

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL APPEALS BOARD**

*In re Department of Natural Resources and
Environmental Control Notice of Administrative
Penalty Assessment and Secretary's Order to
Delaware Recyclable Products, Inc., Waste
Management of Delaware, Inc.*

Order No. 2026-WH-0007

NOTICE AND STATEMENT OF APPEAL TO ENVIRONMENTAL APPEALS BOARD
(PENALTY ASSESSMENT AND DIRECTIVES)

Delaware Recyclable Products, Inc. (“DRPI”) by and through its counsel, submits the instant appeal, pursuant to 7 Del. C. § 6008 and 7 Del. Admin. C. § 105, of the action of the Secretary of Delaware Department of Natural Resources and Environmental Control (“DNREC” or “Department”). Specifically, DRPI appeals herein the issuance of the Notice of Administrative Penalty Assessment and Secretary’s Order No. 2026-WH-0007 (the “Order”) (“Appeal”), received by DRPI on April 27, 2026. A copy of the Order is attached as **Exhibit A**. DRPI notes that the Secretary of DNREC orders DRPI to, among other things, “immediately begin using Department-modified Solid Waste Permit SW-15/02 upon receipt”. (the “Modified Permit”). The 71-page Modified Permit was received by DRPI on April 28, 2026, and is attached as **Exhibit B**. The “forthcoming” Modified Permit supersedes a 28-page Solid Waste Permit SW-15/02, as last modified on April 8, 2022, and effective May 25, 2022 (the “Permit,” attached as **Exhibit C**). DRPI is contemporaneously appealing the issuance of the Modified Permit (“Modified Permit Appeal”) which Modified Permit Appeal is incorporated herein by reference and attached hereto as **Exhibit D**.

INTRODUCTION

1. DRPI operates an industrial waste landfill and recycling center located at 246 Marsh Lane, New Castle, Delaware (“DRPI Landfill” or “Landfill”), accepting primarily construction and demolition (“C&D”) waste. Located in a Heavy Industry zone in an existing community area (as defined by New Castle County’s Comprehensive Development Plan), the Landfill is currently permitted to accept construction/demolition debris; dry waste including plastic, rubber, lumber, trees, and vegetative matter; as well as non-hazardous industrial waste solids if approved by DNREC.

2. The DRPI Landfill is the only privately owned landfill currently operating in the State of the Delaware.¹ and has been operated by DRPI since 1999, almost 30 years. The lengthy Order that is the subject of this Appeal is largely the result of evolving policies and practices of the Department inconsistently applied and communicated to DRPI, which have in many instances led to insurmountable challenges by DRPI in attempting to comply with the Department's evolving requests.

3. At all relevant times hereto, DRPI has engaged and/or made every effort to engage in proactive dialogue with the Department regarding operation of the DRPI Landfill, addressing topics including cover, stormwater management, capping and, notably, an evolving contaminated stormwater policy. Stated another way: (i) DNREC imposes approval requirements for offsite cover materials that takes DNREC months to process, causing DRPI to run short of needed cover materials; (ii) such condition is exacerbated by DNREC's unreasonable change in the Revised Permit requiring daily (versus weekly) operational cover; (iii) DNREC has advanced a theory, unsupported in law and fact, deeming stormwater as being contaminated by allegedly coming into contact with landfill waste as a result of the alleged cover problems (regardless of whether or not such stormwater exceeds standards applicable to discharges); and (iv) DNREC imposes unreasonable stormwater discharge requirements for the water deemed "contaminated".

4. Aside from the legal and factual deficiencies and inconsistencies associated with DNREC's application of its various programs, DRPI's frustration regarding its dialogue with the Department has been the inability to achieve and/or formalize clear and consistent communication with DNREC related to issues identified in the Order. Many of the Order's alleged violations were

¹ The Delaware Solid Waste Authority (DSWA), a public instrumentality, operates three other landfills across the State.

either never reduced to a citation or were never the subject of any other communication with DNREC.

5. Indeed, while DRPI was engaged in good faith communications with the Department to address DNREC's questions and promptly address its concerns, DNREC was working on a 98-page Order designed to include as many violations and penalties as possible. The Order alleges 44 violations and cites duplicative and derivative counts for conditions which in many instances (and which DNREC concedes), had already been corrected, or are based upon incorrect facts and/or law. The Order is devoid of meaningful reference to or consideration of DRPI's continuous efforts, remedial measures, and good faith attempts to engage DNREC in discussion regarding the Landfill, which such mitigating factors should have been, but were not, taken into account by DNREC in issuance of the Order.

6. The Order assesses an administrative penalty in the amount of \$3,767,488.00 without providing the requisite support. The Department aggregates per-day penalties across many overlapping counts and improperly recites the statutory penalty factors without articulating the calculation methodology.

7. DNREC is further ordering DRPI to immediately adapt its operations under a 71-page modified permit (which supersedes a 28-page permit and which is the subject of the Modified Permit Appeal). Additionally, DRPI is required to execute an unreasonable 16 additional directives on a 30-to-90-day clock.

8. The Order and Modified Permit referenced therein are contrary to law and fact, and constitute an abuse of discretion for the reasons set forth above and below.

9. DRPI was served with a copy of the Order on April 27, 2026, and filed this Statement of Appeal on May 15, 2026. Accordingly, this Notice and Statement of Appeal is timely filed.

BASIS FOR APPEAL

I. The Interest Substantially Affected

10. Pursuant to 7 Del. Admin. C. § 105-2.1.1, the Order substantially affects DRPI's interests because DNREC's interpretations of its policies, and of the law, regulations, Permit, and Modified Permit, as applied to DRPI are contrary to law and fact, and constitute an abuse of discretion for the reasons set forth herein. Further, if the Order is upheld, DRPI will be responsible for payment of an exorbitant administrative penalty, will be faced with complying with the Order's stacked 30/60/90-day directives in an unreasonable period of time, as well as being forced to immediately comply with the Modified Permit as addressed at more length in the Modified Permit Appeal. Finally, the Order expressly acknowledges that DRPI's legal rights are affected. (Order at 93.)

