



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

CONCILIATION ORDER BY CONSENT

SECRETARY'S ORDER No. 2025-WH-0009

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

Issued to:

Donovan Salvage Works, Inc.
Herbert Holdings, LLC
Attn: Michael Herbert – President
20262 Donovans Road
Georgetown, DE 19947

This Conciliation Order by Consent and Secretary's Order ("Order") reflects the mutual effort by Donovan Salvage Works, Inc. and Herbert Holdings, LLC (collectively "Donovan") and the Secretary of the Department of Natural Resources and Environmental Control ("Secretary," the "Department," or "DNREC") (collectively the "Parties") to attain compliance with 7 Del. C Chapter 60 by Conciliation pursuant to 7 Del. C §6005(b)(2).

This Order is intended to resolve all the violations contained within Secretary's Orders 2022-WH-0002 and 2022-WH-0021, and the subsequent appeal before the Environmental Appeals Board ("EAB"), No. 2022-02. The Parties have negotiated in good faith and are desirous of an amicable resolution of the issues to avoid the expense, burden, inconvenience, and uncertainty of administrative proceedings or litigation. In exchange for the mutual considerations set forth below

and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree to be bound by the terms and conditions that follow:

SECTION I: BACKGROUND

Donovan owns and operates a salvage yard located at 20262 Donovans Road, Georgetown, Delaware (“Facility”). There is a history of non-compliance and enforcement between the Parties over multiple media including air, water, tanks, solid waste, and hazardous waste. Multiple Notices of Violation (“NOV”) have been issued to Donovan by several of DNREC’s Divisions, including NOV dated February 18, 2011 by DNREC’s Air Quality Management Section, NOV 18-SW-37 by the former Solid and Hazardous Waste Management Section (“SHWMS”), and W-16-SWD-01 by the Division of Water.

On June 19, 2017, Donovan applied to DNREC’s Voluntary Cleanup Program (“VCP”) to conduct a phased Remedial Investigation as well as subsequent remedial action. A VCP Agreement was executed March 21, 2019 between the Parties. A Draft Phased Remedial Investigation (RI) Report – Phase I was submitted to DNREC on July 31, 2020. The first phase of the RI focused on three Areas of Concern (AOCs) identified by the former DNREC-Tank Management Section, one AOC identified by the former SHWMS, and offsite groundwater contamination identified by the former DNREC-Site Investigation and Restoration Section. DNREC’s Remediation Section issued comments to the RI Report on January 7, 2021 requiring edits to the report and additional investigation. DNREC’s comments have not been addressed and the Draft Phased Remedial Investigation Report – Phase I has never been finalized. Further, Donovan remains liable for \$8,286.02 in costs for expenditures by DNREC for oversight pursuant to the VCP Agreement.

On March 22, 2022, DNREC executed a search warrant at the Facility. Department representatives excavated a test pit with dimensions of approximately 15-feet long, 4-feet wide, and 8-feet deep. Starting at a depth of approximately 30 inches below top of the ground surface, an approximately 16-inch layer of visible solid waste including, but not limited to, plastics, felt fabric, alternator, rubber a/c hoses, wheel hub, carburetor, oil filter, Southern States fertilizer bag, and degraded dimensional lumber was observed across the entire length and width of the test pit. On March 23, 2022, DNREC issued Secretary's Order No. 2022-WH-0002, ordering Donovan to cease and desist all business operations. This cease-and-desist order lasted for 30 days and was followed by a renewed cease and desist order for an additional 30 days.

On April 13, 2022, DNREC completed a multi-media compliance inspection of the facility on the property located at 20262 Donovans Road, Georgetown, Delaware to determine if Donovan was in compliance with 7 *Del. C.* Chapters 60 and 63 and 7 *Del. Admin. C.* § 1102, 7 *Del. Admin. C.* § 1301, 7 *Del. Admin. C.* § 1302, 7 *Del. Admin. C.* § 7201, and 7 *Del. Admin. C.* § 1352 (“Environmental Laws and Regulations”).

