) **Area 8** - This area is located at the back of the property in the woods and marshy area. There were scrap tires that were partially buried, scrap tires laying in water, scrap tires on the banks of the water and scrap tires in various piles in the wooded area.

These are violations of Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, C.2.

### **Hazardous Waste**

24. 7 Del. Admin. C. § 1302: DRGHW Section 273.9 defines "lamp" as:

*“**Lamp**’ also referred to as ‘**universal waste lamp**’ is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.”*

DRGHW Section 273.5 identifies lamps as universal waste:

#### ***“Section 273.5 Applicability - lamps***

*(a) Lamps covered under this Part 273. The requirements of this part apply to persons managing lamps as described in §273.9, except those listed in paragraph (b) of this section.*

*(b) Lamps not covered under this Part 273. The requirements of this part do not apply to persons managing the following lamps:*

*(1) Lamps that are not yet wastes under Part 261 of these regulations as provided in paragraph (c) of this section.*

*(2) Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C of these regulations.*

*(c) Generation of waste lamps.*

*(1) A used lamp becomes a waste on the date it is discarded.*

*(2) An unused lamp becomes a waste on the date the handler decides to discard it."*

DRGHW Section 273.13(d)(1) states:

*"(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:*

*(1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.*

Department representatives observed the following universal waste lamps:

- a) In the area used for the deconstruction of railcars there were two intact Amtrak railcars and what appeared to be one deconstructed railcar. In this area, Department representatives observed four broken fluorescent lamps on the ground. Specifically, the broken lamps observed were Sylvania F40/WX lamps which are traditional high-mercury lamps.
- b) Across the unpaved "road" from the railcar deconstruction area, Department representatives observed a light fixture containing two intact fluorescent lamps. The

spent lamps were GE F3078-CW lamps and were marked as containing mercury (Hg) and are traditional high-mercury containing lamps.

Traditional high-mercury lamps are hazardous waste, carrying the D009 hazardous waste code. Traditional high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste is a subset of hazardous waste and DRGHW Part 273 identifies streamlined requirements for certain wastes, including spent lamps, which are commonly generated by a wide variety of establishments. The universal waste regulations require lamps to be accumulated in a structurally sound container that is adequate to prevent breakage. Donovan failed to containerize universal waste lamps to prevent breakage, which is a violation of DRGHW Section 273.13(d)(1).

25. DRGHW Section 273.13(d)(2) states:

*“(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: ...*

*(2) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.”*

Department representatives observed four broken fluorescent lamps on the ground. Specifically, the broken lamps observed were Sylvania F40/WX lamps which are traditional high-mercury lamps carrying the D009 hazardous waste code. Traditional high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste regulations require a small quantity universal waste handler to



immediately clean up any broken lamps and place them in a container to prevent releases of mercury to the environment. Donovan failed to immediately clean up and containerize broken universal waste lamps, which is a violation of DRGHW Section 273.13(d)(2).

26. DRGHW Section 273.14(e) states:

*“A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below: ...*

*(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: ‘Universal Waste—Lamp(s)’, or ‘Waste Lamp(s)’, or ‘Used Lamp(s)’.”*

Across the unpaved “road” from the railcar deconstruction area, Department representatives observed a light fixture containing two intact fluorescent lamps. The spent lamps were GE F3078-CW lamps and were marked as containing mercury (Hg) and are traditional high-mercury containing lamps. Traditional high-mercury lamps are hazardous waste, carrying the D009 hazardous waste code. Traditional high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste regulations require lamps to be accumulated in a structurally sound container that is properly marked or labeled. Donovan failed to label universal waste lamps, which is a violation of DRGHW Section 273.14(e).

27. DRGHW Section 273.6 states:

***“Section 273.6 Applicability – Aerosol Cans***

*(a) Aerosol cans covered under this part. The requirements of this part apply to persons managing aerosol cans as described in §273.9, except those listed in paragraph (b) of this section.”*

DRGHW Section 273.5 states:

***“Section 273.5 Applicability - lamps***

*(a) Lamps covered under this Part 273. The requirements of this part apply to persons managing lamps as described in §273.9, except those listed in paragraph (b) of this section."*

DRGHW Section 122.2 defines "disposal" as:

*"**'Disposal'** means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater."*

DRGHW Section 273.11 states:

*"A small quantity handler of universal waste is:*

*(a) Prohibited from disposing of universal waste..."*

DRGHW Section 122.1(c) states:

*"(c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261. The terms 'treatment', 'storage', 'disposal', and 'hazardous waste' are defined in Section 122.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to Section 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Section 122.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as required under (c)(7) of this section. If a post-closure permit is required, the permit must address applicable Part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of these regulations. The denial of a permit for the active life of a*

*hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.”*

7 Del. C. § 6307(b) states:

*“Beginning 180 days after the effective date of regulations adopted for this purpose, no person shall construct, substantially alter, own or operate any hazardous waste treatment, storage or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the Secretary for such facility, site or activity, except that generators may accumulate hazardous wastes on site without a permit for such periods and upon such conditions as the Secretary may by regulation prescribe.”*

On the northwest side of the site were two step vans used to store equipment and parts. In the area surrounding the step vans, Department representatives observed 47 spent aerosol cans. The majority were on the ground. It did not appear that the spent aerosol cans had accidentally fallen on the ground in the work area. Based on the quantity, their location, and condition, it appears that the spent aerosol cans were disposed of by placing them on the ground in the salvage yard with other solid wastes. The majority of the spent aerosol cans were labeled as containing Brakleen, while others were labeled as containing Instant Gum Cutter. The SDS for Brakleen indicates the main component is tetrachloroethylene (TCE), specifically states that this material and its container must be disposed of as hazardous waste, and provides the appropriate hazardous waste codes associated with the waste. Hazardous wastes exceeding a TCLP concentration of 0.7 mg/L for TCE carry the hazardous waste code D039. Additionally, the waste codes F001 and F002 apply, as the waste is a spent halogenated solvent used in degreasing. The Instant Gum Cutter SDS indicates the components are 70-90% acetone and 5-15% heptane. The SDS indicates the flashpoint is -17°C. Any waste with a flashpoint less than 60°C is considered ignitable, carrying the hazardous waste code of D001. In addition to the contents of the aerosol can, aerosol cans have the potential to be hazardous waste due to the propellant and because an intact can, subject to heat and pressure, can explode, making it a reactive hazardous waste carrying the D003 hazardous waste code.

