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November 15, 2024

VIA HAND DELIVERY

Department of Natural Resources and Environmental Control
Office of the Secretary
Environmental Appeals Board
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901

Re: Statement of Appeal of Notice of Administrative Penalty Assessment and Secretary's Order No. 2024-WH-0043 dated October 22, 2024 ("Order")
TPHS Ref: 259828.000010

Dear Honorable Members of the Environmental Appeals Board:

On behalf of 415 Old Airport Road, LLC, enclosed is a Statement of Appeal, challenging DNREC's October 22, 2024 Order No. 2024-WH-0043. Also enclosed is a \$50 check as a deposit for costs.

Please let me know if you have any questions.

Sincerely

TROUTMAN PEPPER HAMILTON SANDERS LLP

/s/ James H.S. Levine

By _____
James H.S. Levine

Attachment: Statement of Appeal

cc: Randy McIntyre, 415 Old Airport, LLC (by email only rmcIntyre@jadianios.com)
Travis Groski, Deputy Attorney General, Delaware Department of Justice (by email only Travis.Groski@delaware.gov)

STATEMENT OF APPEAL OF 415 OLD AIRPORT, LLC

Pursuant to 7 Del. Admin. Code § 105-2.0, 415 Old Airport, LLC. (Respondent) submits this written statement of appeal to the Delaware Environmental Appeals Board, appealing Order No. 2024-WH-0043 dated October 22, 2024 (Order) which Respondent received on October 28, 2024. In support of its appeal, Respondent states as follows:

Background

1. Respondent owns certain real property located at 469 Old Airport Road in New Castle, Delaware (Parcel No. 1000800009). Respondent leases this property to Delaware Recycling Corp. (DRC), which recycles scrap metal and tires.
2. On October 28, 2024, Respondent received the Order from DNREC. The Order alleges that another entity, DIVI Enterprises, LLC (DIVI) has been operating an automobile salvage yard on real estate located at 469 Old Airport Road (Parcel No. 1000800009) and 495 Old Airport Road (Parcel No. 1000800002) in New Castle, Delaware in violation of 7 *Del. C.* Chapters 60 and 63, 7 DE Admin. Code § 1301, *Delaware's Regulations Governing Solid Waste* (DRGSW) and DE Admin. Code § 1302, and *Delaware's Regulations Governing Hazardous Waste*. (DRGHW). The Order further alleges that Respondent, as the owner of 469 Old Airport Road, is liable for these violations.
3. The Order substantially affects the Respondent's interests as (1) the Respondent owns the property at 469 Old Airport Road (Parcel No. 1000800009) and (2) the Order assesses an administrative penalty against the Respondent for \$10,000.00.
4. The Order issued by DNREC against Respondent is improper for the following reasons:
 - a. Respondent does not lease any property, including Parcel No. 1000800009, to DIVI. Rather, Respondent leases Parcel No. 1000800009 to DRC which recycles scrap metal and tires. DRC is not listed as a Respondent in the Order.
 - b. Upon information and belief, no auto salvage operations occur on 469 Old Airport Road (Parcel No. 1000800009).
 - c. Upon information and belief, DIVI does not conduct any operations on 469 Old Airport Road (Parcel No. 1000800009).
 - d. With the exception of the activities alleged in Violations #13 and #14, all of the conduct described in the Order occurred outside the boundaries of 469 Old Airport Road (Parcel No. 1000800009). Specifically:
 - i. The Order references the 469 Old Airport Road property solely in reference to "Kevin's Warehouse." Footnote 2 of the Order states that the "sole building on the 469 Old Airport Road property is referred to as 'Kevin's Warehouse.'"
 - ii. The referenced Kevin's Warehouse building is located at the very back, northwestern property boundary of the Site and is leased to Delaware Recycling Corp. See Attached Figure 1.

- iii. With the exception of Violations #13 and #14, all violations in the Order appear to have occurred to the northwest of Kevin's Warehouse. The area northwest of Kevin's Warehouse is within Parcel No. 1000800002, which is neither owned nor operated by Respondent.
5. Prior to filing this Statement of Appeal, Respondent has engaged in good faith negotiations with DNREC to resolve the violations in the Order. Accordingly, Respondent respectfully requests that this appeal be stayed to allow the parties to reach an agreeable settlement.
6. In the event a settlement is not reached, Respondent estimates that there will be one witness at the public hearing, and that the public hearing will take one hour.

