BEFORE THE ENVIRONMENTAL APPEALS BOARD
FOR THE STATE OF DELAWARE

In the Matter of	)	
	)	
CONCILIATION ORDER	)	**EAB No. 2025-____________**
BY CONSENT	)	
No. 2025-WH-0009	)	

STATEMENT OF APPEAL BY DONOVAN SALVAGE WORKS, INC.

Donovan Salvage Works, Inc. ("DSW"), by and through its counsel, submits the instant appeal of an action of the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC"). In support of this appeal DSW avers as follows:

I. BACKGROUND

1. This appeal ("Appeal") is taken from issuance by the Secretary, through his counsel, Deputy Attorney General Travis Groski, of a decision by the Secretary (the "Decision") to accelerate a deferred administrative penalty and accelerate remaining Compliance Milestones that were jointly agreed upon in a 2025 Conciliation Order. The undersigned received the Decision in an e-mail, dated June 24, 2026. A copy of the Decision is attached hereto as Exhibit A.

2. Nationwide, over 11 million vehicles reach the end of their useful service lives every year. Approximately 10 million of these end-of-life motor vehicles are dismantled for reuse of parts and scrap material recycling. Scrapping end-of-life motor vehicles is an unavoidably messy business, but yet a vital one.

3. DSW has been in this business for over 40 years. It employs 30 people and scraps approximately 500 motor vehicles a year. DSW has had its run-ins with DNREC over the years, but the vast majority of "violations" asserted by DNREC are administrative

and do not involve any actual impact to the environment. DNREC has singled out DSW for special treatment since 2022, when it shut the business down entirely for over a month causing an extraordinary loss of income.

4. The $1.7 million proposed penalty in DNREC's 2022 administrative order (2022-WH-0021) that followed this shut-down, which again identified mostly administrative violations, was perhaps the biggest ever proposed by DNREC at the time for a small business and was promptly appealed to this Board (EAB Appeal 2022-02). This appeal was resolved before a hearing was convened with the Conciliation Order by Consent - 2025-WH-0009 (the "Conciliation Order"), attached hereto as Exhibit B, that is at the heart of this appeal.

5. This Conciliation Order that was agreed to by both the Secretary and DSW did two important things. First, recognizing the excessiveness of the proposed $1.7 million administrative penalty, the devastating consequences that such a penalty would have on DSW, and the impossibility of DSW both paying a huge penalty up front and incurring the costs of compliance efforts, DNREC agreed to reduce the actual penalty by over 40% (a $700,000 reduction). Further, in the Conciliation Order DNREC deferred and suspended $750,000 of the remaining penalty and required the remaining $250,000 to be paid off over multiple years. Secondly, the Conciliation Order identified 26 compliance objectives (the "Compliance Milestones") and spread these out across a forty-eight-month period such that DSW would have a realistic chance to achieve compliance through operating revenue generated over these years.

6. The compliance actions as proposed by DSW's consultant, Brightfields, are forecast to cost more than $1,000,000 over these four years (DSW has expended almost

$50,0000 just in the last year towards the Compliance Milestones), and long-term groundwater remediation of contaminants, most of which have never been conclusively linked to DSW, will cost millions more.[1] These are costs that DNREC knows DSW can barely afford, even when attenuated over four years.

7. DSW has made diligent efforts to meet the Compliance Milestones since the effective date of the Conciliation Order, but it appears that DNREC was never serious about living up to the spirit of the Conciliation Order. Indeed, DNREC seems to have never been satisfied with the bargain it made with DSW and has conducted a campaign of inspections – three in less than a year – that appear to be intended to manufacture grounds to justify the very action that is being appealed here.

8. Sure enough, in an attempt to crush DSW once and for all, DNREC has issued another administrative order (2026-WH-0013) (the "New Administrative Order") alleging violations based on this campaign of inspections, and is using it to justify the Decision in respect of the Conciliation Order. Again, the violations are mostly administrative in nature and, importantly, the vast majority are noted as "corrected to DNREC's satisfaction."[2] The relative merits of this New Administrative Order and the assessed penalty are the subject of a companion appeal filed contemporaneously herewith.

9. The gravamen of this appeal is DNREC's attempt to use its own New Administrative Order to bootstrap the Decision which asserts that: (i) the suspended and deferred $750,000 penalty in the Conciliation Order is both vacated and accelerated such

[1] The only constituents in groundwater that are very likely sourced to the DSW property are PFAS compounds resulting from the local fire department's application of aqueous film forming foam fire fighting agents in putting out a fire some years ago.

[2] And of those that are not explicitly noted as "corrected," DNREC's basis for considering them uncorrected is its assumption that the allegedly violative activity is "recurring on a daily basis."

that it is due and payable immediately; and (ii) most of the remaining Compliance Milestones in the Conciliation Order, many not due for years, would be accelerated such that most are now due within an impossible 90 days (intentionally setting DSW up for further failure and additional penalties).

