



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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SECRETARY'S ORDER TO CEASE AND DESIST

Pursuant to 7 *Del. C.* § 6018

Order No. 2022-WH-0004

*Via Personal Service*¹:

Facility Operator

Donovan Salvage Works, Inc.
20262 Donovans Road
Georgetown, DE 19947
Attn: Derek Stickler

*Via Personal Service*¹:

Property Owner

Herbert Holdings, LLC
P.O. Box 30
Georgetown, DE, 19947
Attn: Michael Herbert, President

*Via Personal Service*¹:

Facility Operator Registered Agent

Michael Herbert
P.O. Box 30
20262 Donovans Road
Georgetown, DE 19947

*Via Personal Service*¹:

Property Owner Registered Agent

Harvard Business Services, Inc.
16192 Coastal Highway
Lewes, DE 19958

This is to notify Donovan Salvage Works, Inc. facility operator, and Herbert Holdings, LLC, property owner, collectively referred to as “Respondents” or “Donovan” that the Secretary of the Delaware Department of Natural Resources and Environmental Control (“Department”) has found Respondents in violation of 7 *Del. C.* Chapters 60 and 63 and 7 *Del. Admin. C.* §1102, *Permits*, 7 *Del. Admin. C.* §1301, Delaware’s *Regulations Governing Solid Waste* (“DRGSW”), 7 *Del. Admin. C.* §1302, Delaware’s *Regulations Governing Hazardous Waste* (“DRGHW”), and 7 *Del. Admin. C.* §7201, Delaware’s *Regulations Governing the Control of Water Pollution*

¹ All service made in person was effected by a DNREC Environmental Crimes Unit Officer.

(“DRGCWP”). Accordingly, the Department is issuing this Secretary’s Order to Cease and Desist, pursuant to 7 *Del. C.* §6018.

BACKGROUND

1. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of the improper, inadequate, or unsound management of solid and hazardous wastes, by establishing a program of regulation over the storage, transportation, handling, and disposal of solid and hazardous wastes, and to assure the safe and adequate management of solid and hazardous wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapters 60 and 63.
2. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of impacts from emissions, by establishing a program of regulation over air emissions within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.
3. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from stormwater discharges and process wastewater discharges from industrial facilities, by establishing a program of regulation over stormwater and process wastewater discharges within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.
4. On April 13, 2022, the Department completed a multi-media compliance inspection of the facility on the 20262 Donovans Road, Georgetown, Delaware property to determine if Respondents were in compliance with 7 *Del. C.* Chapters 60 and 63 and 7 *Del. Admin. C.* §1102, *Permits*, 7 *Del. Admin. C.* §1301, DRGSW, 7 *Del. Admin. C.* §1302, DRGHW, and 7 *Del. Admin. C.* §7201, DRGCWP.

APPLICABLE REGULATORY CITATIONS

1. Section 3 of DRGSW, specifically the definition of “Disposal” states in part:
... means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or upon any land or water.

2. Section 3 of DRGSW, specifically the definition of “Solid Waste” states in part:
... means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, ...

3. Section 3 of DRGSW, specifically the definition of “Refuse” states in part:
...means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, scrap tire(s), offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

4. Section 3 of DRGSW, specifically the definition of “Landfill” states in part:
...means a natural topographic depression and/or man-made excavation and/or diked area, formed primarily of earthen materials, which has been lined with man-made and/or natural materials or remains unlined and which is designed to hold an accumulation of solid wastes.

5. Section 3 of DRGSW, specifically the definition of “Facility” states in part:
...means all contiguous land, structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations thereof).