Spent aerosol cans and high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste is a subset of hazardous waste and DRGHW Part 273 identifies streamlined requirements for certain wastes, including aerosol cans and spent high-mercury lamps, that are commonly generated by a wide variety of establishments. By placing spent aerosol cans and spent high-mercury lamps on the ground, Donovan disposed of hazardous waste onsite. DRGHW Section 273.11 prohibits a small quantity handler of universal waste from disposing of universal waste. Rather, disposal of universal waste, which is a subset of hazardous waste, requires a permit in accordance with DRGHW Section 122.1(c) and 7 Del. C. § 6307(b). Donovan failed to obtain a permit to dispose of hazardous waste.

28. DRGHW Section 268.34(a) states:

*“(a) Effective August 24, 1998, the following wastes are prohibited from land disposal: the wastes specified in Part 261 as EPA Hazardous Waste numbers D004-D011 that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications in Part 261.”*

Mercury wastes are prohibited from land disposal. By disposing of mercury waste in the form of spent high-mercury lamps (hazardous waste code D009), Donovan violated DRGHW Section 268.34(a).

29. DRGHW Section 273.13(e)(1) states:

*“(e) Aerosol cans. A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:*

*(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage*

*under reasonably foreseeable conditions, and is protected from sources of heat.”*

Department representatives observed approximately 15 of the spent aerosol cans in a small open tote that was not in good condition. The spent aerosol cans in the tote were not on the ground and thus do not meet the definition for disposal. As such, these spent aerosol cans are subject to the universal waste requirements in DRGHW Part 273.

Failing to accumulate spent universal waste aerosol cans in a structurally sound container is a violation of DRGHW Section 273.13(e)(1).

30. DRGHW Section 273.14(f) states:

*“(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: ‘Universal Waste – Aerosol Can(s),’ ‘Waste Aerosol Can(s),’ or ‘Used Aerosol Can(s).’”*

Department representatives observed approximately 15 of the spent aerosol cans in a small open tote and three spent aerosol cans in a drum that contained other solid waste. The spent aerosol cans in the tote and drum were not on the ground and thus do not meet the definition for disposal. As such, these spent aerosol cans are subject to the universal waste requirements in DRGHW Part 273. Failing to properly label the universal waste aerosol cans is a violation of DRGHW Section 273.14(f).

31. DRGHW Section 273.9 defines a battery as:

*“**Battery**’ means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.”*

DRGHW Section 273.2 identifies batteries as universal waste:

***“Section 273.2 Applicability-batteries.***

*(a) Batteries covered under Part 273.*

*(1) The requirements of this part apply to persons managing batteries, as described in §273.9, except those listed in paragraph (b) of this section.*

*(2) Spent lead-acid batteries which are not managed under Part 266, Subpart G, are subject to management under this part.*

*(b) Batteries not covered under Part 273. The requirements of this part do not apply to persons managing the following batteries:*

*(1) Spent lead-acid batteries that are managed under Part 266, Subpart G.*

*(2) Batteries, as described in §273.9, that are not yet wastes under Part 261 of these regulations, including those that do not meet the criteria for waste generation in paragraph (c) of this section.*

*(3) Batteries, as described in §273.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C of these regulations.*

*(c) Generation of waste batteries.*

*(1) A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).*

*(2) An unused battery becomes a waste on the date the handler decides to discard it.”*

DRGHW Section 273.14(a) states:

*“A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:*

*(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the*

*following phrases: 'Universal Waste-Battery(ies),' or 'Waste Battery(ies),' or 'Used Battery(ies);'*

Across the unpaved "road" from the railcar deconstruction area, Department representatives observed several large boxes, each labeled with the words "Battery Box." At least two of the battery boxes contained batteries. The remaining boxes were empty. The batteries were marked with the product number KM80P and were also marked as meeting the International Electrotechnical Commission (IEC) standard 60623, which is the standard for vented nickel-cadmium prismatic rechargeable single cell batteries. Nickel-cadmium (NiCad) batteries meet the definition of a battery above and thus are subject to the universal waste regulations. There were several sets of batteries in each battery box. None were labeled. Failing to properly label the universal waste batteries is a violation of DRGHW Section 273.14(a).

32. DRGHW Section 273.15(c) states:

*"(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:*

*(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;*

*(2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;*

*(3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;*

*(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;*

*(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or*

*(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.”*

Based on the observations made, it does not appear that Donovan had a mechanism in place to demonstrate the length of time universal waste has been accumulated onsite. Failing to have a mechanism to demonstrate the length of time universal waste is accumulated is a violation of DRGHW Section 273.15(c).

33. DRGHW Section 273.16 states:

***“Section 273.16 Employee training.***

*A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.”*

Based on the improper management of spent high-mercury lamps, spent batteries, and spent aerosol cans identified above, Department representatives concluded that Donovan did not provide adequate training for its employees. Failing to provide adequate training to all employees on the proper management of universal waste is a violation of DRGHW Section 273.16.

34. DRGHW Section 279.22(b)(3) states:

*“(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be: ...*

*(3) Closed during storage, except when it is necessary to add or remove oil.”*



Department representatives observed the following open containers or tanks of used oil on April 13, 2022:

- a) A 2.5-gallon poly container with approximately 1 inch of used oil in the bottom in the area near the two step-van vehicles.
- b) A 5-gallon poly bucket approximately half full of used oil in the area near the two step-van vehicles.
- c) An approximately 1,500-gallon aboveground storage tank of used oil in the pole building east the smelter building.
- d) One approximately 200-gallon tank of used oil integrated with a vehicle lift system designed to drain fluids from vehicles in the pole building in front of (to the south of) the smelter building.
- e) A silver drum that had been cut in half that contained used oil in the pole building in front of (to the south of) the smelter building.
- f) An approximately 750-gallon aboveground storage tank of used oil in the pole building in front of (to the south of) the smelter building.
- g) Five 55-gallon drums of used oil in the back left corner of the pole building in front of (to the south of) the smelter building.
- h) The open concrete containment system of the crushing pad where used oil is stored.