II. The Decision is Improper

11. Pursuant to 7 Del. Admin. C. §§ 105-2.1.2 and 2.1.3, the Order, including but not limited to the administrative penalty assessed therein and Modified Permit referenced therein, is improper.

12. For the reasons set forth herein, the Order is unsupported by the evidence, is contrary to law and fact, is arbitrary and capricious and is an abuse of discretion. *See Delaware Solid Waste Auth. v. Delaware Dep't of Nat. Res. & Env't Control*, 250 A.3d 94, 118 (Del. 2021) ("Under 7 Del. C. § 6008, the Board reviews the Secretary's Orders to determine whether they are supported by the evidence, free of legal error, and do not abuse discretion.").

III. Reasons Why the Decision is Improper

13. As set forth herein, the Order is improper, not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion for several reasons. Except as specifically stated herein, DRPI does not admit any of the allegations or legal conclusions set forth in the Order. The absence of a specific refutation should not be construed as an admission by DRPI as to any fact or legal conclusion set forth within the Order. DRPI reserves all rights and defenses regarding the Order's allegations and/or legal conclusions.

a. DNREC's oscillating interpretations regarding what it deems "contaminated stormwater" lack legal foundation and factual support, are arbitrary and capricious and an abuse of discretion

14. The foundation of the Order's most significant penalty counts (Violations 1, 2, 6, 9, 12, 20, 21, 22, and 23) is DNREC's most recent contaminated-stormwater interpretation: that stormwater in contact with exposed or inadequately covered waste constitutes "contaminated stormwater" under the Permit, Condition IV.A.4, and that any discharge of such water without separate National Pollutant Discharge Elimination System (NPDES) authorization violates 7 Del. C. § 6003(a)(2), 7 Del. Admin. C. § 7201-3.2.1 and 3.3.3, and several Permit conditions. DNREC first verbally notified DRPI of its current contaminated-stormwater interpretation on June 11, 2025. (Order at 11.) DRPI disputes both the factual predicate and the regulatory characterization of DNREC's interpretation.

15. DNREC initially asserted that (1) cover integrity issues and (2) well-field management were causing sporadic subsurface oxidation ("SSO") events at the Landfill. When DRPI demonstrated that neither of those conditions was contributing to the SSO events, DNREC shifted its theory and began to characterize the Landfill's stormwater runoff as "contaminated" on the basis that it had contacted exposed waste on the Landfill surface.

16. As a result, a prior DNREC engineer, Michael Melito, established a sampling and testing protocol to be used whenever DNREC believed the stormwater was potentially contaminated, which protocol was followed by DRPI. Specifically, Mr. Melito's January 4, 2023 email to DRPI directed the Landfill to sample in accordance with Permit Conditions IV.A.5 and IV.A.6 according to specified detailed analytical parameters, including parameters added in March 2018, whenever exposed waste and water runoff were observed. (A copy of Mr. Melito's January 4, 2023, email is attached as **Exhibit E.**)

17. In or about the summer of 2025, DRPI conducted nine independent sampling events testing stormwater and basin water using the parameters prescribed by Mr. Melito. Each sampling event showed that the water was not contaminated under either the NPDES permit parameters applicable to those basins or the additional testing parameters set forth in Mr. Melito's protocol. Rather than accept those results and allow the discharge of both basins, DNREC subsequently and without support imposed heightened testing parameters aligned with Delaware's drinking water standards, instead of requiring compliance with the industrial discharge standards applicable to an operating landfill.

18. Furthermore, in the summer of 2025, DNREC improperly directed DRPI to plug the basin outlets and to pump all onsite water into the leachate collection system for discharge to the New Castle County wastewater treatment facility. Compliance with this directive would have caused DRPI to exceed its permitted leachate discharge volume with New Castle County. DRPI consequently negotiated with New Castle County for an increase to its permitted gallons-per-day discharge limit, obtained the increase, and began pumping basin water into the leachate collection system. DNREC's Division of Water Quality ("DOW") did not issue the Temporary Discharge Authorization ("TDA") until October 30, 2025 (nearly four months after DRPI's June 12, 2025

application, which was filed at the direction of DNREC), which resulted in certain discharges due to heavy rain events prior to receipt of the TDA. The delayed approval appeared to be due to internal disputes within DNREC in that several DOW representatives indicated to DRPI that they did not believe the authorization was necessary. Subsequent to issuance of the TDA, issued under DOW's revised parameter list, the West Basin sampling continued to reflect results at or under applicable thresholds. As a result, DRPI made a mid-January 2026 request to limit the TDA to the East Basin, which was denied by DNREC. DNREC's delays associated with the TDA and its insistence on more stringent drinking water standards has only served to create and exacerbate environmental risks at the Landfill.

19. The Order rests on DNREC's baseless assertion that stormwater contacting exposed waste is "contaminated," without identifying a single contaminant of concern despite DRPI's repeated requests. DNREC's evidentiary gap cannot sustain nine violations based on a theory it refuses to substantiate with analytical data. The Order's reliance on drinking water standards (rather than industrial discharge standards applicable to operating landfills) further demonstrates that DNREC has applied the wrong regulatory benchmark. Its failure to investigate or account for third-party stormwater contributions from adjacent properties also undermines the causal link between DRPI's operations and the alleged contamination. Lastly, DNREC counts violation days back to 2022 (*see, e.g.*, Order at 44); any penalty accrual for periods before DNREC's June 11, 2025 verbal notice of the contaminated-stormwater interpretation lacks fair notice.

20. Further, DNREC bases its contaminated-stormwater violations through application of a provision of the Permit in a vacuum, concluding that DRPI is in violation of section IV A 4 of the Permit application regulations due to the finding that water made direct contact with exposed landfill wastes. This finding is fatally flawed as a matter of fact and law in failing to apply section

IV A 5 of the Permit, which provides that “in the event a leachate seep is found to be contaminating surface water, DRPI shall sample the impacted surface and the downstream stormwater pond at both the inlet and outfall (if discharging)...” Not only does the Order fail to apply the provisions of the Permit as written, it represents an unexplained about-face of the positions previously taken by DNREC regarding this very issue. A plain reading of Mr. Melito’s January 4, 2023 email, attached as **Exhibit E**, evidences DNREC’s recognition of the fact that sections IV A 4, 5, and 6 should be read together, and that in the event exposure of water to waste, sampling should take place as set forth in **Exhibit E**.