6. Section 122.2 of DRGHW, specifically the definition of “Disposal” states in part:
...means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

7. Section 273.9 of DRGHW, specifically the definition of “Lamp” states in part:

*...also referred to as ‘**universal waste lamp**’ is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps*

8. Section 273.9 of DRGHW, specifically the definition of “Battery” states in part:

...means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

9. Section 273.1 of DRGHW, specifically the definition of “Tank” states in part:

...means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

FINDINGS

Upon the Department's information and belief, the Department has concluded Respondents are in violation of 7 Del. C. Chapters 60 and 63 and 7 Del. Admin. C. §1102, *Permits*, 7 Del. Admin. C. §1301, DRGSW, 7 Del. Admin. C. §1302, DRGHW, and 7 Del. Admin. C. §7201, DRGCWP, including, but not limited to:

1. Section 6003(a)(4) of Title 7:

(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity:

(4) In a way which may cause or contribute to the collection, transportation, storage, processing, or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes...

DRGSW Section 4.1.1:

No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under subsection 2.3, without first having obtained a permit from the Department.

During the April 13, 2022 site visit, Department representatives observed various piles and berms that contained solid waste including, but not limited to, the following:

- a) Waste pile #1 was mostly comprised of scrap tires, plastic, carpet, metal, textile fabric, and soil. This disposal pile measured approximately 125 feet in circumference with a peak height of 10 feet and was located adjacent to the southwest corner of the smelter building.
- b) Waste pile #2 was mostly comprised of what appeared to be contaminated soil commingled with plastic, vehicle parts, textile fabric, milled dimensional lumber, cars, appliances, and outdoor furniture. This disposal pile measured approximately 300 feet in circumference with an average height of five (5) feet and was located adjacent to, and on, the concrete pad.
- c) Waste pile #3 was mostly comprised of soil commingled with vehicle parts and remnants. This disposal pile measured approximately 100 feet in circumference

with a peak height of eight (8) feet and was located behind the northeast corner of the metal shed adjacent to the smelter building.

- d) Waste pile #4 was mostly comprised of soil commingled with vehicle parts, plastic remnants, glass, and textile fabric. The footprint of this disposal pile measured approximately 262 feet with a peak height of 12 feet and an average height of five (5) feet. Waste pile #4 was located approximately 100 feet north of waste pile #3 and extended right up to the northern salvage yard/forest interface.
- e) Waste pile #5 was mostly comprised of soil commingled with plywood scraps, plastic grating, insulation, vehicle parts, milled dimensional lumber, and textile fabric. The footprint of this disposal pile measured approximately 225 feet with a peak height of 11 feet and was located approximately 50 feet east of pile #4.
- f) Waste pile #6 was mostly comprised of construction and demolition-like debris (C&D debris) which appeared to be remnants from RV dismantling operations. This disposal pile was comprised mostly of plywood scraps, milled dimensional lumber, insulation, metal, plastic sheeting, fiberglass boats, and wall paneling. This pile measured approximately 312 feet in circumference with a peak height of 12 feet and was located approximately 150 feet east/northeast of pile #5.
- g) Waste pile #7 contained various C&D-like debris, most of which appeared to be remnants from railcar dismantling operations. This disposal area was mostly comprised of railcar parts and pieces, including but not limited to, railcar seats, insulation, railcar frames, plywood scraps, and exterior metal paneling. The footprint of this discharge pile measured approximately 400 feet and was located approximately 50 feet east of pile #6. Located directly east of waste pile #7, two (2) assembled railcars were observed each measuring approximately 80 feet long and 10 feet wide.
- h) Waste berm #1 was mostly comprised of soil commingled with remnants of plastic, textile fabric, metal, tires, concrete block, and vehicle parts. This waste berm

measured approximately 250 feet long with an average height of four (4) feet and was located at the salvage yard/forest interface, north of waste piles #6 and #7.

