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 No. 2026-WH-0032

RESPONDENTS' NOTICE AND STATEMENT OF APPEAL TO ENVIRONMENTAL APPEALS BOARD
(SECRETARY'S ORDER NO. 2026-WH-0032)

Jemal's 700 Middletown, LLC ("Jemal's") and Construction Services Group, LLC ("CSG," and together with Jemal's, "Appellants"), through their counsel, appeal the Secretary's October 4, 2026 Notice of Administrative Penalty Assessment and Secretary's Order No. 2026-WH-0032 (the "Order," attached as **Exhibit 1**). The Order assesses a $124,480.00 administrative penalty under 7 Del. C. § 6005(b)(3) and $4,065.00 in cost recovery under 7 Del. C. § 6005(c). (Ex. 1, Order at 16, 18–19.) Appellants appeal the penalty, the findings that support it, and the cost recovery demand.

INTRODUCTION

1. This appeal asks whether DNREC may reasonably impose a six-figure penalty for largely administrative paperwork violations that involved no release, caused no environmental harm, and were not caused by "cost-saving" measures, on parties cleaning up the prior owner's contamination and putting a contaminated property to beneficial use in Delaware. Over four years ago, Jemal's bought the former lead-acid battery plant at 700 North Broad Street (the "Facility")

from Clarios, LLC. Jemal's believed it was buying a clean property. It was not. Appellants have spent years remediating what Clarios and its predecessors left behind. Neither Jemal's nor CSG have at any time operated a battery plant. They are in the business of property development and management—not battery manufacturing. This property has been repositioned to low-intensity commercial storage and logistical distribution use. When DNREC issued the Order, Appellants were mid-cleanup. Even on DNREC's terms, Appellants corrected every alleged violation, and DNREC confirmed it held all compliance documentation by August 9, 2026. The alleged violations, predominantly administrative, resulted in no spill, no release, and no environmental harm. A $124,480 penalty on these facts is unreasonable and punitive. The Board should vacate the penalty or, alternatively, substantially reduce it.

BACKGROUND

2. Jemal's began decontaminating the Facility in early 2024 with licensed contractors, including CSG. DNREC's Order describes a former battery plant that Respondents "are decontaminating in preparation for commercial leasing." (Ex. 1, Order at 2.)

3. DNREC inspected the Facility on April 8, 2026, and cited eight violations of the Delaware Regulations Governing Hazardous Waste, 7 Del. Admin. C. § 1302 ("DRGHW"). (Ex. 1, Order at 2.) The inspection was a routine, unannounced inspection that DNREC's Compliance and Permitting Section conducts at large quantity generators every three to five years. The Facility was notified as a large quantity generator because of the volume of hazardous lead waste being remediated.

4. On May 20, 2026, DNREC issued Notice of Violation 26-HW-09 (the "NOV") and set a June 22, 2026 deadline to document correction. (Ex. 1, Order at 3.)

5. Appellants opened a dialogue with DNREC in April 2026 which thereafter continued consistently to address all of DNREC's concerns. Following the inspection, DNREC issued a nine-item records request, and Appellants exchanged information with DNREC through May 7, 2026; on May 8, DNREC acknowledged the last submission without raising any further concern. Appellants delivered documents on April 21 and April 29, 2026, and answered each DNREC request. The parties met by phone on July 9, 2026, to review each open item. On August 11, 2026, DNREC closed the last item. CSG understood that from DNREC's perspective, nothing remained outstanding. Eight weeks later, DNREC demanded $124,480 to be paid within thirty days.

6. Appellants resolved every alleged violation. They documented three corrections on June 20, 2026, and a fourth on June 22—each by DNREC's deadline. (Ex. 1, Order at 3.) They documented the other four on July 10, July 14, August 7, and August 9, 2026. (*Id.*) DNREC accepted each one "to the Department's satisfaction." (Ex. 1, Order at 5–11, 13.) On October 9, 2026, DNREC staff confirmed that "[a]s of 8/9/2026, all documentation demonstrating compliance with the violations cited in NOV 26-HW-09 was received."

7. The Secretary issued the Order on October 4, 2026. Jemal's registered agent, Corporation Service Company, received it by personal service on October 5.

BASIS FOR APPEAL

I. Timeliness

8. Section 6008 allows an appeal within twenty days of receipt. 7 Del. C. § 6008(a). Appellants received the Order on October 5, 2026, and file this appeal on October 23, 2026. This appeal is timely.

II. The Interest Substantially Affected

9. Under 7 Del. Admin. C. § 105-2.1.1, the Order substantially affects Appellants' interests. It finds Appellants in violation of eight DRGHW provisions, demands $124,480.00 in penalties and $4,065.00 in costs, and states that it "affects Respondents' legal rights." (Ex. 1, Order at 16, 18–19.)