21. DNREC’s contact-only interpretation is also irreconcilable with the regulatory definition of the very contaminant at issue. Under the Regulations Governing Solid Waste, “leachate” is defined as “liquid that has passed through, contacted, or emerged from solid waste *and* contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste.” 7 DE Admin. Code 1301, § 3.0 (emphasis added.) The definition is thus conjunctive: stormwater becomes leachate only if two conditions are satisfied: (1) the liquid has contacted solid waste, and (2) the liquid actually contains materials removed from that waste. Stormwater in short-duration contact with flagged or windblown debris/exposed waste on a landfill surface may satisfy the first element, but it does not satisfy the second unless the liquid in fact contains dissolved, suspended, or miscible materials, chemicals, and microbial waste produced removed from the solid waste.

22. A permit condition contradicting the regulatory definition it purports to implement is unsupported by the evidence and contrary to law. *See Delaware Solid Waste Auth.*, 250 A.3d at 109 (“The Secretary’s duty to issue permits ‘in accordance with duly promulgated regulations’

implies and requires the power to impose reasonable permit conditions that are *consistent with existing regulations* but lack identical regulatory antecedents.”) (emphasis added).

i. DNREC improperly disregards third-party stormwater contributions to the East Basin.

23. DRPI has subsequently informed DNREC that the East Basin receives combined stormwater flow from adjacent properties, some of which has appeared turbid and exhibited an oil sheen, and some of which DRPI believes is the source of elevated aluminum concentrations. Aluminum has never been a parameter under DRPI’s NPDES permit, but it is now one of the additional parameters required under the Modified Permit.

ii. DNREC continues to improperly restrict East Basin discharge despite completed treatment.

24. DRPI has installed ClosureTurf® final cap on all contributing run-off areas draining into the East Basin, and all intermediate cover integrity concerns in that area have been addressed. Despite DRPI’s corrective actions, DNREC continues to restrict discharge from the East Basin, asserting that additional corrective action is required. See October 30, 2025 Temporary Discharge Authorization attached as **Exhibit F**. The East Basin, however, is itself a permitted stormwater treatment unit designed to receive and treat surface water before discharge. DNREC’s refusal to allow the basin to function as designed does not reflect a deficiency in DRPI’s operations; it only exacerbates the same conditions the Department cites as violations.

iii. DNREC’s calculations of total acreage disturbance are flawed

25. DNREC’s calculation of total acreage disturbed under 7 Del. Admin. C. § 5101-4.4.1 (Order at 13) includes approximately 19 acres of cap in its disturbance total, a factually and legally flawed conclusion as no erosion can occur in that area because geosynthetic liner material protects the intermediate cover. The regulatory purpose of § 5101-4.4.1 is to minimize areas of

exposed ground and reduce erosion rates—a purpose unserved by counting acreage where erosion cannot physically occur. Based on DRPI’s aerial survey data, fewer than 20 acres were open between the Phase I and Phase II capping events, placing the site within the regulatory limit.

b. The Order improperly stacks violations by inflating the per-day penalty through duplicative and derivative violation counting, which actions constitute an abuse of discretion.

26. “*Simultaneous violations of more than 1 pollutant or air contaminant parameter or of any other limitation or standard imposed under this chapter shall be treated as a single violation for each day.*” 7 Del. C. § 6005(b)(3) (emphasis added). The phrase, “or of any other limitation or standard imposed under this chapter,” reaches any limitation or standard imposed under Chapter 60 (“Environmental Control”). Chapter 60 includes the Solid Waste Permit SW-15/02 conditions (issued under 7 Del. C. § 6003 and the Delaware Regulations Governing Solid Waste, 7 Del. Admin. C. § 1301 et seq.) and the Operations and Maintenance Plan provisions incorporated into Solid Waste Permit SW-15/02.

27. Moreover, every regulation DNREC invokes in the Order is incorporated into the Permit at Condition I.D.1, requiring DRPI to comply with “with all federal, state, county, and municipal environmental statutes, ordinances, and regulations, including, but not limited to: Delaware’s Regulations Governing Solid Waste, Delaware’s Regulations Governing Hazardous Waste, Delaware’s Regulations Governing the Control of Water Pollution, Delaware’s Surface Water Quality Standards, and Delaware’s Regulations Governing the Control of Air Pollution.” (Order at 14–15.) Because the Permit itself is a Chapter 60 instrument, each limitation and standard the Permit incorporates is a “limitation or standard imposed under this chapter” for purposes of § 6005(b)(3). *See also* 7 Del. C. § 6003 (“[Chapter 60] shall be liberally construed in order to preserve the land, air and water resources of the State.”). Consequently, when multiple parameters

are violated on the same day, they must be counted as one violation per day rather than multiple separate violations.

28. Here, the Order disregards this statutory anti-stacking command on a grand scale. DNREC separately pleads the same operative conduct under multiple permit conditions, regulations, and the Permit's incorporation-by-reference clauses. DNREC's stacking of violations is most notable in the nine-count contaminated-stormwater cluster (Violations 1, 2, 6, 9, 12, 20, 21, 22, and 23) by relying on the same operative conduct: the alleged stormwater discharge that contacted exposed waste from the East and West Basins on the same dates. Stated differently, DNREC penalizes the same conduct (inadequate cover allowing stormwater contact with exposed waste) using nine different legal hooks.

29. Likewise, Violation 8 rests on a discrete construction-defect event (a missing riser seal installed) and duplicates Violations 9, 22, and 23, all of which rely on the same riser facts. Violation 39 (deviation reporting) is purely derivative, cataloging Violations 10, 21, 26, 37, and 44.

30. As another example, the eleven-count Cell 4C pump-station cluster (Violations 25–32 and 34–36) duplicate a single course of conduct (one malfunctioning pump station, producing one continuous set of leachate-log irregularities) and must be consolidated under 7 Del. C. § 6005(b)(3). Charging the same conduct first as a regulatory violation and again as a permit violation, then multiplying each count by daily penalties of up to \$40,000, is the type of stacking that § 6005(b)(3) forecloses.