Department representatives observed the following open containers or tanks of used oil on September 30, 2022:

- a) Two 55-gallon drums of used oil in the maintenance shop
- b) Five 55-gallon drums of used oil in the parts building warehouse
- c) Two approximately 250-gallon tanks of used oil and one approximately 750-gallon tank of used oil sludge in the crushing pad containment area
- d) An approximately 200-gallon tank of used oil in the pole building in front of (to the south of) the smelter building

- e) A silver drum that had been cut in half that contained used oil in the pole building in front of (to the south of) the smelter building.

Failing to close containers or tanks of used oil is a violation of DRGHW Section 279.22(b)(3).

35. DRGHW Section 279.22(c)(1) states:

*“(c) Labels.*

*(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil’.”*

Department representatives observed the following unlabeled containers of used oil on April 13, 2022:

- a) A 2.5-gallon poly container with approximately 1 inch of used oil in the bottom in the area near the two step-van vehicles.
- b) A 5-gallon poly bucket approximately half full of used oil in the area near the two step-van vehicles.
- c) A silver drum that had been cut in half that contained used oil in the pole building in front of (to the south of) the smelter building.
- d) An approximately 750-gallon above ground storage tank located in the containment of the crushing area of the crushing pad.
- e) The open concrete containment system of the crushing pad where used oil is stored.
- f) An approximately 1,000-gallon aboveground storage tank of used oil in the Smelter Staging Area.

Department representatives observed the following unlabeled containers of used oil on September 30, 2022:

- a) Five 55-gallon drums of used oil in the parts building warehouse
- b) A 30-gallon oil drain tank in the pole building to the east of the smelter building

- c) An approximately 750-gallon tank of used oil sludge in the crushing pad containment area
- d) A silver drum that had been cut in half that contained used oil in the pole building in front of (to the south of) the smelter building.

Failing to label tanks or containers of used oil is a violation of DRGHW Section 279.22(c)(1).

36. DRGHW Section 279.22(d) states:

*“(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the **Delaware Regulations Governing Underground Storage Tanks (UST)** and which has occurred after the effective date of Delaware’s recycled used oil management program, a generator must perform the following cleanup steps:*

- (1) Stop the release;*
- (2) Contain the released used oil;*
- (3) Clean up and manage properly the released used oil and other materials; and*
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.”*

- a) Department representatives observed that a cinderblock had been removed from the rear exterior wall of the pole building east of the smelter building. With the cinderblock removed, there is a breach in the designed containment. Department representatives observed approximately 4 inches of soil between the concrete floor and the rear wall where the cinderblock had been removed. It appears this is the low-point of the concrete floor, as approximately ¼ - ½ inch of standing used oil was observed on the concrete floor in this area. Additionally, Department representatives observed that the soil in this area was dark in color and had liquid used oil pooled on the surface.

- b) Department representatives observed several inches of standing liquid in the bermed containment area that acts as the Smelter Staging Area. The standing liquid had an oily sheen and appeared to be a mixture of used oil and water. Based on the discoloration of the berm, it appears that oily water has breached/overtopped the berm in the past, allowing oily water to spill onto the ground outside the containment area. On the backside of the bermed area, Department representatives observed a 3-4" diameter pipe coming through the concrete berm. It appears the pipe is in place to allow standing liquid to be removed from the concrete pad. At the time of the compliance inspection, the pipe was capped. The soil in this area had dark stains and had been partially dug out. It appeared that the used oil and water mixture had been released from the containment system to the soil and had run approximately 100 feet down a hill into a man-made pond north of the containment system. Department representatives observed oil spill boom in the pond.

Failing to properly clean up releases of used oil is a violation of DRGHW Section 279.22(d).

37. DRGHW Section 262.11 states in part:

***"Section 262.11 Hazardous waste determination.***

*A person who generates a solid waste, as defined in §261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to these regulations. A hazardous waste determination is made by using the following steps:*

*(a) The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous waste classification of the waste may change.*

*(b) A person must determine whether the solid waste is excluded from regulation under §261.4 of these regulations.*

*(c) If the waste is not excluded under §261.4 of these regulations, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Part 261, Subpart D of these regulations. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under §§260.20 and 260.22 of these regulations to demonstrate to the Secretary that the waste from this particular site or operation is not a hazardous waste.*

*(d) The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in Part 261, Subpart C of these regulations by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both.*

*(1) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Part 261, Subpart C of these regulations, may be used as part of a*

*person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at §260.10 of these regulations.*

*(2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in Part 261, Subpart C of these regulations and in accordance with the following:*

*(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at §260.10 of these regulations.*

*(ii) Where a test method is specified in Part 261, Subpart C of these regulations, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.*

*(e) If the waste is determined to be hazardous, the generator must refer to Parts 261, 264, 265, 266, 268, and 273 of these regulations for other possible exclusions or restrictions pertaining to management of the specific waste.”*

Department representatives observed a desktop computer tower on a pallet in the Smelter Staging Area, as well as a broken Dell laptop on the ground in the area where scrap vehicles are accumulated. Electronics are potentially exempt from regulation if they are to be donated or sent for reclamation/reuse through a reverse logistics center. However, this requires the generator to treat the electronic waste as if it has value and accumulate the electronic waste in a manner that prevents releases to the environment. By storing the computer tower outdoors subject to the elements, Donovan is not managing the computer tower in a manner in which it could be donated or sent for reuse/reclamation.

Additionally, the laptop on the ground, was broken, with the electronic components open to the environment. Because the computer tower and laptop had been discarded by Donovan and not managed as if they had value, they are solid waste and Donovan was required to make a hazardous waste determination at the point of generation. There are several components within the computer tower and laptop that are potentially hazardous waste, including printed circuit boards that have heavy metal components (e.g., lead, cadmium, chromium), batteries, and mercury switches. Failing to make a hazardous waste determination is a violation of DRGHW Section 262.11.