On April 22, 2022, DNREC issued Secretary's Order No. 2022-WH-0004 that identified 31 violations of the Environmental Laws and Regulations and ordered Donovan to cease and desist all business operations unrelated to those activities specifically directed and approved by DNREC. On May 19, 2022, DNREC issued Notice of Violation No. 22-HW-14 that identified 45 violations of the Environmental Laws and Regulations. In September 2022, Donovan submitted two responses to NOV 22-HW-14, neither of which adequately demonstrated compliance with all violations cited.

On September 30, 2022, representatives from DNREC'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. As of November 2, 2022, 18 of the violations cited in the NOV had 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, DNREC remains concerned about the compliance certifications submitted. As such, DNREC does not consider the violation to be corrected. Accordingly, DNREC issued Secretary's Order 2022-WH-0021 on November 2, 2022 and Donovan timely appealed to the EAB.

Settlement negotiations have stretched for an extended period, through all of 2023 and into 2024. During the interim, Donovan has made some efforts towards coming into compliance, specifically related to improving the surface impoundment to prevent additional releases.

SECTION II: CORRECTIVE ACTIONS AND COMPLIANCE SCHEDULE

Both DNREC and Donovan agree that proactively addressing the noncompliance to avoid protracted litigation regarding the enforcement actions is in the best interest of the Parties and can be effectively accomplished via this Order outlining the necessary procedures and timelines for bringing Donovan into compliance. Further, Donovan asserts that the only source of funds necessary to pay the costs associated with the remedial measures set forth below is through operating revenues. Accordingly, the parties have negotiated an attenuated compliance schedule. Donovan agrees to address these violations and complaints as provided herein. Provided Donovan is proceeding to implement the terms and conditions of this Agreement in good faith, DNREC and Donovan agree to consult and cooperate in the adjustment of the timeframes set forth in this Section II, and the timeframe for implementation of administrative penalties that follow non-

compliance, upon a determination by the National Bureau of Economic Research that the United States economy has entered a recession.

NOW THEREFORE, Donovan and DNREC jointly execute this Order to effectuate the purposes and actions delineated herein, and pursuant to 7 *Del. C.* §6005(b)(2), it is Ordered and Agreed as follows:

Water

1) Within 15 days of receipt of the executed Conciliation Order, Donovan shall submit a Notice of Intent (NOI) request to obtain permit coverage in accordance with of 7 *Del. Admin. C.* § 7201-9.1.3: the State of Delaware Regulations Governing the Control of Water Pollution (“Water Pollution Regulations”).

2) Within 60 days of receipt of the executed Conciliation Order, Donovan shall submit a Storm Water Plan in accordance with § 9.1.5 of the Water Pollution Regulations.

a. As per § 9.1.5.4.4 of the Water Pollution Regulations, if, upon review, the submitted Storm Water Plan is deemed incomplete, Donovan shall amend the Storm Water Plan and submit these amendments to the Department within 30 days of notification. The notification from the Department shall list and describe the deficiencies of the Storm Water Plan.

3) Within 90 days of approval of the Storm Water Plan or receipt of the executed Conciliation Order, whichever is later, Donovan shall begin submitting quarterly routine inspection results in accordance with § 9.1.5.7.4 of the Water Pollution Regulations.

4) Within 90 days of approval of the Storm Water Plan or receipt of the executed Conciliation Order, whichever is later, Donovan shall submit comprehensive site evaluation results in accordance with § 9.1.5.7.4 of the Water Pollution Regulations. Comprehensive site evaluations

may substitute for a periodic inspection if it is conducted during the regularly scheduled periodic inspection.

5) Within 90 days of approval of the Storm Water Plan or receipt of the executed Conciliation Order, whichever is later, Donovan's shall submit training records in accordance with § 9.1.5.7.6 of the Water Pollution Regulations.

6) Within 90 days of approval of the Storm Water Plan or receipt of the executed Conciliation Order, whichever is later, Donovan's shall submit quarterly visual monitoring results in accordance with § 9.1.4 of the Water Pollution Regulations.

7) Within 90 days of approval of the Storm Water Plan or receipt of the executed Conciliation Order, whichever is later, Donovan shall submit analytical monitoring results for the facility's stormwater outfalls. All outfalls shall be sampled semiannually in accordance with § 9.1.4 of the Water Pollution Regulations, and results shall be submitted to the Department for review to observe effectiveness of Best Management Practice implementation.