31. Finally, DNREC counts violation days back to 2022 (see, e.g., Order at 44); any penalty accrual for periods before DNREC's June 11, 2025 verbal notice of the contaminated-

stormwater interpretation constitutes not only impermissible stacking, but constitutes lack of fair notice, robbing DRPI of due process.

c. DNREC improperly invoked 7 Del. C. § 6005(b)(2) to impose injunctive relief for completed and already-corrected conduct.

32. DNREC’s penalty assessment and 30/60/90-day directives are purportedly issued under 7 Del. C. §§ 6005(b)(2) and (b)(3), without specifying which Delaware Code subsection applies to which findings. [See Order at 1 (“NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT AND SECRETARY’S ORDER Pursuant to 7 Del. C. §§ 6005(b)(2) and (b)(3)”); *id.* at 84 (“In consideration of the *foregoing findings*, notice is hereby given, pursuant to 7 Del. C. § 6005(b)(2)) (emphasis added).]

33. To the extent DNREC issued the Order under 7 Del. C. § 6005(b)(2), that subsection authorizes injunctive relief only for continuing violations—not for completed conduct. DNREC’s Order concedes that several cited conditions were corrected before issuance, and that other conduct ended well before February 6, 2026.

34. Because § 6005(b)(2) excludes already-corrected or completed violations, the 30/60/90-day directives premised on that subsection must be vacated, and any penalties tied to those counts are properly channeled, if at all, only through 7 Del. C. § 6005(b)(1).

35. DNREC’s Order, moreover, concedes that the following cited conditions were corrected to the Department’s satisfaction before the Order issued and were largely administrative in nature: the current permit copy in the scalehouse and onsite office (Violation 7; Order at 15–16); the emergency telephone numbers in the maintenance office/shop, pre-treatment building, and scale house (Violation 18; Order at 34–35); the GP 5-6 monitoring-well locking lid (Violation 24; Order at 49); the odor conditions (Violation 37; Order at 66–68); and the single observed instance of an improperly installed under-cap gas collection pipe (Violation 42; Order at 78–79). DNREC’s

Order additionally mischaracterizes multiple items stemming from the September 25, 2025, inspection as open and ongoing, contradicting DNREC’s own regulatory database’s outcome as “Violation(s) Found—All Immediately Corrected” (**Exhibit G**).

36. Many of the cited conditions are administrative in nature and reflect no demonstrated environmental harm: the failure to produce paper First Aid, CPR, and AED training certificates for trainings that were completed in August and September 2025 (Violation 19; Order at 35–37); the recordkeeping deficiencies in the leachate logs—blank entries, missing dates, and anomalous formula values (Violations 29, 35, and 36; Order at 55, 63, and 64–66); the single Cell 5C pump-station log entry that DNREC itself concedes may have been “anomalous or miss-entered into the log” (Violation 34, in part; Order at 62); the failure to produce landfill-gas monitoring records on request (Violation 38; Order at 71); and the derivative deviation-reporting count, cataloging other violations (Violation 39; Order at 72–73).

37. Penalties for these administrative and already-cured items are legally erroneous, inappropriate and should be reversed, as they are “understandable oversight” that did not harm the environment. *See Delaware Solid Waste Auth.*, 250 A.3d at 118 (holding “that substantial evidence supported the Board’s determination that the [appellant] G&F Group should not be penalized” even if a permit was violated).

d. The evidence does not support DNREC’s findings of fact as the Order relies on conclusory assertions that are contradicted by DRPI’s data and DNREC’s own regulatory record, and it ignores the Department’s own conduct in causing and prolonging conditions cited as violations.

38. DRPI contests, among other things, the Order’s findings of fact as to the following violations on the grounds that the evidence does not support DNREC’s conclusions: the acreage-disturbance count (Violation 4); the contaminated-stormwater cluster (Violations 1, 2, 6, 9, 12, 20, 21, 22, and 23); the cover-deficiency counts (Violations 10, 14, 15, and 43); unclean swales and

culverts (Violation 11); the mercury-bearing flooring debris and battery-induced fire (Violation 13); wind-blown litter (Violation 16); dust/mud control (Violation 17); completion of required employee training and production of certificates (Violation 19); the Cell 4C pump-station cluster (Violations 25–32 and 34–36); the leachate seeps (Violation 33); the landfill gas (LFG) monitoring records (Violation 38); the liner-damage counts (Violations 40 and 41); and the cap-modification count (Violation 44).

39. Contrary to DNREC’s conclusions, the record does not support the findings underlying the Order’s most significant violation counts, the contaminated-stormwater cluster (Violations 1, 2, 6, 9, 12, 20, 21, 22, and 23).

40. As discussed above, DRPI’s nine sampling events demonstrate that the basin water did not contain those materials. DNREC’s position that contact alone suffices reads the second, conjunctive element out of its own regulation.

41. Adoption of DNREC’s contact-only interpretation would also produce an impossible result. If mere physical contact with any solid waste rendered stormwater “contaminated,” then every stormwater inlet in Delaware that has debris on its grate or within the contributing flow path would need to be plugged and its runoff managed as leachate. Curbside waste set out for collection on rainy days would similarly generate “contaminated stormwater” requiring segregation and treatment.

42. **Acreage-Disturbance Count (Violation 4).** DNREC’s finding that DRPI exceeded the 20-acre disturbance limit under 7 Del. Admin. C. § 5101-4.4.1 rests on an incorrect calculation that includes approximately 19 acres of capped area protected by geosynthetic liner material. The regulatory purpose of § 5101-4.4.1 is to minimize areas of exposed ground and reduce erosion rates—a purpose unserved by counting acreage where erosion cannot physically

occur. As mentioned above, DRPI's aerial survey data confirms that fewer than 20 acres were open between Phase I and Phase II capping events. DNREC's failure to exclude stabilized, liner-protected acreage from the disturbance total renders their finding unsupported.