- i) Waste pile #8 contained multiple heaps of soil commingled with vehicle parts, textile fabric, garbage bags, tires, milled dimensional lumber, and plastic. The footprint of this disposal pile measured approximately 135 feet with an average height of four (4) feet and was located approximately 150 feet southeast of waste pile #7 at the salvage yard/forest interface.
- j) Waste berm #2 was mostly comprised of soil commingled with remnants of insulation, plastic, textile fabric, metal, and vehicle parts. This waste berm measured approximately 62 feet long with an average height of four (4) feet and was located at the salvage yard/forest interface, east of waste pile #8.
- k) Waste pile #9 appeared to exclusively consist of an entangled mass of wiring. This disposal pile was approximately 10 feet in diameter with a peak height of five (5) feet and was partially submerged in water. Waste pile #9 was located just beyond the eastern-most region of the salvage yard extending into the forested/wetland area.
- l) Waste berm #3 was mostly comprised of soil commingled with tires, concrete, brick, concrete block, textile fabric, metal, cable, ABS pipe, and vehicle parts. This waste berm measured approximately 200 feet long with an average height of two (2) feet and was located at the northeast salvage yard/forest interface.
- m) Waste pile #10 was a shallow pile of C&D-like debris mostly comprised of remnants of plastic, insulation, plywood, milled dimensional lumber, metal, vehicle parts, and tires. The footprint of this discharge pile measured approximately 312 feet with an average height of eight (8) to 12 inches and was located approximately 100 feet south of waste pile #6.
- n) Waste pile #11 was mostly comprised of soil commingled with plastic grating, plastic bags, carpet, fragments of milled dimensional lumber, insulation, carpet, and tires. The footprint of this disposal pile measured approximately 200 feet with an

average height of 2 feet and was located approximately 75 feet east of the concrete pad at the southern salvage yard/forest interface.

2. Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition A.4:

At no time shall the volume of tires stored in the scrap tire management facility exceed 901 square feet by 10 feet high.

During the April 13, 2022 site visit, Department representatives observed Donovan's designated scrap tire facility and it exceeded 901 square feet by 10 feet high. Within the designated facility there were tire shreds, quartered tires, and whole and blown out tires that comprised of car passenger tires, tractor trailer tires, and off-the-road (OTR) tires. At the time of the inspection, scrap tires were observed to be actively added to the scrap tire facility by heavy equipment in violation of Secretary's Order to Cease and Desist, Order No. 2022-WH-0002, dated March 23, 2022.

3. Scrap Tire Facility Permit, DE-ST-000128-01, II. Operations, Condition C.2:

No scrap tires shall be stored outside of the scrap tire facility unless enclosed by a building.

During the April 13, 2022 site visit, Department representatives observed that Donovan's had scrap tires stored in eight (8) additional outdoor locations other than its designated Group 2 Scrap Tire Facility. The areas observed were:

- a) **Area 1** - This area is located outside next to the Smelter structure. There were approximately nine (9) large OTR tires with rims that had cut treads, vegetation growing through the rim, and metal sticking out of the tread and sidewall. There were also ten (10) tractor trailer tires on rims that had dry rot and tread separating from the sidewall. In addition, there was a pile of solid waste located adjacent to the scrap tires that had car passenger tires mixed in with the rest of the solid waste.
- b) **Area 2** - This area is located inside of the smelter structure. There were 34 tires located in this area. It's comprised of new, used and scrap tires. Department representatives inspected the tires are two (2) tires were identified as scrap tires.

There were also car passenger tires on rims located towards the back of the structure that had rims on them and did not meet the definition of a scrap tire.

- c) **Area 3** - The piles below are both in the crushing area on the property. There was a grey 30–40-yard roll-off that contained cut tires inside the roll-off and on the sides of the roll-off on the ground.

In addition, there was another pile of cut tires that were comprised of tractor trailer tires, car passenger tires and OTR tires. These tires were located on the ground. There was a rusted black dumpster that was empty located directly behind the pile .