III. The Decision Is Improper

10. Under 7 Del. Admin. C. §§ 105-2.1.2 and 105-2.1.3, the Order is improper. The Board reviews DNREC decisions "to determine whether they are supported by the evidence, free of legal error, and do not abuse discretion." *Delaware Solid Waste Auth. v. Delaware Dep't of Nat. Res. & Env't Control*, 250 A.3d 94, 118 (Del. 2021).

IV. Reasons Why the Decision Is Improper

11. Except as stated here, Appellants do not admit any allegation or legal conclusion in the Order. Silence on any point is not an admission. Appellants reserve all rights and defenses.

a. The record does not support the weight that DNREC gave each alleged violation.

Violation 1: Manifest Accuracy, DRGHW § 262.20(a)(1) (Ex. 1, Order at 3–5)

12. DNREC alleges that two manifests omitted the lead and chromium waste codes. (Ex. 1, Order at 3–4.) The waste moved under manifests, to a permitted facility, and DNREC identifies no mishandling, release, or harm. The NOV itself acknowledged that the designated facility uploaded the D008 lead code for Manifest 014799678JJK to EPA's e-Manifest system. Manifest 014799678JJK came from the hauler ECS arranged, and Appellants corrected every manifest that followed.

13. DNREC accepted the corrections and requires no further action. (Ex. 1, Order at 5.) At bottom, this is a paperwork error with no release and no harm.

Violation 2: LDR Notification, DRGHW § 268.7(a)(2), (4) (Ex. 1, Order at 5–6)

14. DNREC alleges that the April 2026 LDR notification for the sulfuric acid waste omitted the lead code. (Ex. 1, Order at 5–6.) Certain waste was mislabeled. That said, the waste reached the disposal facility under manifest, and DNREC identifies no mistreatment, release, or harm. The NOV itself confirms that the site's analytical records correctly characterized the sulfuric acid waste as corrosive and toxic for lead and chromium, and that the waste was "ultimately managed correctly."

15. CSG's contractor, Bristol Environmental, contacted the disposal facility and the hauler, and they corrected the LDR to reflect the correct information on July 14, 2026.

16. DNREC required no further action. (Ex. 1, Order at 6.)

17. This count rests on the same sulfuric acid waste and the same Manifest 010128275JJK that drive Violation 1. DNREC consequently charged one characterization issue twice.

Violation 3: Contingency Plan Distribution, DRGHW § 262.262(a) (Ex. 1, Order at 7)

18. Violations 3, 4, and 5 all target one document. (Ex. 1, Order at 7–9.) DNREC split one contingency plan, already present onsite, into three penalties.

19. First, Violation 3 faults Appellants for not giving the contingency plan to local emergency responders. The plan sat onsite, and in every pre-project meeting with DNREC, no one raised responder distribution as a requirement. Even before the NOV's issuance, Appellants notified local police that the project was starting.

20. When the NOV flagged the requirement, Appellants emailed the plan to the hospital, the police, and the fire company.

21. DNREC then required certified mail. Appellants complied. But their team held distribution until DNREC accepted the revised plan.

22. CSG promptly mailed the plan and quick reference guide to all three responders: the fire department and hospital received it on July 23, and the police on July 24. Every responder held the plan two weeks before the date the Order credits.

23. Appellants submitted proof of receipt on August 7, 2026. (Ex. 1, Order at 7.) That day, DNREC confirmed it had updated its records to reflect the submittal of the contingency plan and quick reference guide to local emergency responders.

Violation 4: Contingency Plan Content, DRGHW § 262.261 (Ex. 1, Order at 7–8)

24. Violation 4 addresses the contingency plan's content.

25. Appellants gave DNREC the plan on April 29, 2026. (Ex. 1, Order at 8.) Bristol Environmental added explosion response and a list of emergency equipment onsite on June 1—three weeks before DNREC's deadline.

26. Appellants filed a revision with the emergency equipment list on July 10, 2026, and DNREC accepted it. (Ex. 1, Order at 8.)