43. **Cover-Deficiency Counts (Violations 10, 14, 15, and 43).** DRPI's cover efforts have been continuous throughout the relevant period, and DNREC's own delay in approving offsite cover sources has directly impeded the same compliance DNREC now demands. An agency cannot simultaneously withhold the means of compliance and penalize the regulated party for the resulting noncompliance. Moreover, DRPI's long-term capping plan (a Department-approved closure project) will permanently resolve these conditions, and the Order fails to credit DRPI's documented interim efforts (contractor mix and mulch application, jute matting plan) as evidence of good-faith compliance.

44. **Unclean Swales and Culverts (Violation 11).** The Order describes the debris-laden swales near the 4C and 1,2,3,5 pump stations and the buried culverts² as evidence of a failure to maintain the Landfill in accordance with OMP § 3.13.1 (Order at 23). DRPI has continuously called in contractors as needed to clean the swales and culverts; by example, DRPI retained contractor Evo Echo to clean and jet the culverts on Marsh Lane at the end of 2025, and has scheduled annual swale cleanouts, including the cleaning of all pipes and culverts, beginning May 1, 2026.

45. **Mercury-Bearing Flooring Debris and Battery-Induced Fire (Violation 13).** The Department's own treatment of the mercury-bearing flooring debris further illustrates disproportionate enforcement: DRPI completed all 12 months of an agreed-upon sampling

² The remaining allegations in Violation 11 are duplicative of other counts and addressed elsewhere.

protocol, submitted the final report in April 2025, and has repeatedly sought closure. Almost a year later, DNREC recently accepted the report and signed off on the findings.

46. **Violations relating to batteries. (Violation 13).** Lithium-ion batteries are small in size and not identifiable during the inspection, unloading, and placement process. When discovered, batteries are properly segregated, packaged, and sent for recycling. Both fires resulted from concealed batteries in mixed loads delivered by third-party haulers. DRPI has notified its customers that lithium-ion batteries are prohibited in the waste stream. DRPI has addressed and continues to actively address this issue, including providing frequent literature to customers regarding proper handling and recycling of lithium-ion batteries. Again, none of these efforts are recognized in the Order.

47. **Wind-Blown Litter (Violation 16).** DRPI maintained litter-control measures consistent with the approved Operation and Maintenance Plan at all relevant times. Specifically, portable litter fences were deployed at the working face in response to high-wind events, a temporary labor force was retained onsite for continual litter collection, and the Landfill's 50-foot perimeter litter fence contained windblown material within the property boundary. Any litter observed during DNREC's site visits was incidental to active capping operations and was being managed through these measures at the time of inspection.

48. **Dust/Mud Control (Violation 17).** Similarly, DRPI employed dust and mud controls in accordance with the Operation and Maintenance Plan: mud, dust, and debris were not tracked onto the public roadway. A water truck operates daily to clean the road surface and suppress dust, and a mechanical sweeper cleans the access road at least once per week, with additional cleaning scheduled as warranted by weather conditions, and continual efforts to work with DRPI's neighbors to limit track-out.

49. **Employee Training and Certificates (Violation 19).** DRPI disagrees with DNREC’s finding: information confirming training was provided to DNREC on October 9, 2025.

50. **Cell 4C Pump-Station Cluster (Violations 25–32 and 34–36).** The 11 counts arising from the Cell 4C pump station all derive from a single, intermittent transducer malfunction—not from 11 independent acts of noncompliance. Leachate levels trend higher during weather events but are then brought back into compliance via the leachate sump pumps, demonstrating the system functioned as designed. DNREC’s evidence is further undermined by (a) its failure to provide a final report from the September 25, 2025 annual inspection, leaving DRPI unable to verify the specific dates DNREC asserts are deficient, and (b) DRPI’s daily logs, which do not corroborate the assertion of missing records.

51. **Leachate Seeps (Violation 33).** The cited “seeps” were primarily directly tied to large quantities of water DRPI placed in the waste mass to extinguish subsurface thermal (SSO) events (a necessary remedial effort). Stormwater testing was conducted in compliance with DNREC’s January 6, 2023, letter, and no environmental impacts occurred as a result of the seeps. Each seep was repaired immediately upon discovery, and the Order itself concedes that facility-wide seep frequency “has significantly decreased.” (Order at 62.) Seeps are rare given the flow of liquids through the waste mass of C&D. The Department is trying to improperly penalize DRPI for a transient byproduct of a remedial measure that prevented greater environmental harm.

52. **LFG Monitoring Records (Violation 38).** The Order asserts that DRPI failed to produce LFG monitoring records when asked on October 9 and again on November 21, 2025. The requested gas migration monitoring data has consistently been included in DRPI’s Semi-Annual Environmental Monitoring Report—documents in the Department’s possession. The alleged “failure to produce” seems to stem from DNREC’s own confusion about the Landfill’s

infrastructure: the Department originally assumed Pump House 4C was part of the gas collection and control system (GCCS), when it is actually part of the leachate management system. DRPI has no documentation of a secondary request on November 21, 2025 and, as noted above, DNREC never issued a final inspection report from September 25, 2025 identifying the records it deemed outstanding.

53. **The Liner-Damage Counts (Violations 40 and 41).** Any damage was limited to the over-run flap on the outboard side of the anchor trench and did not compromise the overlay liner system. DNREC cites no evidence that DRPI delayed reporting beyond what was reasonable under the circumstances, and the record demonstrates that DRPI communicated the relevant facts shortly after the damage was observed.

54. **The Cap-Modification Count (Violation 44).** The under-cap gas collection system was installed as a secondary, environmental enhancement. The Order's finding of noncompliance under Permit Condition X.E is unsupported because: (a) DNREC was notified of the addition; (b) personnel changes at DNREC complicated the approval exchange; and (c) DRPI submitted an updated request on April 9, 2026, which remains under CAPS review. Characterizing good-faith environmental improvement (supplementing the ClosureTurf® system's existing pressure relief controls) as a permit violation is not substantial evidence of noncompliance. The Order incorrectly alleges that DRPI worked out of sequence from its approved Sediment and Stormwater Management Plan by beginning work on the West Basin in March 2025 immediately after constructing the East Basin, and by moving from capping event Phase I to Phase II in September 2025 without scheduling a pre-construction meeting or notifying the Department. (Order at 12–13.). This is inconsistent with the several meetings and communications with

DNREC regarding DRPI's planned activities and timing of same. The West Basin work was not tied to the Phase I capping project, and DRPI began that work independently.