- d) **Area 4** - This area is located adjacent from the concrete pad. This pile contained approximately one-hundred and seventy-five (175) scrap tires. Most of the scrap tires in this area had rims remaining on them. The tires had cuts, nicks, bulges, and blown out tires.
- e) **Area 5** - This area is located next to solid waste pile number 4. It contained seven (7) scrap tires. Of the seven (7) tires, six (6) of the scrap tires were on rims. The tires had worn tread, nicks, cuts, bulges.
- f) **Area 6** - This area is located near solid waste pile number six (6). This pile was comprised of approximately forty (40) tractor trailer tires, ten (10) car passenger tires, and one (1) OTR tire. The tires had nicks, cuts, and some were blown out.
- g) **Area 7** - This area is located next to the deconstructed Amtrak railcar debris. There are OTR tires, tractor trailer tires, and car passenger tires. The tires in this area had the rims removed and they were cut.
- h) **Area 8** - This area is located at the back of the property in the woods and marshy area. There were tires that were partially buried, tires laying in water, on the banks of the water and in various piles in the wooded area.

4. Scrap Tire Facility Permit, DE-ST-000128-01, II. III. Reporting, Condition C:

The owner/operator shall report any instance of noncompliance with this permit to the CAPS [means Compliance and Permitting Section] within seven (7) calendar days of its discovery. The owner/operator shall take immediate action to correct the noncompliance

or notify the Department pursuant to Section V of this permit, of its intent to close the scrap tire facility.

Donovan's failed to maintain compliance with the identified permit conditions above (Findings # 2 and #3). It also failed to report the noncompliance to the Department within seven (7) days or take immediate action to correct the noncompliance. Failing to report and remedy the noncompliance is a violation of Donovan's Scrap Tire Facility Permit, DE-ST-000128-01, III. Reporting, Condition C.

5. DRGCWP Section 9.1.5.7.4.2, Comprehensive Site Evaluations:

Persons subject to this Part shall conduct comprehensive site evaluations. The comprehensive site evaluations shall be used to assess the effectiveness of the current SWP [means Stormwater Plan].

To date, no evidence has been provided to the Department that indicates Donovan's has been performing the required Comprehensive Site Evaluations.

6. DRGCWP Section 9.1.5.7.6, Training:

Facility employees and contractor personnel that work in areas where Industrial Materials are used or stored shall be appropriately trained to meet the requirements of the SWP. Employee training shall be conducted and documented not less than once per year.

To date, no evidence has been provided to the Department that indicates Donovan's has been performing the required annual training on the Facility's Stormwater Plan.

7. DRGCWP Section 9.1.4.3.1, Quarterly Visual Monitoring:

All facilities required to monitor storm water discharges, must perform and document quarterly visual examinations of storm water discharges associated with industrial activities from each storm water outfall.

To date, no evidence has been provided to the Department that indicates Donovan's has been performing the required quarterly visual monitoring inspections.

8. DRGCWP Section 9.1.4.4.1.6, Benchmark Monitoring:

In the event that analytical results exceed Benchmark Monitoring Concentration values or Numeric Effluent Limitations, the facility shall investigate the cause for such exceedance and the results of this investigation shall be documented. The results of the investigation shall identify potential sources of pollution, additional Best Management

Practices (BMPs) necessary, revisions to the Industrial Material Management Section of the SWP, or identify other areas of the SWP that may require revision in order to meet the goal of the Benchmark Monitoring Concentration values.

During the March 3, 2020 inspection records review, there was no documentation that Donovan's was investigating repeated benchmark monitoring exceedances and documenting any improvement made to best management practices to prevent future exceedances. To date, no evidence has been provided to the Department that indicates Donovan's has conducted the required investigation and implemented corrective actions and/or additional BMPs to reduce metal pollution in runoff. Additionally, during the April 13, 2022 site visit, no analytical monitoring data was available.

9. DRGCWP Section 9.1.5.7.3.1, Good Housekeeping Practices:

The SWP shall identify the practices/programs used to define the ongoing maintenance and clean-up, as appropriate, of areas which may contribute pollutants to storm water discharges.