### Water

38. The Department's Surface Water Discharge Section conducted inspections in 2017, 2020, and 2022 at Donovan Salvage Works, Inc. and determined that the site is non-compliant with the *7 Del. Admin. C. § 7201: DRGCWP Section 9.1* and the NPDES Industrial Stormwater General Permit (ISWGP) authorization issued in 2011 for this facility. During these inspections, a walk-through was conducted to observe activities onsite and potential outfall discharges. The following events document the non-compliant status of this facility.
39. Donovan was issued a NOV on March 31, 2016, for violations found during a site inspection performed on February 26, 2016. On May 23, 2017, a follow up inspection was performed that confirmed the site continued to be non-compliant with DRGCWP. On October 19, 2017, BrightFields, Inc. submitted benchmark monitoring results on behalf of Respondents, which showed multiple exceedances of benchmark monitoring thresholds for metals. This benchmark monitoring is required by DRGCWP and was one of the violations noted in the 2016 NOV. BrightFields, Inc. recommended that Donovan's improve BMPs to improve benchmark monitoring results.
40. On March 3, 2020, an inspection was performed that confirmed the site remained non-compliant with the DRGCWP and the ISWGP authorization. During the records review, it was found that Donovan failed to complete annual training in 2019, comprehensive inspections had not been completed, quarterly visual inspections were not completed yet

in 2020, and benchmark monitoring continued to show exceedance in metals. Additionally, there was no documentation stating what actions were taken to reduce benchmark exceedances. During the physical inspection, it was observed that there were multiple fluid leaks/spills, spill kit materials were not adequately supplied, there were multiple areas where erosion was occurring, improper practices for used petroleum storage was observed, trash/debris was pervasive throughout the facility, and multiple additional outfalls that were identified during the Department's 2016 inspection remained unlabeled. The observed violations were documented in the inspection report and sent to Donovan on March 4, 2020.

41. On April 13, 2022, a compliance inspection was completed at the facility. During this activity, the conditions listed above were observed with no improvements on site since the March 3, 2020 inspection.

42. DRGCWP Section 9.1.5.7.4.2, Comprehensive Site Evaluations states:

*"Persons subject to this Part shall conduct comprehensive site evaluations. The comprehensive site evaluations shall be used to assess the effectiveness of the current SWP."*

To date, no evidence has been provided to the Department that indicates Donovan has been performing the required Comprehensive Site Evaluations.

43. DRGCWP Section 9.1.5.7.6, Training states:

*"Facility employees and contractor personnel that work in areas where Industrial Materials are used or stored shall be appropriately trained to meet the requirements of the SWP. Employee training shall be conducted and documented not less than once per year."*

To date, no evidence has been provided to the Department that indicates Donovan has been performing the required annual training on the Facility's Stormwater Plan.



44. DRGCWP Section 9.1.4.3.1, Quarterly Visual Monitoring states:

*“All facilities required to monitor storm water discharges, must perform and document quarterly visual examinations of storm water discharges associated with industrial activities from each storm water outfall.”*

To date, no evidence has been provided to the Department that indicates Donovan has been performing the required quarterly visual monitoring inspections.

45. DRGCWP Section 9.1.4.4.1.6, Benchmark Monitoring states:

*“In the event that analytical results exceed Benchmark Monitoring Concentration values or Numeric Effluent Limitations, the facility shall investigate the cause for such exceedance and the results of this investigation shall be documented. The results of the investigation shall identify potential sources of pollution, additional Best Management Practices (BMPs) necessary, revisions to the Industrial Material Management Section of the SWP, or identify other areas of the SWP that may require revision in order to meet the goal of the Benchmark Monitoring Concentration values”*

During the March 3, 2020 inspection records review, there was no documentation that Donovan was investigating repeated benchmark monitoring exceedances and documenting any improvement made to best management practices to prevent future exceedances. To date, no evidence has been provided to the Department that indicates Donovan has conducted the required investigation and implemented corrective actions and/or additional BMPs to reduce metal pollution in runoff. Additionally, during the April 13, 2022 site inspection, no analytical monitoring data was available.

46. DRGCWP Section 9.1.5.7.3.1, Good Housekeeping Practices states:

*“The SWP shall identify the practices/programs used to define the ongoing maintenance and clean-up, as appropriate, of areas which may contribute pollutants to storm water discharges.”*

During the March 3, 2020 inspection and the April 13, 2022 site inspection, there was significant evidence that Donovan is not conducting good housekeeping practices. There were spills and leaks of petroleum products and industrial materials observed throughout the site. Additionally, trash and debris were pervasive throughout the facility. To date, no evidence has been provided that Donovan has been conducting good housekeeping practices.

47. DRGCWP Section 9.1.5.7.3.3, Spill Prevention and Response Measures states:

*“The SWP must describe the procedures that will be followed for cleaning up spills or leaks. The procedures and necessary spill response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves) that are intended to minimize spills or leaks at the facility. If applicable, the spill response plan shall address prevention and minimization of releases of oil and hazardous material into the storm water system.”*

During the March 3, 2020 inspection and the April 13, 2022 site inspection, there was significant evidence that Donovan has failed to follow the spill prevention and response measures in their Stormwater Plan. The evidence of spills was pervasive across the site, and there were not enough adequate spill kits on site to address potential releases. To date, no evidence has been provided to the Department that indicates Donovan has adequate spill kits on site and is managing spills in accordance with their approved SWP.

48. DRGCWP Section 9.1.5.7.3.5, Erosion Control Practices states:

*“All facilities must evaluate the risk of soil erosion on their site that could contaminate storm water. At a minimum, the SWP must include a narrative that describes whether there is reasonable potential for soil erosion of a significant amount at the site. Where reasonable potential exists, the permittee must include BMPs to prevent or minimize the potential for soil erosion onsite.”*

During the March 3, 2020 inspection and the April 13, 2022 site inspection, Donovan had multiple areas where erosion was occurring and was not being addressed. To date, no evidence has been provided to the Department that indicates Donovan has corrected the observed erosion issues.