Respectfully submitted,

TROUTMAN PEPPER HAMILTON SANDERS LLP

/s/ James H.S. Levine

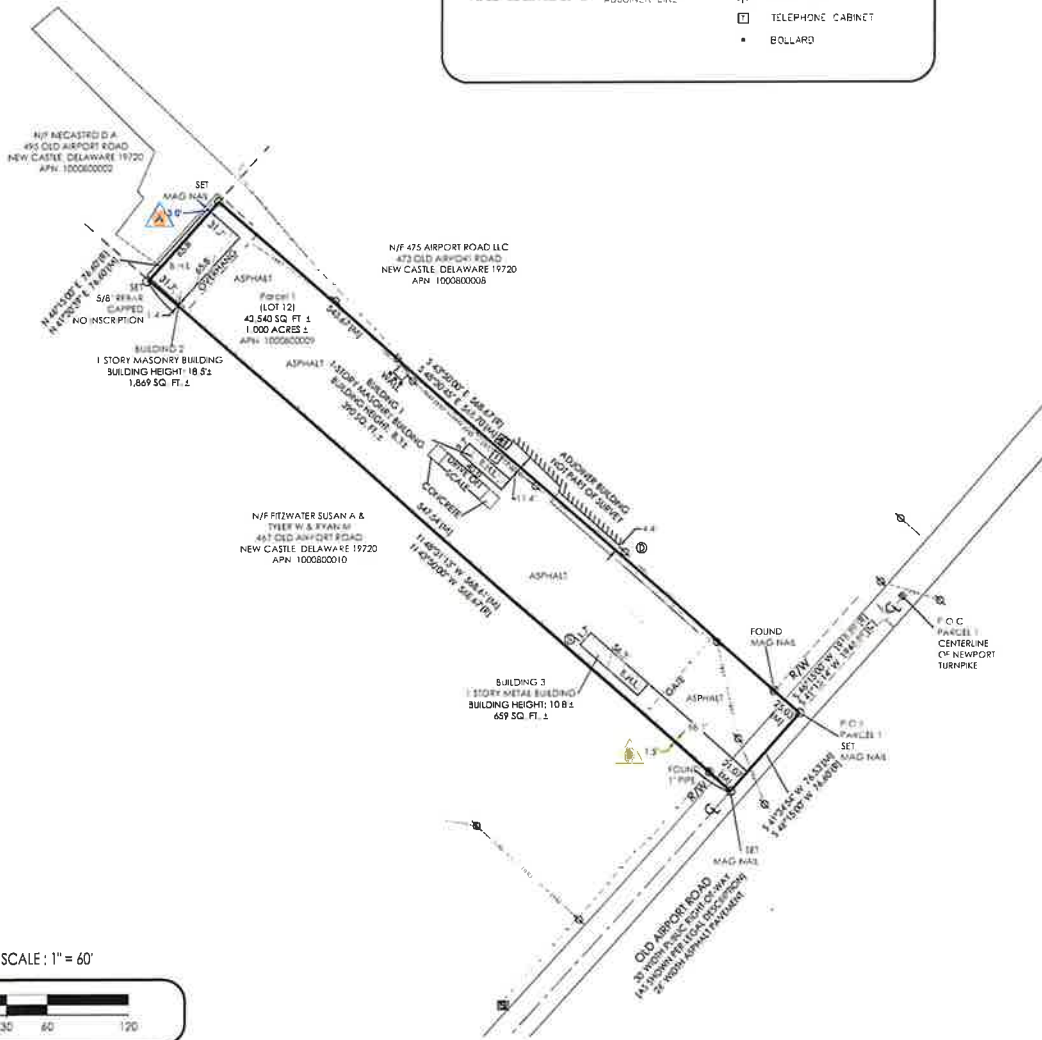
By _____
James H.S. Levine

Enclosure

PARCEL 1 DETAIL

PARCEL 1
43,540 SQ. FT. ±
1.000 ACRES ±

LEGEND	
P.O.B. POINT OF BEGINNING	B.H.L. BUILDING HEIGHT LOCATION
CL CENTERLINE OR HIGHWAY-WAY	♿ HANDICAP PARKING
(M) MEASURED/CALCULATED DIMENSION	⊕ SEWER MANHOLE
(R) RECORD DIMENSION	⊕ POWER POLE
R/W RIGHT-OF-WAY	⊕ ELECTRIC METER
N/F NGA OR FORMERLY	⊕ ELECTRICAL BOX
PS PARKING SPACES	⊕ WATER METER
⊙ FOUND MONUMENT (AS NOTED)	⊕ WATER VALVE
○ SET MONUMENT (AS NOTED)	⊕ FIRE HYDRANT
⊕ COMPUTED POINT	⊕ STORM MANHOLE
— PROPERTY LINE	⊕ GRAVED INLET
- - - EASEMENT LINE	⊕ TELEPHONE PEDESTAL
- · - · - FENCE	⊕ ELECTRICAL BOX
- · - · - OVERHEAD ELECTRIC	⊕ A/R CONDITIONER UNIT
- · - · - FLOOD ZONE LINE	⊕ GUY ANCHOR
- · - · - ADJOINER LINE	⊕ LIGHT POLE
	⊕ TELEPHONE CABINET
	• BOLLARD

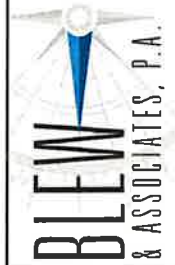


SCALE: 1" = 60'



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Surveying
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NO.	DESCRIPTION	DATE	BY

PROJECT NO.	010 AIRPORT RD NEW CASTLE, DE
DATE	04/05/2022
TITLE	PARCEL 1 DETAIL
COMMITTEE NO.	202200414 NCS
EFFECTIVE DATE	05/08/2022
DATE OF FIELD SURVEY	04/01/2022