- e. DNREC abused its discretion in failing to apply the facts to the assessment of the administrative penalty factors under section 6005(b)(3).*
- i. DNREC's exorbitant penalty (1) lacks an articulated calculation methodology, rendering the assessment unreviewable and (2) relies on an unreasonable balancing of discretionary factors listed in § 6005(b)(3).*

55. The Order recites the six § 6005(b)(3) factors and offers generalized conclusions for each, but it shares no mathematical rationale between those conclusions and the resulting \$3,311,470.00 solid-waste penalty or \$456,018.00 water-pollution penalty. DNREC repeatedly defines the violation period in terms that are inherently incapable of being translated into specific "days of violation." *See, e.g.*, Order at 51-52 (describing Cell 4C pump-station problems as occurring "from around April to the end of September 2025"); *id.* at 30 (speculating that "waste has been exposed for an unknown amount of time but at least a couple months").

56. It is impossible to determine, from the face of the Order, which violations DNREC assessed at the pre-June 16, 2025 statutory cap of \$10,000 per day, which were assessed at the post-June 16, 2025 cap of \$40,000 per day, how many "days of violation" were attributed to each count, or how DNREC applied (or ignored) the simultaneous-violation rule in § 6005(b)(3).

57. A Secretary's bare recitation of the discretionary factors, untethered to any analysis explaining the penalty's rationale, is legally insufficient. *See Delaware Solid Waste Auth.*, 250 A.3d at 119 (acknowledging that "[t]he Secretary's Orders, however, did not provide any analysis of why the penalties assessed against the [appellant] were appropriate in light of the discretionary factors listed in § 6005(b)(3). Rather, the orders appear to rely on the assertion that the penalties assessed were appropriate because the [appellant] committed violations."). The Order suffers from

that defect and cannot be understood, without remand for recalculation supported by an articulated methodology.

58. Even if, *arguendo*, liability was established on each alleged count (which is not the case here), the penalty assessment is unreasonable under the discretionary factors of 7 Del. C. § 6005(b)(3) because DNREC omits meaningful detail and ignores pertinent facts.

1. Nature, circumstances, extent and gravity of the violations

59. DNREC's assessment improperly ignores its own concessions, including that (1) DRPI has "taken steps to improve the overall operation of the DRPI landfill," (Order at 10); (2) seep frequency "has significantly decreased with the addition of adequate cover materials," (*id.* at 62) and (3) several of the cited deficiencies (current permit copies, emergency telephone numbers, monitoring-well locking lid, odors) were already corrected to the Department's satisfaction before the Order issued (*id.* at 16, 35, 49, 68, 78-79). The Order also appears to improperly treat every count as "significant" and undifferentiated, regardless of whether they involve pure recordkeeping and housekeeping items (e.g., a missing well-cap lock, an outdated emergency-phone list, a 2021-versus-2022 permit copy in the scalehouse, and delays for CPR/AED training certificates) or substantive cover and stormwater conditions that DRPI is actively addressing through capping.

2. Prior history of such violations

60. DNREC admits that "Respondent's prior history of violations was not a factor in compounding the administrative penalty" (Order at 91). But without an articulated penalty-calculation methodology, neither DRPI nor the Board can verify that representation. This lack of methodology constitutes an abuse of discretion.

3. The degree of culpability and unclear and conflicting communications from DNREC

61. The Order's cursory finding of "significant" culpability rests entirely on DRPI's decades of landfill ownership and operating experience—factors that speak to tenure and not to intent, recklessness, or any other measure of mental state that culpability is meant to capture. (Order at 92.). Further, the Order improperly fails to consider the significant effort, actions, and measures consistently taken by DRPI over the years to satisfy the conditions of the Department, the Permit and regulations. By way of example, to support intermediate cover placement, DRPI expended almost \$3 million over a two-year period to purchase clean fill obtained on an expedited basis because of delays due to DNREC's lengthy review process resulting in lost opportunities to receive clean fill from local generating sources at no cost to DRPI. To that end, DRPI continues to advocate for clear, consistent, and regular communication with DNREC to streamline timeframes.

62. Another example of DRPI's efforts to mitigate conditions, over half a million dollars was dedicated in connection with a temporary labor force to expediently 24-hour cleanup cleanup during a windstorm) engage in litter cleanup and general site maintenance. Further, DRPI expended almost \$100,000 on mechanical and electrical parts to maintain leachate pumphouses and other mechanically driven environmental control devices on site.

63. The Order's failure to credit any of the mitigating facts discussed throughout this Appeal and within DNREC's own record, is unreasonable and an abuse of discretion.

64. DNREC ignores DRPI's documented good-faith engagement throughout the periods at issue, including its application for and receipt of the October 30, 2025 Temporary NPDES Discharge Authorization (Order at 8), basin plugging at DNREC's direction (Order at 17-18), riser repair (Order at 45), ongoing capping construction to close operations (Order at 4), and

prompt correction of several counts (Order at 16, 35, 49, 68, 78-79), and DRPI's monthly update calls with all DNREC Bureaus, which started in late 2022 or early 2023 primarily with Division of Air Quality, re-commenced in October 2025 with various DNREC representatives (during which none of the cited violations were raised). While certain remedial measures (e.g., the East Basin plug and the riser repair) ultimately proved less effective than hoped, that does not diminish their probative value on lack of culpability.

65. In addition, many of the cited incidents were brought to the Department's attention by DRPI: DRPI self-reported the suspected mercury-bearing flooring debris in November 2023 (Order at 26), the July 24, 2025 lithium-ion battery fire (Order at 26), the October 23, 2025 security-camera battery fire (Order at 26), the improperly-sealed East Basin risers (Order at 17, 45), the December 2, 2025 East Basin overtopping event (Order at 18), and the leachate seep incident referenced in Violation 33 (Order at 61 n.5).