49. DRGCWP Section 9.1.6, Outfall Identification states:

*“All persons conducting industrial activities identified in §9.1.1.3.1.2. with discharges that flow through a regulated outfall, shall identify each storm water outfall covered under this Subsection with a legible outfall tag or stencil. The mechanism for identification should be attached to an outfall pipe, stenciled on an outfall pipe, or posted in close proximity of the outfall area. The identification shall indicate the designated outfall number.”*

During the March 3, 2020 inspection and April 13, 2022 site inspection, the Department inspectors observed multiple outfalls at the facility that were not identified, labeled, and that are not being monitored. This was noted as a violation during the 2016 inspection. To date, no evidence has been provided that Donovan has properly labeled or monitored the additional outfalls identified during the March 3, 2020 inspection.

50. DRGCWP Section 9.1.5.7.3.4, Minimizing Exposure states:

*“Where practicable, industrial materials and activities should be protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt or runoff.”*

During the March 3, 2020 inspection and April 13, 2022 site inspection, the Department inspectors observed that Donovan is failing to minimize exposure of industrial materials to stormwater. Vehicles and other parts are being dismantled throughout the site causing spills and leaks. Additionally, there is trash throughout the site and no plan in place to mitigate it. To date, no evidence has been provided to the Department that indicates Donovan has taken measures to minimize exposure of industrial materials to stormwater.

51. DRGCWP Section 9.1.2.3, Proper Operation and Maintenance states:

*“Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Storm Water Plan.”*

During the March 3, 2020 inspection and April 13, 2022 site inspection, the Department inspectors observed improperly engineered stormwater impoundments filled with tanks, debris, and a significant amount of free phase petroleum product floating on the water's surface. Water levels in the impoundments were such that storm events could result in discharge and flow of oily water offsite. No construction specifications, or operation specifications are listed in the SWP to assure discharge and/or infiltration of contaminated water is not occurring. Donovan is failing to minimize exposure of industrial materials to stormwater.

52. DRGCWP Section 9.1.2.3, Proper Operation and Maintenance states:

*“Persons covered by this Subsection: Who engage in industrial activities identified in §9.1.1.3.1.2, excluding those facilities classified as Industrial Activity Codes HZ and LF, shall develop and continually implement a Storm Water Plan (SWP) The SWP shall identify potential sources of pollutants, which may reasonably be expected to affect the quality of storm water discharges associated with industrial activities from a facility. In addition, the SWP shall describe and ensure the implementation of practices and programs which are used to reduce or eliminate the pollutants in the storm water discharges associated with the industrial activity at a facility and to assure compliance with the terms and conditions of the Subsection.”*

During the March 3, 2020 inspection and April 13, 2022 inspection, the Department inspectors observed that the facility was not implementing their Storm Water Plan.

Air

53. Air Permit: APC-2009/0060-CONSTRUCTION/OPERATION (Amendment 1) (MACT),  
Condition 3.2 states:

*“At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall operate and maintain the facility, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Department which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the SS&M Plan), review of operation and maintenance records, and inspection of the source.”*

During the April 13, 2022 compliance inspection, the Aluminum Smelter Furnace did not appear to be operated and maintained in a manner consistent with safety and good air pollution control practices to minimize emissions. The equipment was in poor disrepair. The unit had large holes which would allow air contaminants to escape the furnace prior to being controlled by the afterburner.

54. Air Permit: APC-2009/0060-CONSTRUCTION/OPERATION (Amendment 1) (MACT),  
Condition 3.3 states:

*“All structural and mechanical components of the equipment or process covered by this permit shall be maintained in proper operating condition.”*

During the April 13, 2022 compliance inspection, the Aluminum Smelter Furnace did not appear to be maintained in proper operating condition.

55. Air Permit: APC-2009/0060-CONSTRUCTION/OPERATION (Amendment 1) (MACT),  
Condition 6.7 states:

*As specified in §63.1516(b), the owner or operator shall submit semiannual reports within sixty (60) days after the end of each six (6)-month period. When no*

*deviations of parameters have occurred, the owner or operator shall submit a report stating that no excess emissions occurred during the reporting period. A report shall be submitted if any of these occur during a six (6)-month reporting period:*

*1) An excursion of a compliant process or operating parameter value or range (e.g., afterburner operating temperature, or other approved operating parameter).*

*2) An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the SS&M [means Startup, Shutdown, and Malfunction] Plan.*

*3) An affected source was not operated according to the requirements of 40 CFR Part 63, Subpart RRR.*

Copies of the following semi-annual reports were sent as electronic mail attachments from Beatrice Briggs on March 11, 2022:

- January 1, 2019 – June 30, 2019 (due August 30, 2019)
- July 1, 2019 – December 31, 2019 (due March 1, 2020)
- January 1, 2020 – June 30, 2020 (due August 30, 2020)
- July 1, 2020 – December 31, 2020 (due March 1, 2021)

Each report stated that the equipment was in proper working order, there were no excess emissions, the Aluminum Smelter Furnace was operated in accordance with the startup, shutdown, and operating plans, and the afterburner operated at the required ranges.

Maintenance activity was included with each report and is detailed below:

- January – June 2020 – Maintenance performed during the reporting period included replacement of the floor, fire ropes, and cables, welded skids on bottom of the hot box, replaced the gas regulator and blower motor.

- July – December 2020 – Maintenance performed during the reporting period included replacement of the fire ropes and all 4 door cables, skimming walls and replaced inswool ceramic fire blanket.
- January – June 2021 – Maintenance performed during the reporting period included replacement of fire ropes and cables, skimming walls.
- July – December 2021 – Maintenance performed during the reporting period included replacement of fire ropes and cables, skimming walls, welding on skimmer and replaced screen.

Each of these reports, being transmitted on March 11, 2022, was submitted late. Additionally, the reports stated the equipment was operated and maintained properly and that no excess emissions occurred. Although these reports indicate that maintenance was performed on the Aluminum Smelter Furnace in 2020 and 2021, based on the Department's visual site inspection on April 13, 2022, the equipment has not been maintained and operated in a manner that no excess emissions have occurred.

#### **Aboveground Storage Tanks**

56. On March 16, 2016, the Department's former Solid and Hazardous Waste Management Section and Tank Management Section conducted a compliance inspection. During the inspection, evidence of releases of regulated substances, under 7 Del. Admin. C. § 1352, RGAST was observed at multiple aboveground storage tank (AST) locations. As a result, in a letter dated June 6, 2016, the Department notified Donovan of the requirement to perform a hydrogeologic investigation to determine the nature and extent of each release.