During the March 3, 2020 inspection and the April 13, 2022 site visit, there was significant evidence that Donovan's is not conducting good housekeeping practices. There were spills and leaks of petroleum products and industrial materials observed throughout the site. Additionally, trash and debris are pervasive throughout the facility. To date, no evidence has been provided that Donovan's has been conducting good housekeeping practices

10. DRGCWP Section 9.1.5.7.3.3, Spill Prevention and Response Measures:

The SWP must describe the procedures that will be followed for cleaning up spills or leaks. The procedures and necessary spill response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves) that are intended to minimize spills or leaks at the facility. If applicable, the spill response plan shall address prevention and minimization of releases of oil and hazardous material into the storm water system.

During the March 3, 2020 inspection and the April 13, 2022 site visit, there was significant evidence that Donovan's has failed to follow the spill prevention and response measures in their Stormwater Plan. The evidence of spills was pervasive across the site, and there were not enough adequate spill kits on site to address potential releases. To date, no

evidence has been provided to the Department that indicates Donovan's has adequate spill kits on site and is managing spills in accordance with their approved SWP.

11. DRGCWP Section 9.1.5.7.3.5, Erosion Control Practices:

All facilities must evaluate the risk of soil erosion on their site that could contaminate storm water. At a minimum, the SWP must include a narrative that describes whether there is reasonable potential for soil erosion of a significant amount at the site. Where reasonable potential exists, the permittee must include BMPs to prevent or minimize the potential for soil erosion onsite.

During the March 3, 2020 inspection and the April 13, 2022 site visit, Donovan's had multiple areas where erosion was occurring and was not being addressed. To date, no evidence has been provided to the Department that indicates Donovan's has corrected the observed erosion issues.

12. DRGCWP Section 9.1.6, Outfall Identification:

All persons conducting industrial activities identified in §9.1.1.3.1.2. with discharges that flow through a regulated outfall, shall identify each storm water outfall covered under this Subsection with a legible outfall tag or stencil. The mechanism for identification should be attached to an outfall pipe, stenciled on an outfall pipe, or posted in close proximity of the outfall area. The identification shall indicate the designated outfall number.

During the March 3, 2020 inspection and April 13, 2022 site visit, the Department inspectors observed multiple outfalls at the facility that were not identified, labeled, and that are not being monitored. This was noted as a violation during the 2016 inspection. To date, no evidence has been provided that Donovan's has properly labeled or monitored the additional outfalls identified during the March 3, 2020 and April 13, 2022 inspections.

13. DRGCWP Section 9.1.5.7.3.4, Minimizing Exposure:

Where practicable, industrial materials and activities should be protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt or runoff.

During the March 3, 2020 inspection and April 13, 2022 site visit, the Department inspectors observed that Donovan's is failing to minimize exposure of industrial materials to stormwater. Vehicles and other parts are being dismantled throughout the site causing spills and leaks. Additionally, there is trash throughout the site and no plan in place to mitigate it.

To date, no evidence has been provided to the Department that indicates Donovan's has taken measures to minimize exposure of industrial materials to stormwater.

14. DRGCWP Section 9.1.2.3, Proper Operation and Maintenance:

Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Storm Water Plan.

During the March 3, 2020 inspection and April 13, 2022 site visit, the Department inspectors observed improperly engineered stormwater impoundments filled with tanks, debris, and a significant amount of free phase petroleum product floating on the water's surface. Water levels in the impoundments were such that storm events could result in discharge and flow of oily water offsite. No construction specifications, or operation specifications are listed in the SWP to assure discharge and/or infiltration of contaminated water is not occurring. Donovan's is failing to minimize exposure of industrial materials to stormwater.

**15. Air Permit: APC-2009/0060-CONSTRUCTION/OPERATION (Amendment 1)
(MACT), Condition 3.2:**

At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall operate and maintain the facility, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Department which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the SS&M Plan), review of operation and maintenance records, and inspection of the source.