66. Many cited conditions, moreover, derive from upstream third-party generators and haulers (concealed lithium-ion batteries in mixed waste, mercury-bearing flooring debris) or from a single equipment defect (the East Basin riser-pipe seal installation), neither of which reflects intentional or reckless conduct warranting heightened culpability weight.

4. Economic benefit or savings (if any) resulting from the violation

67. Without any cost-savings calculation, or supporting analysis, DNREC argues that DRPI incurred an economic benefit from "failing to maintain compliance by not incurring costs associated with cover materials, failing to deploy seeds/nutrients for adequate vegetation growth, and failing to manage contaminated stormwater by an alternative means other than by way of an unpermitted discharge." (Order at 92). Yet DNREC offers no cost-savings calculation or supporting analysis. Any such savings would nevertheless be negligible relative to the sums DRPI

is concurrently expending on the compliance activities the Department has approved (capping construction, basin construction, riser repair, and cover materials). DNREC concedes that economic benefit “was not a factor in compounding the administrative penalty” (id. at 92), but without an articulated penalty-calculation methodology, neither DRPI nor the Board can verify that representation.

5. Such other matters as justice may require

68. The Department’s Actions, including for example, focusing on 44 violations of which many were either incorrect or rectified, do not serve the goals of the Order. *See State of Delaware Dep’t of Nat. Res. & Env’t Control v. McGinnis Auto & Mobile Home Salvage, LLC*, 225 A.3d 1251, 1256 (Del. 2020) (striking part of the Secretary’s order because certain directives were “too attenuated” from the order’s purpose). Properly weighed, the § 6005(b)(3) factors warrant extinguishment of a penalty assessment, or at a minimum a substantial assessment reduction.

f. The Order’s 30/60/90-day directives are unreasonable because the Modified Permit’s immediately-effective requirements place DRPI in technical noncompliance while still within the Order’s own compliance windows.

69. DNREC issued the Modified Permit on April 27, 2026, ordering DRPI to “begin using” it “upon receipt” and declaring it “valid and enforceable upon receipt.” (Order at 84; Modified Permit Cover Ltr. at 2.) Because many of the Modified Permit’s conditions are new and require time to implement, DRPI appears to be placed in technical noncompliance on Day 1—even while still within the Order’s own 30/60/90-day compliance windows. This conflict renders the directives unreasonable, is antithetical to fair notice and is an abuse of discretion.

70. For example, the Secretary’s Order gives DRPI 60 days to rebury waste surfaced on plateaus and slopes, cover certain waste on plateaus and slopes (Order at 88). At the same time,

DNREC's Modified Permit (effective immediately upon receipt) already requires, among other cover requirements, "daily cover over all disposed and exposed solid waste by the end of each working day." (Modified Permit at 29.) If DRPI takes 60 days to complete reburial and recover, it will be in technical violation of Condition III.DD for 59 days.

71. As another example, the Order gives DRPI 90 days to establish temporary vegetation on external slopes and certain areas that have received intermediate cover (Order at 89), but the Modified Permit immediately requires that "[l]ong-term intermediate cover (cover exposed for greater than 30 days) used on the sub-cells prior to final capping . . . be stabilized with vegetation or other erosion control material approved by the Department." (Modified Permit at 37.)

72. Similarly, Order item no. 3 allowed the discharge of contaminated stormwater to the leachate collection system or, through the expiration date of the TDA to April 30, 2026. (Order at 85.) The new permit, though, mandates diversion to the leachate-collection system. (Modified Permit at 20.) It does not appear that an opportunity exists under the Modified Permit to obtain a TDA for secondary discharge.

73. The Order's 30/60/90-day directives cannot be simultaneously satisfied alongside the immediately effective Modified Permit requirements, and DNREC has made no attempt to reconcile the two. DRPI would welcome the opportunity to collaborate with DNREC and reach agreement on timing of DNREC requests/directives and timing of DRPI responses, such that DRPI is afforded the opportunity to comply with DNREC's requests on a timetable that does not conflict with the Permit, Modified Permit, regulations, and now the Order's directives.

g. The Order is improperly bolstered by various administration violations

74. Additionally, several of the Order's 44 counts concern purely administrative items, corrected promptly upon DRPI's discovery and caused no demonstrated environmental harm. DNREC's own Delaware Environmental Navigator database records the September 25, 2025 inspection outcome as "Violation(s) Found—All Immediately Corrected" (a copy of the inspection record is attached as **Exhibit G**), yet the Order characterizes some of those same items as ongoing or unresolved violations.

75. The Landfill maintains the current version of the Solid Waste Permit electronically and has demonstrated compliance; a hard copy of the current May 2022 permit was confirmed in place on October 6, 2025, 11 days after the September 25, 2025, inspection (Violation 7). DRPI corrected the emergency telephone number issue the next day, September 26, 2025, without any DNREC formal notification of a compliance concern (Violation 18). The GP 5-6 monitoring-well locking lid was relocked on September 30, 2025 (Violation 24). As to employee training, DRPI provided information confirming completion of First Aid, CPR, and AED training to DNREC on October 9, 2025 (Violation 19).

76. Further, DNREC never issued a final report from the October 9, 2025, annual inspection, leaving DRPI without formal notice of which items DNREC considered outstanding or deficient.

77. Beginning in October 2025, DRPI hosted monthly update calls with representatives of all DNREC Bureaus, and none of the alleged violations cited in the Order were raised for discussion. DNREC has also maintained a full-time, onsite inspector who raised no concerns regarding the conditions now cited as violations.

78. Now, DNREC alleges that DRPI damaged the landfill liner system on the southern side of Cell 1 during ClosureTurf® preparation and failed to report the damage immediately. (Violations 40 and 41; Order at 74–76.) Damage occurred to the over-run flap during initial sitework for the final cap. The flap is on the outboard side of the anchor trench, and the damage did not compromise the overlay liner system in the area. DRPI notified DNREC of the conditions shortly after the damage was observed. DNREC’s characterization of the October 1, 2025 design-modification request as an “indirect acknowledgment” purport to reflect that DRPI disclosed the relevant facts DNREC in its submission after damage was observed.