57. RGAST Section 5.1.1 states:

*“After a release is confirmed, the Owner and Operator shall conduct a hydrogeologic investigation as the first step in the corrective action process unless directed to do otherwise by the Department.”*

RGAST Section 5.1.2 states in part:

*“5.1.2.1 Determine the nature of the release, including the chemical compounds present, their concentrations, quantity released and their physical and chemical characteristics related to potential human health and environmental impacts and cleanup procedures; and*

*5.1.2.2 Determine the extent of the release, both horizontal and vertical, including whether the contaminant is distributed homogeneously or heterogeneously; and*

*5.1.2.3 Determine the physical characteristics of the site, including characteristics affecting the occurrence, distribution, and movement of the released contaminant and characteristics affecting access to the site, both horizontal and vertical, which may influence the feasibility of various investigatory and remediation procedures; and*

*5.1.2.4 Evaluate, in accordance with the Delaware Risk-Based Corrective Action Program (DERBCAP) or other Department approved procedure, the potential risks posed by the release including identification of environmentally sensitive receptors, and estimate the impacts to human health and the environment that may occur as a result of the release”*

To date, the hydrogeologic investigation required in the June 6, 2016 letter from the Department has not been fully performed. The nature and extent of each release has not been fully determined and reported, and the potential risks posed by the releases have not been assessed. Some steps have been completed through the Voluntary Cleanup Program investigation; however, the nature and extent of the releases have not been fully determined and the potential risks posed have not been evaluated.

58. RGAST Section 2.1 states in part:

*“2.1.1 Indicated releases are signs that an AST, or the secondary containment are failing or could potentially fail to contain a regulated substance. Indicated releases are releases that are not observable and are not directly attributable to*



*another source. Observable releases must refer to PART E, subsection 4.2. Indicated releases include, but are not limited to, the following:*

*2.1.1.1 Stained soils or soils that emit characteristic odors of regulated substance compounds which are exposed during activities including but not limited to digging, boring or excavation activities, retrofit of ASTs, removal of an AST or collection of soil samples around an AST that is permanently closed in place, or results from an Phase I or Phase II environmental site assessment.”*

On April 13, 2022, the Department performed a compliance inspection at the facility, including ten locations with ASTs. The AST locations observed were determined to be different than the locations of the ASTs observed on March 16, 2016. Six of the AST locations had observable evidence of releases from the tanks, in the form of stained soils. During the April 13, 2022, Department inspection, soil samples were collected at six AST locations. The reported analytical results include exceedances of the current Hazardous Substance Cleanup Act (HSCA) Screening Levels (February 2022 update) for each of the six AST locations. The analytical results confirm releases from these AST locations. These locations differ from the ASTs observed in the March 2016 Department inspection. According to Section 2.1 of RGAST, the stained soils are considered an Indicated Release, and subject to Reporting Requirements.

59. RGAST Section 2.2 states in part:

*“2.2.1 Any indication of a release of a regulated substance from an AST that was not witnessed, is not immediately quantifiable, and has impacted soil, surface water, or groundwater, and is discovered by any person, including but not limited to environmental consultants, environmental contractors, utility companies, financial institutions, real estate transfer companies, or AST Owners or Operators shall be reported within 48 hours to:*

*2.2.1.1 The DNREC Tank Management Section by calling 302-395-2500 during normal business hours, which are 8am to 4pm, Monday through Friday, excluding state holidays or emergency state office closures.*

*Reporting to the Tank Management Section does not release any person from complying with the requirements of 7 Del.C. Ch. 60 and the Regulations promulgated there under as amended and if an imminent threat to human health, safety or the environment exists.*

*2.2.1.2 If the phone numbers listed in these Regulations are not valid it is the responsibility of the Owner and Operator to take all reasonable steps to ascertain a valid phone number”*

To date, reporting of the releases identified during the April 13, 2022 compliance inspection has not been provided to the Department.

60. RGAST Part A, Section 4.1 Registration Requirements states in part:

*“4.1.1 Any person that owns or operates an AST, with the exception of those ASTs listed in Part A, subsection 1.2.2 shall register each AST with the Department utilizing an AST registration form provided by the Department.*

...

*4.1.3 No person shall own or operate an AST unless the AST is registered with the Department.”*

During the April 13, 2022 site inspection, 24 ASTs were observed to be present on site; however, Department records indicate that only 9 have been previously registered.

61. RGAST Part A, Section 4.3 Change in Service, Permanent Closure in Place, Emptying, and Removal states in part:

*“4.3.2 Owners or Operators shall notify the Department utilizing a form provided by the Department prior to Removing, Permanently Closing in Place, Emptying, or making a Change In Service to an AST. The notification form must be received by the Department at least ten (10) days prior to beginning the removal or permanent closure in place, emptying, or making a Change In Service to the AST, except in the case of a retrofit or upgrade which shall require the*

*notification as specified in PART A, subsection 4.6, unless such action is in response to an imminent threat to human health, safety or the environment.”*

During the April 13, 2022 site inspection, an unknown number of ASTs appeared to have a change in status from “in service” to “empty” with no prior notification provided to the Department.

62. RGAST Part A, Section 9.0 Signage Requirements states in part:

*“9.1 Requirements for Hazard Labeling of ASTs*

*9.1.1 All ASTs with a capacity greater than 250 gallons and containing a regulated substance other than diesel, heating fuel or kerosene shall be labeled using the hazard rating system in accordance with NFPA 704, Standard for the Identification of the Fire Hazards of Materials for Emergency Response.*

*9.2 Requirements for Labeling of Empty ASTs*

*9.2.1 All ASTs with a capacity greater than 250 gallons and containing a regulated substance other than diesel, heating fuel or kerosene shall be labeled with the word "Empty" if the tank contents have been removed.*

*9.3 Requirements for Labeling of Contents and Tank Identification Number of ASTs*

*9.3.1 All ASTs with a capacity greater than 250 gallons and containing a regulated substance other than diesel, Heating Fuel heating fuel or kerosene shall be labeled with the name of the tank contents or the name of the chemical family associated with the tank contents and the tank identification number as noted on the DNREC registration form.*

...