8) Within one year of receipt of the executed Conciliation Order, Donovan shall submit a surface impoundment improvement plan for Department review and approval that details any proposed improvements to the surface water impoundments and an operations plan to assure no future discharge from the impoundments occurs. Donovan will submit to DNREC within nine months of receipt of the Conciliation Order proof of engagement of an environmental consultant. These long-term corrective actions, once in place, will supersede the current interim pumping activities; however, periodic pumping can also be part of the proposed long-term solution. All interim measures including pumping and other mitigation measures will continue until the long-term surface impoundment improvement plan is fully implemented. The plan shall include any drawings and design documentation detailing the current and proposed design specifications of the

impoundments. A construction permit application for the proposed improvements shall be submitted to DNREC in accordance with Section 4 of the Water Pollution Regulations within 60 days of surface impoundment improvement plan approval. Construction of the improvements shall begin within 60 days of construction permit issuance.

Solid Waste

9) Within 60 days of receipt of the executed Conciliation Order, Donovan shall submit a written plan detailing the removal of all unpermitted waste piles and berms as identified in the NOV. The plan shall require complete removal within 6 months of the start date. Removal must begin within 60 days of receipt of DNREC's written approval of the submitted plan.

10) Within 6 months of receipt of the executed Conciliation Order, Donovan shall submit an investigatory plan to fully delineate the horizontal and vertical extents of the unpermitted landfill identified during the March 22, 2022 search warrant execution. Further, the delineation must be completed within 60 days of receipt of DNREC's written approval of the submitted plan.

11) Within 12 months of completion of delineation of the unpermitted landfill per Paragraph 10, Donovan shall commence removal of all emplaced waste in or around the unpermitted landfill identified during the March 22, 2022 search warrant execution and delineated pursuant to Paragraph 10 above. Removal shall be completed within 12 months. Waste determinations must be made for all removed waste to ensure proper disposal, and documented through manifests, bills of lading, or equivalent documentation of disposal at a permitted facility. Following removal of emplaced waste, Donovan shall consult with DNREC's Remediation Section to determine if additional sampling or remedial actions are necessary in the area of the unpermitted landfill.

12) All solid waste that is disposed pursuant to this Order must be transported by a permitted transporter and disposed at a permitted facility.

Hazardous Substances

13) Within 18 months of receipt of the executed Conciliation Order, Donovan, through its environmental consultant, shall submit a plan to investigate MTBE releases with a minimum of 2 co-located off-site monitoring wells to determine the shallow and deep groundwater flow in the eastern portion of the site to delineate the plume. The plan shall include sampling on-site monitoring wells for VOCs. Groundwater elevations at the Former Georgetown Dump should be included in the areawide groundwater elevation map.

14) Within 18 months of receipt of the executed Conciliation Order, Donovan, through its Hazardous Substance Cleanup Act (HSCA)-certified environmental consultant, shall submit a plan to investigate PFAS releases. Such plan shall include at a minimum, review of the existing private well data, review of PFAS groundwater analytical data for the Former Georgetown Dump Site, and installation of 3 nested on-site monitoring wells up to the depth of the private wells. The plan shall also include resampling of the on-site groundwater monitoring wells for PFAS.

15) Within 12 months of receipt of the executed Conciliation Order, Donovan will be responsible for routine sampling of the private wells with known contamination for PFAS and VOCs: treated water shall be tested annually, raw water shall be tested biennially (every two years). New private wells may be added to the sampling list per DNREC's request with supporting documentation. The parties agree to reevaluate this sampling schedule after four years. Sampling data must be reported to DNREC as it becomes available, within two weeks of receipt.

16) Within 12 months of receipt of the executed Conciliation Order, Donovan will be responsible for maintaining existing treatment systems on private wells and provide new treatment

systems based on ongoing sampling of the private wells. New filters must be provided within 2 weeks of receiving analytical data that indicates a breakthrough. Additional filters may need to be provided to private wells owners who historically had filter breakthrough in advance of the annual sampling.

