

**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)**

2. The DRPI Landfill is the only privately owned landfill currently operating in the State of the Delaware.<sup>1</sup> 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

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

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.").

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

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’

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

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

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

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.

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

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.

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

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.

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

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.

**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,

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