During the April 13, 2022 site visit, the Aluminum Smelter Furnace did not appear to be operated and maintained in a manner consistent with safety and good air pollution control practices to minimize emissions. The equipment was in poor disrepair. The unit had large holes which would allow air contaminants to escape the furnace prior to being controlled by the afterburner.

**16. Air Permit: APC-2009/0060-CONSTRUCTION/OPERATION (Amendment 1)
(MACT), Condition 3.3:**

All structural and mechanical components of the equipment or process covered by this permit shall be maintained in proper operating condition.

During the April 13, 2022 site visit, the Aluminum Smelter Furnace did not appear to be maintained in proper operating condition.

**17. Air Permit: APC-2009/0060-CONSTRUCTION/OPERATION (Amendment 1)
(MACT), Condition 6.7:**

As specified in §63.1516(b), the owner or operator shall submit semiannual reports within sixty (60) days after the end of each six (6)-month period. When no deviations of parameters have occurred, the owner or operator shall submit a report stating that no excess emissions occurred during the reporting period. A report shall be submitted if any of these occur during a six (6)-month reporting period:

- 1) An excursion of a compliant process or operating parameter value or range (e.g., afterburner operating temperature, or other approved operating parameter).*
- 2) An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the SS&M [means Startup, Shutdown, and Malfunction] Plan.*
- 3) An affected source was not operated according to the requirements of 40 CFR Part 63, Subpart RRR.*

Copies of the following semi-annual reports were sent as electronic mail attachments from Beatrice Briggs on March 11, 2022:

- January 1, 2019 - June 30, 2019. (due August 30, 2019)
- July 1, 2019 - December 31, 2019 (due March 1, 2020)
- January 1, 2020 – June 30, 2020 (due August 30, 2020)
- July 1, 2020 – December 31, 2020 (due March 1, 2021)

Each report stated that the equipment was in proper working order, there were no excess emissions, the Aluminum Smelter Furnace was operated in accordance with the startup, shutdown, and operating plans, and the afterburner operated at the required ranges. Maintenance activity was included with each report and is detailed below:

- January – June 2020 – Maintenance performed during the reporting period included replacement of the floor, fire ropes, and cables, welded skids on bottom of the hot box, replaced the gas regulator and blower motor.
- July – December 2020 – Maintenance performed during the reporting period included replacement of the fire ropes and all 4 door cables, skimming walls and replaced inswool ceramic fire blanket.
- January – June 2021 – Maintenance performed during the reporting period included replacement of fire ropes and cables, skimming walls.
- July – December 2021 – Maintenance performed during the reporting period included replacement of fire ropes and cables, skimming walls, welding on skimmer and replaced screen.

Each of these reports being transmitted on March 11, 2022, were submitted late. Additionally, the reports stated the equipment was operated and maintained properly and that no excess emissions occurred. Although these reports indicate that maintenance was performed on the Aluminum Smelter Furnace in 2020 and 2021, based on the Department's visual inspection on April 13, 2022, the equipment has not been maintained and operated in a manner that no excess emissions have occurred.

18. DRGHW Section 273.5:

- (a) Lamps covered under this Part 273. The requirements of this part apply to persons managing lamps as described in §273.9, except those listed in paragraph (b) of this section.*
- (b) Lamps not covered under this Part 273. The requirements of this part do not apply to persons managing the following lamps:*
 - (1) Lamps that are not yet wastes under Part 261 of these regulations as provided in paragraph (c) of this section.*
 - (2) Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C of these regulations.*
- (c) Generation of waste lamps.*
 - (1) A used lamp becomes a waste on the date it is discarded.*
 - (2) An unused lamp becomes a waste on the date the handler decides to discard it.*

DRGHW Section 273.13(d)(1):

(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions

During the April 13, 2022 site visit, Department representatives observed the following universal waste lamps:

- a. In the area used for the deconstruction of railcars there were two (2) intact Amtrak railcars and what appeared to be one (1) deconstructed railcar. In this area, Department representatives observed four (4) broken fluorescent lamps on the ground. Specifically, the broken lamps observed were Sylvania F40/WX lamps which are traditional high-mercury lamps.
- b. Across the unpaved “road” from the railcar deconstruction area, Department representatives observed a light fixture containing two (2) intact fluorescent lamps. The spent lamps were GE F3078-CW lamps and were marked as containing mercury (Hg) and are traditional high-mercury containing lamps.