Violation 5: Contingency Plan's Quick Reference Guide, DRGHW § 262.262(b)(7) (Ex. 1, Order at 8–9)

27. Violation 5 addresses the Facility's contingency plan quick reference guide, alleging that it missed a single section. Specifically, Appellants delivered the guide to DNREC on April 21, 2026. (Ex. 1, Order at 9.) It omitted one element—on-site notification systems. (*Id.*)

28. Appellants cured the gap on June 20, by DNREC's deadline, and DNREC confirmed the update "met all regulatory requirements." (*Id.*)

29. A timely cured, one-element omission does not deserve a third penalty on the same plan.

Violation 6: Personnel Training Records, DRGHW § 262.17(a)(7)(i)(A) (Ex. 1, Order at 9–10)

30. The Order faults Appellants for failing "to provide records demonstrating" training. (Ex. 1, Order at 10.)

31. Appellants' team sent updated training records on July 5, 2026—five weeks before the date the Order credits.

32. Bristol and CSG barred each untrained worker from hazardous waste duties (signed manifests) on July 9 and July 11, and posted the bar at the jobsite by July 13.

33. By August 7, 2026, DNREC narrowed this item to written confirmation that four individuals would no longer perform hazardous waste duties, and advised that an email confirming this would suffice. Appellants transmitted that confirmation on August 9, 2026.

34. DNREC makes this count its only economic-benefit finding without justification. (Ex. 1, Order at 15.)

Violation 7: Weekly Inspection Records, DRGHW § 262.17(a)(1)(vi) (Ex. 1, Order at 10–11)

35. DNREC found two missing weekly records for the site's hazardous waste central accumulation area. (Ex. 1, Order at 11.)

36. Bristol Environmental conducted the underlying inspections, however, the April 27, 2025 form failed to scan, and Bristol forwarded it to DNREC. The December 21, 2025 inspection slipped because the jobsite closed for the holiday, which Bristol explained to DNREC.

37. The Order finds no leaking or deteriorated container. Appellants cured this item on June 20, 2026, by DNREC's deadline. (Ex. 1, Order at 11.)

Violation 8: 90-Day Accumulation and Storage Without a Permit, DRGHW §§ 262.17(a), 122.1(c) (Ex. 1, Order at 12–13)

38. Lastly, Violation 8 alleges that remediation waste stayed onsite past the 90-day accumulation limit. (Ex. 1, Order at 12–13.) True, the waste sat in closed containers awaiting shipment from an active cleanup, and it left the site under manifest for permitted disposal.

39. DNREC inferred the 117-day figure by matching containers on a November 20, 2025 inspection record to a March 17, 2026 manifest. (Ex. 1, Order at 12–13.) DNREC then converted an accumulation-time lapse into "operating a hazardous waste storage facility" without a permit. (Ex. 1, Order at 13.)

40. That reclassification inflates a slight scheduling lapse at a cleanup site into an unpermitted storage facility violation. To be clear, no container leaked, no waste escaped, and Appellants cured this item on June 20, 2026, by DNREC's deadline; DNREC accepted the cure. (*Id.*)

b. The $124,480 penalty is unreasonable under 7 Del. C. § 6005(b)(3).

41. The Secretary "shall" weigh several factors: (1) the violation's nature, circumstances, extent, and gravity; (2) respondents' ability to pay; (3) respondents' prior violation history; (4) degree of culpability; (5) any economic benefit or savings resulting from the violation; and (6) "such other matters as justice may require." 7 Del. C. § 6005(b)(3).

42. The Order recites the factors but applies them in conclusory terms, imposing a penalty by default rather than weighing the factors under the statute. That is legal error and an abuse of discretion.

Nature, circumstances, extent, and gravity: DNREC penalized a remediation project as if it were an operating production facility, elevating Appellants' cured administrative lapses into major offenses.

43. In conclusory fashion, the Order simply recites the eight alleged violations and labels them "significant" under this factor. (Ex. 1, Order at 14–15.)

44. Appellants are not production generators. They remediated conditions created by predecessor owners. And the workers DNREC cited for missing training records in Violation 6 belonged to crews from Bristol Environmental and CSG—not to any production workforce.

45. Yet DNREC applied a framework built for operating facilities. The statute directs the Secretary to weigh the violation's "nature" and "circumstances"; removing legacy contamination is the circumstance that matters most, and the Secretary's factor balancing ignores it.

46. All but one alleged violation concern administrative or procedural duties: manifest codes, an LDR form, a contingency plan, a guide, training records, and inspection logs. While Violation 8 was not administrative, no container leaked and DNREC accepted Appellants' written commitment as full cure.

47. No spill, release, or environmental harm occurred, and the Order identifies none.

48. DNREC also counted one waste stream twice (Violations 1 and 2) and one plan three times (Violations 3, 4, and 5). Each stacked count adds to the penalty, but none reflects any additional risk to human health or the environment.

49. Moreover, DNREC ignores Appellants' prompt and complete cure, which should bear on both gravity and justice. DNREC accepted every correction "to the Department's satisfaction." (Ex. 1, Order at 5–11, 13.)