*9.5 Requirements for Labeling of Permanently Closed AST*

*9.5.1 All ASTs with a capacity greater than 250 gallons and contained a regulated substance other than diesel, heating fuel or kerosene and which are permanently closed in accordance with the requirements of these Regulations shall be labeled with the words Permanently Closed and the date of permanent closure within thirty (30) days of the closure date, or for ASTs that were permanently closed prior to the most recent effective date of these Regulations, labels must be affixed within ninety (90) days of the most recent effective date of these Regulations."*

During the April 13, 2022 site inspection, 17 ASTs, not including the 7 diesel ASTs, did not meet the signage requirements.

### **CONCLUSIONS**

Based on the foregoing, the Department has concluded that Respondents have violated and continue to violate the above-cited regulatory provisions, despite the Department's multiple efforts to notify Respondents of their regulatory obligations and to assist Respondents in achieving compliance.

### **SECRETARY'S ORDER**

As Respondents have failed to comply with the requirements cited in the May 19, 2022, Notice of Violation (No. 22-HW-14), the Department requires that Respondents shall demonstrate compliance with the applicable law to resolve the outstanding violations. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 Del. C § 6005(b)(2), that Respondents shall achieve compliance by undertaking the following actions.

In a manner in full compliance with all applicable laws and regulatory requirements, Respondents shall within 14 days of receipt of this Order:

**Solid Waste**

1. Submit a written plan detailing the removal of the unpermitted waste piles and berms to include proper off-site disposal. Removal must begin within 30 days of the Department's written approval of the submitted plan and conclude within 6 months. [Paragraph #13]

**Scrap Tires**

2. Submit a written statement that Donovan will maintain compliance with all federal, state, county, and municipal environmental statutes, ordinances, and regulations. [Paragraph #15]
3. Submit a plan detailing actions to correct the noncompliance of exceeding the Group 2 Scrap Tire Facility size and storing scrap tires outside the permitted facility, by removing the excess scrap tires from the property [Paragraphs #18 and #23]. The plan must include:
  - a. The name(s) of the permitted Delaware solid waste transporter(s) that will haul the scrap tires from Donovan's property; and
  - b. The name(s) of the authorized treatment, storage, disposal, or recycling facility(ies) (TSDRF) that will receive the scrap tires removed from Donovan's property; and
  - c. Written affirmation that documentation of scrap tire delivery (e.g., tolling agreement, letter of acceptance, manifest, or other documentation deemed acceptable by the Department) to the authorized TSDRF will be submitted to the Department weekly once removal begins and until all excess scrap tires are removed; and
  - d. Written affirmation that the scrap tire removal will begin within 15 days and be completed within 60 days of receipt of the Department's written approval of the scrap tire removal plan unless a written extension is provided by the Department.
  - e. Written affirmation that Donovan will maintain all scrap tires within the Group 2 Scrap Tire Facility.

4. Submit photographic evidence demonstrating that only scrap tires are in Donovan's Group 2 Scrap Tire Facility. All other substances must be removed, including but not limited to: car parts, plastics, and metals. [Paragraph #19]
5. Submit a written statement that Donovan will achieve and maintain compliance with the Group 2 Scrap Tire Facility Permit. [Paragraph #21]
6. Submit a written statement indicating that for all future non-compliance incidents as it pertains to the Group 2 Scrap Tire Facility, Donovan will submit a non-compliance report to the Department within 7 calendar days of non-compliance discovery. [Paragraph #22]

#### **Hazardous Waste**

7. Submit documentation demonstrating compliance with the land disposal restrictions of DRGHW Part 268.34. Documentation shall include photographs demonstrating broken universal waste lamps observed on the ground have been removed and any release of mercury to the environment resulting from the land disposal of mercury lamps has been removed. [Paragraph #28]
8. Submit documentation demonstrating compliance with the requirement to properly label all containers of universal waste aerosol cans in accordance with DRGHW Section 273.14(f). Documentation shall include photographs demonstrating all containers of universal waste aerosol cans are properly labeled with the words "Universal Waste – Aerosol Can(s)," "Waste Aerosol Can(s)," or "Used Aerosol Can(s)." [Paragraph #30]
9. Submit documentation demonstrating compliance with the requirement to keep all containers and tanks of used oil closed, unless used oil is being added or removed in accordance with DRGHW Section 279.22(b)(3). Documentation shall include photographs demonstrating each of the containers and tanks identified above are properly closed. Documentation shall also include a written statement that the tanks/drums cut in half that are not designed to close will only be used to temporarily store used oil and that they will be emptied into appropriate containers or tanks as soon as removing used oil from vehicles has stopped. At no time shall used oil remain in containers or tanks that cannot be closed overnight. [Paragraph #34]

10. Submit documentation demonstrating compliance with the requirement to label all containers and tanks of used oil with the words "Used Oil" in accordance with DRGHW Section 279.22(c)(1). Documentation shall include photographs demonstrating each of the containers and tanks identified above are properly labeled. [Paragraph #35]
11. Submit documentation demonstrating compliance with the requirement to adequately respond to all releases of used oil in accordance with DRGHW Section 279.22(d). Documentation shall include:
  - a) Documentation demonstrating that any contamination resulting from a release of used oil in the soil between the concrete floor and the rear wall of the pole building has been properly remediated. [Paragraph #36.a.]
  - b) Documentation including receipts or shipping records demonstrating the contaminated soils generated from the release of used oil from the Smelter Stage Area were properly disposed at a lawful disposal facility. [Paragraph #36.b.]