Traditional high-mercury lamps are hazardous waste, carrying the D009 hazardous waste code. Traditional high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste is a subset of hazardous waste and DRGHW Part 273 identifies streamlined requirements for certain wastes, including spent lamps, that are commonly generated by a wide variety of establishments. The universal waste regulations require lamps to be accumulated in a structurally sound container that is adequate to prevent breakage. Donovan’s failed to containerize universal waste lamps to prevent breakage, which is a violation of DRGHW Sections 273.13(d)(1).

19. DRGHW Section 273.13(d)(2):

(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(2) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

During the April 13, 2022 site visit, Department representatives observed four (4) broken fluorescent lamps on the ground. Specifically, the broken lamps observed were Sylvania F40/WX lamps which are traditional high-mercury lamps carrying the D009 hazardous waste code. Traditional high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste regulations require a small quantity universal waste handler to immediately clean up any broken lamps and place them in a container to prevent releases of mercury to the environment. Donovan's failed to immediately clean up and containerize broken universal waste lamps, which is a violation of DRGHW Section 273.13(d)(2).

20. DRGHW Section 273.14(e):

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below: ...

(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: 'Universal Waste—Lamp(s)', or 'Waste Lamp(s)', or 'Used Lamp(s)'.

Across the unpaved "road" from the railcar deconstruction area, Department representatives observed a light fixture containing two (2) intact fluorescent lamps. The spent lamps were GE F3078-CW lamps and were marked as containing mercury (Hg) and are traditional high-mercury containing lamps. Traditional high-mercury lamps are hazardous waste, carrying the D009 hazardous waste code. Traditional high-mercury lamps are considered universal waste and are regulated in DRGHW Part 273. Universal waste

regulations require lamps to be accumulated in a structurally sound container that is adequate to prevent breakage. Donovan's failed to containerize universal waste lamps to prevent breakage, which is a violation of DRGHW Section 273.14(e).

21. DRGHW Section 273.5:

(a) Lamps covered under this Part 273. The requirements of this part apply to persons managing lamps as described in §273.9, except those listed in paragraph (b) of this section.

DRGHW Section 273.6:

(a) Aerosol cans covered under this part. The requirements of this part apply to persons managing aerosol cans as described in §273.9, except those listed in paragraph (b) of this section.

DRGHW Section 273.11:

*A small quantity handler of universal waste is:
(a) Prohibited from disposing of universal waste...*

DRGHW Section 122.1(c):

(c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261. The terms 'treatment', 'storage', 'disposal', and 'hazardous waste' are defined in Section 122.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to Section 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Section 122.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as required under (c)(7) of this section. If a post-closure permit is required, the permit must address applicable Part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of these regulations. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

7 Del C. §6307(b):

Beginning 180 days after the effective date of regulations adopted for this purpose, no person shall construct, substantially alter, own or operate any hazardous waste treatment, storage or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the Secretary for such facility, site or activity, except that generators may accumulate hazardous wastes on site without a permit for such periods and upon such conditions as the Secretary may by regulation prescribe.