17) Within 24 months of receipt of the executed Conciliation Order, Donovan, through its HSCA-certified environmental consultant, shall submit a plan to investigate the surface water and sediment conditions on the property.

18) Within 24 months of receipt of the executed Conciliation Order, Donovan, through its HSCA-certified environmental consultant, shall submit a plan to investigate surface water discharges on the property. The plan shall address the HSCA-certified environmental consultant's recommendation to further investigate the localized area of impacted soil and water immediately adjacent/downgradient of the rainwater discharge valve at the smelter building pad.

19) Within 24 months of receipt of the executed Conciliation Order, Donovan, through its HSCA-certified environmental consultant, shall submit a plan addressing tanks areas of concern: three locations referenced in the RI Report – Phase I was submitted to DNREC on July 31, 2020 and the four 2022 AST locations with TPH-DRO above 1,000 mg/kg not collocated with the first three locations, for a total of seven locations. The plan shall include groundwater sampling at each location for Tanks contaminants of concern including VOCs and SVOCs. The plan shall also address the comments issued by DNREC's Remediation Section to the RI Report on January 7, 2021 requiring edits to the report and additional investigation.

20) Within 24 months of receipt of the executed Conciliation Order, Donovan, through its HSCA-certified environmental consultant, shall submit a plan addressing the potential mercury release in the area of the railcar deconstruction where crushed fluorescent lamps were observed.

21) Within 36 months of receipt of the executed Conciliation Order, through its HSCA-certified environmental consultants, shall submit a work to plan to address data gaps for any environmental media that is needed to perform the human health and ecological risk assessment and feasibility study for the Site.

22) Donovan must commence implementation of DNREC-approved work plans within 6 months of DNREC written approval.

23) Following receipt of new data derived from activities described in Paragraphs 13, 14, 17, 18, 19, 20 and 21, Donovan, through its HSCA-certified consultant, shall submit preliminary data summary reports to DNREC within 30 days for review following receipt of data.

24) Within 48 months of receipt of the executed Conciliation Order, Donovan, through its HSCA-certified consultant, shall submit a comprehensive final remedial investigation report including a human health and ecological risk assessment and feasibility study in accordance with HSCA regulations and guidance. The remedial investigation report shall include recommendations for remedial actions.

25) Donovan is responsible for completion of interim remedial actions as deemed necessary by DNREC based on site data and in accordance with the HSCA Regulation and remedial actions pursuant to Final Plan of Remedial Action to be prepared on a schedule to be mutually agreed to by the parties.

Air

26) Within 30 days of receipt of the executed Conciliation Order, Donovan shall install a PurpleAir Classic Air Quality Sensor as close as practicable to the smelter. Further Donovan

shall opt-in to inclusion of its data to the Purple Air public reporting map by registering the sensor at www.purpleair.com/register. The sensor must remain active and publicly reporting at all times.

SECTION III: PENALTIES AND COSTS

Administrative Penalties

27) Donovan agrees to be liable for a Total Administrative Penalty in the amount of \$1,000,000.00. The penalty is assessed for 45 separate regulatory violations identified in Secretary's Order 2022-WH-0021, which both separately and in the aggregate are of significant nature, circumstances, extent, and gravity. The administrative penalty shall be satisfied as follows:

a. Donovan agrees to pay a Base Administrative Penalty in the amount of \$250,000. Payment of the Base Administrative Penalty shall be made as follows: \$125,000 shall be paid no later than 12 months following the receipt of the executed Conciliation Order, \$62,500 shall be paid no later than 24 months following receipt of the executed Conciliation Order, and the final \$62,500 shall be paid no later than 36 months following receipt of the executed Conciliation Order.

b. Donovan further agrees to be liable for the remaining Deferred Administrative Penalty of \$750,000. Payment of the Deferred Administrative Penalty shall be made no later than 48 months following receipt of the executed Conciliation Order. The Deferred Administrative Penalty may alternatively be satisfied by completion of all requirements detailed in paragraphs 1 through 25 of this agreement ("Order Requirements") no later than 48 months following receipt of the executed Conciliation Order. Further, Donovan must not have accrued any additional material violations of law. Donovan shall notify DNREC in writing of its completion of all Order Requirements. Concurrence from DNREC regarding completion

of all Order Requirements, and satisfaction of the Deferred Administrative Penalty, will be provided in writing within 30 days of Donovan's submission. DNREC's Concurrence will be subject to onsite confirmation and submission of bills, receipts, work orders, etc.

c. All payments under this paragraph shall be made by check made payable to "the State of Delaware." The check shall be mailed to: Devera Scott, Esquire, Delaware Department of Justice, 391 Lukens Drive, New Castle, Delaware 19720.