10. In accordance with Section 2.3 of the Board's Regulations, a $50 deposit for costs accompanies this Appeal.

II. BASIS FOR APPEAL

A. The Interest Which Has Been Substantially Affected

11. DSW's interests have been substantially affected by the issuance of the Decision because DNREC's attempt to vacate and accelerate a deferred and suspended administrative penalty and to accelerate the remaining Compliance Milestones in the Conciliation Order, are inconsistent with the terms and conditions of the Conciliation Order, they are contrary to law and fact, and otherwise constitute an abuse of discretion for the reasons set forth below.

12. DSW's interests are further substantially affected because the Decision, if upheld, would impose an immediate obligation for DSW to pay a $750,000 penalty and to almost immediately incur Compliance Milestone costs, that together are grossly and unduly burdensome and would very likely drive DSW out of business.

B. Allegation That The Decision Is Improper

13. For the reasons set forth herein, DSW asserts that the Decision is improper because it is inconsistent with the terms and conditions of the Conciliation Order, it is not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion.

C. Reasons Why The Decision Is Improper

14. As described below, the Decision is improper because it is inconsistent with the terms and conditions of the Conciliation Order, it is not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion for several reasons. The absence of a specific refutation of individual allegations should not be construed as an admission by DSW as to any fact or legal conclusion included within the Decision. Instead, except as specifically stated herein, DSW does not admit the allegations and/or legal conclusions contained within the Decision, and DSW expressly reserves all rights and defenses relative to such allegations and/or legal conclusions.

i. The Decision's Attempt to Vacate and Accelerate the Suspended Administrative Penalty Contradicts the Express Terms of the Conciliation Order

15. The Conciliation Order provides the following with respect to the suspended portion of the administrative penalty:

> 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.

Conciliation Order at paragraph 27.b. Nothing in this paragraph, or elsewhere in the Conciliation Order (or otherwise under applicable law) authorizes DNREC to accelerate the "Deferred Administrative Penalty" such that it is due at any time prior to 48 months following receipt of the Conciliation Order, i.e., March 2029.

16. In the Decision, DNREC relies heavily on the phrase "[f]urther, Donovan must not have accrued any additional material violations of law" to support its decision to vacate and accelerate the suspended administrative penalty. As noted, this phrase says nothing about accelerating the due date of the penalty, and the Decision in this regard is arbitrary, capricious and not supported by substantial evidence. To the extent the phrase justifies vacating the penalty upon the 48-month due date, the key requirement is that the violations be "material." As discussed in the companion appeal of the New Administrative Order filed contemporaneously herewith, the violations expressed in the New Administrative Order, many of which are not legitimate, are not *material* because they do not involve any significant impact to the environment and because the overwhelming majority have been "corrected to DNREC's satisfaction."

17. Moreover, had the violations set forth in the New Administrative Order risen to the level of a material breach of the requirement set forth in paragraph 27.b., DNREC was obligated to give DSW notice of material noncompliance of the Conciliation Order under paragraph 28.e. thereof with a 90-day period to cure. Yet, not one of the violations expressed in the New Administrative Order was the subject of a material noncompliance notice. The Secretary's basing of the Decision on allegations of material violations of law when in fact DNREC never sent a notice of material noncompliance or gave DSW its 90 days to cure the material noncompliance, especially given the extreme gravity of the result contemplated by the Secretary in the Decision, is a violation by DNREC of its own commitments in the Conciliation Order and demonstrates that the Decision is contrary to law, arbitrary, capricious, and not supported by substantial evidence.

D. Request for Relief

18. Under 7 *Del. C.* § 6008(b), "the Board may affirm, reverse or remand with instructions any appeal of a case decision of the Secretary." DSW respectfully requests that the Board reverse the Decision, as the Decision is unsupported by substantial evidence, a clear abuse of discretion, and premised entirely on the New Administrative Order that is improper and replete with errors of law and fact.

E. Reservation of Rights, Counsel, and Estimate of the Number of Witnesses and Time for Hearing

19. DSW reserves the right to assert additional grounds for appeal and reserves the right to amend this Statement of Appeal.

20. DSW has authorized the following attorneys to represent it in this matter before the Environmental Appeals Board:

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21. Relative to the hearing of this matter before the Board, DSW estimates that it will call four witnesses and that the presentation of its testimony and other evidence will require one to two days of hearing, not including any time DNREC needs to have its case heard. Furthermore, DSW anticipates that this Appeal can (and should) be consolidated with its Appeal of the Secretary's Order 2026-WH-0013, which involves the same witnesses and overlapping issues.

Dated: July 13, 2026

Respectfully Submitted,

/s/Michael W Teichman

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