79. DNREC alleges that DRPI modified previously approved capping system plans by adding an under-cap gas collection system and implementing it without prior Department approval. (Violation 44; Order at 79–84.) Notably, the under-cap gas collection system was added as an enhancement and secondary control feature to evacuate potential buildup of landfill gas between the intermediate cover and the final cap. The ClosureTurf® system already includes built-in pressure relief controls, and the under-cap system enhanced that system to further improve environmental protection. Personnel changes at DNREC complicated this exchange: prior personnel accepted permit-level drawings for review, while current staff required construction-level drawings. DRPI submitted a revised request on April 9, 2026, which remains under CAPS review as of the date of the Order.

a. The Order is Unduly Burdensome

80. The Order, which can be broken down into three components: (1) the 44 alleged violations and resulting financial penalty; (2) Modified Permit; and (3) 30/60/90-day directives.

81. DNREC claimed that DRPI failed to comply with conditions of Solid Waste Permit SW-15/02 (and the incorporated March 2021 Operations and Maintenance Plan, or “OMP”), the

facility's NPDES Industrial Stormwater General Permit coverage, the October 30, 2025 Temporary NPDES Discharge Authorization, and related provisions of Delaware's Environmental Control Act, (7 Del. C. Chapter 60), the Regulations Governing the Control of Water Pollution (7 Del. Admin. C. § 7201), and the Delaware Sediment and Stormwater Regulations (7 Del. Admin. C. § 5101).

82. Based on the claimed violations, DNREC imposes an administrative penalty totaling \$3,767,488.00 on DRPI—comprised of \$3,311,470.00 attributed to alleged violations of Solid Waste Permit SW-15/02 and \$456,018.00 attributed to alleged violations of the Water Pollution Control Regulations, with the Department's calculations running through February 6, 2026.

83. Finally, DNREC ordered that DRPI comply with 16 directives within 30 days, ranging from producing a full year of landfill gas monitoring records and conforming the facility's OMP to the newly modified permit, to submitting numerous written plans addressing waste handling, leachate and groundwater system maintenance, liner protection, cap components, and other assurances. (Order at 85–88.)

84. Within 60 days, DRPI must rebury surfaced waste, apply at least six inches of cover to waste on plateaus and twelve inches to waste on external slopes, and restore all stormwater management features with confirmatory sediment sampling and a summary report to DNREC. (*Id.* at 88–89.)

85. Within 90 days, DRPI must establish temporary vegetation on external slopes and intermediate cover areas, and submit a workplan (for DNREC approval) to investigate impacts to groundwater, surface water, soil, and natural resources around the East and West Basins. (*Id.* at 89.)

86. Stacked atop a multimillion-dollar penalty and a same-day permit overhaul, these compounding 30, 60, and 90-day mandates impose an unprecedented compliance burden on a single facility within a compressed timeframe that no operator could realistically achieve.

**RESERVATION OF RIGHTS, COUNSEL, AND ESTIMATED WITNESS
NUMBER AND TIME INVOLVED**

87. DRPI reserves the right to assert additional grounds for appeal and reserves the right to amend this Statement of Appeal. Notably, DRPI was afforded only twenty (20) days under applicable rules and regulations in which to file this Appeal. This timeframe is insufficient to fully evaluate the 98 pages of violations as alleged by DNREC in the Order and related 71-page Modified Permit. The scope of alleged noncompliance addressed in the Order span multiple calendar years, and it involves several substantive factual and legal issues. Therefore, DRPI may be required to supplement this Appeal in advance of the Hearing.

88. DRPI has authorized the following attorney to represent it in this matter before the Environmental Appeals Board: Sharon Oras Morgan (Bar ID 4287), Collin Crecco (Bar ID 7502) Fox Rothschild LLP, 1201 North Market Street, Suite 1200, Wilmington, DE 19801

89. Pursuant to 7 Del. Admin. C. § 105(2.2), DRPI currently estimates that presentation of its appeal (along with the appeal of the Modified Permit) will involve 5-6 witnesses and will take between 2 and 3 days, not including any time DNREC needs to have its case heard. Depending on the volume of the entire record before the Secretary, and the parties' ability to narrow issues in advance of hearing, DRPI may be able to reduce these estimates. 7 Del. Admin. C. § 105-3.1.1. Enclosed is the \$50.00 deposit for costs required under 7 Del. Admin. C. § 105-2.3.

CONCLUSION

90. For the foregoing reasons, DNREC's issuance of the Order was improper, without factual or legal basis, was arbitrary and capricious and constitutes an abuse of discretion. DRPI looks forward to presenting its appeal to the Environmental Appeals Board if no resolution with DNREC can be achieved beforehand.

REQUESTED RELIEF

91. For the foregoing reasons, DRPI respectfully requests that the Board, pursuant to 7 Del. C. § 6008(b):

- a. Reverse and vacate the Order as unsupported by law and/or fact and lacking in substantial evidence.
- b. Reverse and vacate the Order's determinations and corresponding penalty assessments as they double-count violations in contravention of 7 Del. C. § 6005(b)(3).
- c. Reverse and vacate the Order's determinations and corresponding penalty assessments as to each violation corrected before issuance of the Order.
- d. Reverse and vacate penalty accrual for the contaminated stormwater counts for lack of fair notice, error in law, and lack of substantial evidence.
- e. Reverse and vacate or remand the derived counts for consolidation as a single per-day violation.
- f. Reverse and vacate the Order's violation findings as they are not supported by law or by substantial evidence on the record.
- g. Reverse and vacate the Order's penalty determinations as they reflect unreasonable consideration of the discretionary factors under 7 Del. C. § 6005(b)(3) and constitute an abuse of discretion.

h. Remand the Order to the Secretary for recalculation of any sustained penalties consistent with the foregoing.

i. Vacate the 30/60/90-day directives improperly issued under § 6005(b)(2) for completed conduct, unreasonable in their compressed timeframe, and/or conflicting with the Modified Permit; and

j. Grant such other and further relief as the Board deems just and proper.

Dated: May 15, 2026

Respectfully submitted,

/s/ Sharon Oras Morgan

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