Stipulated Penalties

28) Donovan expressly agrees that failure to comply with any of the above obligations and deadlines shall lead to the imposition of the following monetary administrative penalties ("Stipulated Penalties") as follows:

a. Donovan agrees to pay a Stipulated Penalty of \$100 per day per instance of material noncompliance with this Order that is not cured in accordance with subparagraph e. of this paragraph 27.

b. If Donovan remains materially noncompliant with this Order for 90 days, as calculated by the sum of instances of noncompliance assessed penalties, Donovan agrees to pay a Stipulated Penalty of \$500 per day for each additional instance of noncompliance.

c. DNREC shall provide Donovan with written notice within 15 days of each instance of noncompliance. Payment of any Stipulated Penalties shall be remitted within 30 days of said notice by check payable to "the State of Delaware" and mailed to: Ms. Devera Scott, Esquire, Delaware Department of Justice, 391 Lukens Drive, New Castle, Delaware 19720.

d. Donovan may request, and DNREC may grant, a waiver of any Stipulated Penalty. DNREC will not unreasonably withhold such waiver for any failure to comply that is outside

of Donovan's control, including but not limited to acts of God, third-party disruptions, and other delays outside of Donovan's control.

e. Upon receipt of a notice of material noncompliance, Donovan shall have a period of 90 days to implement a cure of such material noncompliance prior to the imposition of stipulated penalties.

Costs

29) Donovan agrees to pay \$8,286.02, representing all outstanding costs for DNREC's oversight regarding the VCP Agreement.

30) From the effective date of this Order, the Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with this Order.

IV. MISCELLANEOUS PROVISION

31) Binding on Successors: It is the intention of the parties that this Order shall be binding upon and enforceable against the Parties and their successors, heirs, executors, administrators and assigns.

32) Severability: In the event that any provision (section, paragraph, or portions thereof) of this Order shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect, or impair the remaining provision(s) (sections, paragraphs, or portions thereof) of this Order, and to this end, the provisions of this Order are hereby declared to be severable except that the provisions within paragraph 27 are not severable from one another.

33) Construction: This is an order of the Secretary, which has been constructed to resolve the pending violations and to prevent future violations and harm to the environment. The interpretation of the Secretary shall be given due weight should any court be required to construe any term herein.

34) Compliance with Law: Nothing in this Order shall relieve Donovan of its obligation to comply with all applicable federal, state or local laws or regulations.


35) Good Faith: The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Order, provided that nothing in this Order shall be construed to restrict DNREC's regulatory and permitting judgment and discretion, and nothing in this Order shall be construed to require DNREC to pay or appropriate any monies or expend any funds. However, nothing in this Order prevents Donovan from receiving monies or funds otherwise appropriated or granted by DNREC.

36) Entire Understanding: This Order constitutes the entire agreement and settlement between the Parties. The Parties acknowledge that this Order may not be amended except in writing executed by both Parties.

37) No Third-Party Rights: The Parties to this Order expressly intend that this Order shall create no right(s) in any person or entity not a party to this Order.

38) This Order becomes effective on the date of execution by the Secretary of DNREC.

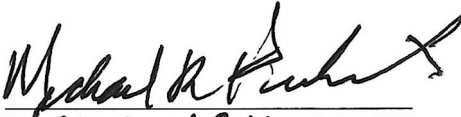
Date: Feb. 5, 2025


Gregory B. Patterson, Secretary
Department of Natural Resources and
Environmental Control

Agreed and Accepted:


Date:

Donovan Salvage Works, Inc.

By: 
Name: Michael R Herbert
Title: Owner/President

Date:

Herbert Holdings, LLC

By: 
Name: Michael R Herbert
Title: Owner/President