### Water

12. Assure oily water within surface water impoundments has been pumped out for proper offsite disposal and all tanks and debris within the impoundments have been removed for proper disposal and submit documentation certifying compliance. [Paragraph #51]
13. As an interim measure until surface water impoundments can be fully remediated and replaced with appropriately designed storm water management best management practices (BMPs), Donovan shall submit a plan and proof of contract for periodic pump outs of the surface impoundments to assure no future discharges occur. [Paragraph #51]
14. Submit a comprehensive plan, including a detailed implementation timeline for all site clean-up related to stormwater pollution prevention which includes addressing spills and leaks, adding additional spill kits on site, good housekeeping practices, and minimizing exposure of industrial materials to stormwater. [Paragraphs #46, #47, #50, and #51]
15. Submit photographic documentation of labeled outfalls for new outfalls identified during the March 3, 2020 inspection. [Paragraph #49]
16. Begin analytical monitoring. [Paragraph #45]

17. Submit a detailed plan to investigate and address any benchmark monitoring exceedances. [Paragraph #45]
18. Correct erosion issues and submit photographic documentation. [Paragraph #48]
19. Submit an updated Notice of Intent (NOI) Application and Stormwater Plan that addresses all the identified deficiencies listed above, including but not limited to: updated map showing all outfalls (including newly identified outfalls) and drainage areas, and all new BMPs being implemented to address identified violations. [Paragraph #52]
20. Submit recently completed comprehensive site inspections, quarterly visual inspections, annual training documentation and analytical monitoring of newly identified outfalls. [Paragraphs #42, #43, #44, and #45]

#### **Aboveground Storage Tanks**

21. Submit for Department review and approval a work plan to determine the nature and extent of the releases associated with the aboveground storage tanks identified during the March 2016 and April 2022 inspections, and assess the potential risks posed by these releases. [Paragraphs #57 and #58]
22. Submit a written procedure detailing the process by which Donovan will report releases of regulated substances from ASTs. [Paragraph #59]

#### **ASSESSMENT OF PENALTY AND COSTS**

Pursuant to 7 *Del. C* § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$10,000.00 for each day of violation detailed in this Order. This Order is written notice to Respondents that on the basis of its findings, the Department is assessing Respondents an administrative penalty for the violations identified in this Assessment and Order. In assessing the administrative penalty, 7 *Del. C* § 6005(b)(3) instructs the Secretary to consider the following factors: (1) the nature, circumstances, extent, and gravity of each violation of the violation, or violations; (2) the ability of the violator to pay; (3) any prior history of such violations; (4) the degree of culpability; (5) the economic benefit or savings (if any) resulting from each violation; and (6) such other matters as justice may require. A brief discussion of these factors is set forth below.



1. The Nature, Circumstances, Extent and Gravity of the Violation, or Violations:  
The nature, circumstances, extent, and gravity of the violations are significant. This Order identifies and describes 45 separate regulatory violations. Failing to ensure compliance with the regulatory requirements described in this Order significantly deviates from the statutory and regulatory requirements cited herein.
2. Respondents' Ability to Pay:  
The record contains no information that Respondents lack the ability to pay the administrative penalty assessed.
3. Prior History of Violations:  
Respondents have had prior violations of the same regulatory requirements, which warrants the assessed penalty.
4. Degree of Culpability:  
The degree of culpability is significant, as Respondents were previously provided notice of many of these regulatory violations and afforded the opportunity to comply. In addition, had Respondents employed reasonable oversight measures as required by the regulations, many of the violations could have been remedied sooner or avoided altogether.
5. Economic Benefit or Savings Resulting from the Violation(s):  
With respect to the economic benefit, Respondents incurred meaningful economic benefit from these violations, including avoidance of permit fees, analytical costs, and disposal fees. These factors were considered in the administrative penalty assessment.
6. Such Other Matters as Justice May Require:  
Lastly, considering such other matters as justice may require, the penalty assessed is proportional to the violations and has been calculated to deter Respondents and those similarly situated from engaging in future violations.

Having considered these factors, an administrative penalty of \$1,700,000.00 is assessed for the violations identified in this Order.

In addition to the penalty assessment, pursuant to *7 Del. C § 6005(c)*, Respondents will be assessed costs incurred by the Department for reimbursement at a later date.

Respondents shall submit a check to the Department in the amount of \$1,700,000.00 to pay the penalty within 30 days from the receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and shall be directed to: Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street – 3<sup>rd</sup> Floor, Dover, DE 19904.

#### **PUBLIC HEARING AND APPEAL RIGHTS**

This Assessment and Order is effective and final upon receipt by Respondents. Pursuant to Section 6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Assessment and Order. In the alternative, Respondents may, pursuant to *7 Del. C § 6005(b)(3)*, request a public hearing on the penalty assessment and Order, within **30 days** of receipt of the Assessment and Order. A hearing would be conducted pursuant to *7 Del. C § 6006*, and the Secretary's order following the hearing would be subject to appeal, pursuant to *7 Del. C § 6008*, by any person substantially affected.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Respondents' facility, including but not limited to one or more of the following: an action under *7 Del. C § 6005(b)(1)* seeking penalties for past violations, an action under *7 Del. C § 6005(b)(2)* seeking penalties for continuing violations, an action in the Court of Chancery pursuant to *7 Del. C § 6005(b)(2)* seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to *7 Del. C §§ 6005(b)(3) & (c)(1)*. Nothing in this document shall be deemed to estop, or in any way preclude any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control  
Office of the Secretary  
89 Kings Highway  
Dover, DE 19901  
Ph: (302) 739-9000

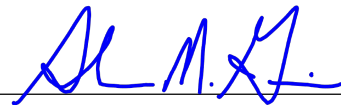
To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee,  
with a check made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control  
Office of the Secretary  
Attn: Assistant to the Environmental Appeals Board  
89 Kings Highway  
Dover, DE 19901  
Ph: (302) 739-9000

If you have any questions, please contact Devera B. Scott, DAG at (302) 257-3218.

11/2/22

Date



Shawn M. Garvin, Secretary

**WAIVER OF STATUTORY RIGHT TO A HEARING**

**Donovan Salvage Works, Inc.** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Donovan Salvage Works, Inc.** will pay the administrative penalty in the amount of \$1,700,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street – 3<sup>rd</sup> Floor, Dover, DE 19904.

**Donovan Salvage Works, Inc.**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

**WAIVER OF STATUTORY RIGHT TO A HEARING**

**Herbert Holdings, LLC** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Herbert Holdings, LLC** will pay the administrative penalty in the amount of \$1,700,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street – 3<sup>rd</sup> Floor, Dover, DE 19904.

**Herbert Holdings, LLC**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_