Prior history and ability to pay: both favor Appellants.

50. The Order concedes that prior history "was not a factor." (Ex. 1, Order at 15.) Neither Jemal's nor CSG has any prior DRGHW violations, and a clean record should mitigate the penalty.

51. The Order's weighing of the ability-to-pay factor relies on the record's silence. (*Id.*) Silence is not a finding, and a statutory factor that DNREC never examined should not support a six-figure penalty.

52. Neither factor justifies a penalty of this size.

Culpability and good faith: Appellants acted as responsible parties.

53. The Order calls Appellants' culpability "significant" because "reasonable oversight measures" would have prevented the violations. (Ex. 1, Order at 15.) That reasoning rests on nothing more than the fact that the violations occurred.

54. Culpability measures mental state: intent, recklessness, or knowing disregard. The Order finds none of them, so it reads culpability out of the statute and turns every violation into a "significant" one.

55. Appellants did exercise oversight. They hired Bristol Environmental, a professional remediation firm, to write and run the Facility's emergency plan. They answered DNREC's requests, kept an email dialogue open from April 2026 forward, and met with DNREC by phone on July 9 to review each open item. They cured four violations by DNREC's deadline and the rest

by August 9, 2026. (Ex. 1, Order at 3.) The Order gives no credit to Appellants' good faith and lack of culpability.

Economic benefit: DNREC guesses that Appellants saved on training costs.

56. The Order speculates about one economic benefit (avoided training costs). (Ex. 1, Order at 15.) To be clear, the underlying violation rests on missing records—not missing training. (Ex. 1, Order at 10.) Workers were trained, and untrained workers were precluded from hazardous waste duties by July 13. Nothing about this property represents a cost-saving measure to any of the Appellants.

Justice: the penalty punishes remediating parties.

57. The Order claims the penalty will "deter Respondents, and those similarly situated." (Ex. 1, Order at 15.)

58. Jemal's bought a contaminated site, and Appellants cleaned it and corrected every item DNREC raised. Those "similarly situated" are the owners and contractors Delaware wants redeveloping legacy industrial sites. A six-figure penalty deters cleanup—not violations. That result contradicts Delaware's policy of restoring contaminated land to productive use.

59. The Order's penalty calculation is also unknown. The Order states a "multi-day administrative penalty of $124,480.00." (Ex. 1, Order at 16.) It identifies no number of days, no per-violation amount, no gravity tier, and no adjustment for cure, good faith, or history.

60. Without a transparent calculation, neither Appellants nor the Board can test the penalty against the statute. It remains an unsubstantiated demand.

c. Cost Recovery

61. The Order states that DNREC will rescind its $4,065.00 billing upon appeal and issue a new billing later. (Ex. 1, Order at 19.) Jemal's reserves every right to challenge any billing under 7 Del. C. § 6005(c)(2).

RESERVATION OF RIGHTS AND COUNSEL

62. Appellants reserve the right to assert additional grounds and to amend this Statement of Appeal. Appellants have not received DNREC's penalty calculation or full record. They may need to supplement this appeal before hearing.

63. Appellants have authorized the following attorneys to represent them before the Environmental Appeals Board: Sharon Oras Morgan (Bar ID 4287) and Collin M. Crecco (Bar ID 7502).

ESTIMATED WITNESS NUMBER AND TIME INVOLVED

64. Under 7 Del. Admin. C. § 105-2.2, Appellants estimate that presenting their appeal will involve 3–5 witnesses and take one day, not including DNREC's case.

65. Appellants enclose the $50.00 deposit for costs required under 7 Del. Admin. C. § 105-2.3.

CONCLUSION

66. DNREC unfairly and unreasonably penalized remediating parties. It stacked administrative lapses into eight counts, ignored complete cure, and demanded $124,480. The Order lacks evidentiary support, rests on legal error, and abuses DNREC's discretion. Penalties exist to deter polluters—not to punish the parties voluntarily remediating them.

67. Condoning DNREC's heavy-handed enforcement here would discourage the very redevelopment of contaminated sites that Delaware law is meant to encourage.

68. Appellants welcome resolution with DNREC before hearing. Absent resolution, Appellants will proceed with presenting their appeal to the Board.

REQUESTED RELIEF

69. Appellants ask the Board, under 7 Del. C. § 6008(b), to:

i. Reverse the $124,480.00 administrative penalty in its entirety;

ii. In the alternative, reduce the penalty to an amount proportionate to the violations' nature, gravity, and complete cure, or remand to the Secretary with direction to recalculate the penalty under 7 Del. C. § 6005(b)(3) and disclose the calculation; and

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

Dated: October 22, 2026

Respectfully submitted,

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