On the northwest side of the site were two (2) step vans used to store equipment and parts. In the area surrounding the step vans, Department representatives observed 47 spent aerosol cans. The majority were on the ground. It did not appear that the spent aerosol cans had accidentally fallen on the ground in the work area. Based on the quantity, their location, and condition, it appears that the spent aerosol cans were disposed of by placing them on the ground in the salvage yard with other solid wastes. The majority of the spent aerosol cans were labeled as containing Brakleen, while others were labeled as containing Instant Gum Cutter. The safety data sheet (SDS) for Brakleen indicates the main component is tetrachloroethylene (TCE), and specifically states that this material and its container must be disposed of as hazardous waste. The appropriate hazardous waste codes associated with the waste are provided. Hazardous wastes exceeding a Toxicity Characteristic Leaching Procedure (TCLP) concentration of 0.7 mg/L for TCE carry the hazardous waste code D039. Additionally, the waste codes F001 and F002 apply, as the waste is a spent halogenated solvent used in degreasing. The Instant Gum Cutter SDS indicates the components are 70-90% acetone and 5-15% heptane. The SDS indicates the flashpoint is -17°C. Any waste with a flashpoint less than 60°C is considered ignitable, carrying the hazardous waste code of D001. In addition to the contents of the aerosol can, aerosol cans have the potential to be hazardous waste due to the propellant and because an intact can, subject to heat and pressure, can explode, making it a reactive hazardous waste carrying the D003 hazardous waste code.

DRGHW Part 273 identifies streamlined requirements for certain wastes, including lamps and aerosol cans, that are commonly generated by a wide variety of establishments. By placing spent high-mercury containing lamps and spent aerosol cans containing hazardous waste on the ground, Donovan's disposed of hazardous waste onsite. DRGHW Section

273.11 prohibits a small quantity handler of universal waste from disposing of universal waste. Additionally, disposal of universal waste, which is a subset of hazardous waste, and hazardous waste requires a permit in accordance with DRGHW Section 122.1(c) and 7 Del. C. §6307(b). Donovan's failed to obtain a permit to dispose of hazardous waste.

22. DRGHW Section 268.34(a):

(a) Effective August 24, 1998, the following wastes are prohibited from land disposal: the wastes specified in Part 261 as EPA Hazardous Waste numbers D004-D011 that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications in Part 261.

Additionally, mercury wastes are prohibited from land disposal. By disposing of spent high-mercury containing lamp mercury waste (hazardous waste code D009), Donovan's violated DRGHW Section 268.34(a)

23. DRGHW Section 273.13(e)(1):

(e) Aerosol cans. A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

Department representatives observed approximately 15 of the spent aerosol cans in a small open tote that was not in good condition. The spent aerosol cans in the tote were not on the ground and thus do not meet the definition for disposal. As such, these spent aerosol cans are subject to the universal waste requirements in DRGHW Part 273. Failing to accumulate spent universal waste aerosol cans in a structurally sound container is a violation of DRGHW Section 273.13(e)(1).

24. DRGHW Section 273.14(f):

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: 'Universal Waste – Aerosol Can(s),' 'Waste Aerosol Can(s),' or 'Used Aerosol Can(s).'

Department representatives observed approximately 15 of the spent aerosol cans in a small open tote. The spent aerosol cans in the tote were not on the ground and thus do not meet the definition for disposal. As such, these spent aerosol cans are subject to the universal waste requirements in DRGHW Part 273. Failing to properly label the universal waste aerosol cans is a violation of DRGHW Section 273.14(f).

25. DRGHW Section 273.2:

(a) Batteries covered under Part 273.

(1) The requirements of this part apply to persons managing batteries, as described in §273.9, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under Part 266, Subpart G, are subject to management under this part.

(b) Batteries not covered under Part 273. The requirements of this part do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under Part 266, Subpart G.

(2) Batteries, as described in §273.9, that are not yet wastes under Part 261 of these regulations, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in §273.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C of these regulations.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).

(2) An unused battery becomes a waste on the date the handler decides to discard it.”

Department representatives observed universal waste batteries not being properly managed onsite. Including, but not limited to, nickel-cadmium (NiCad) batteries in battery boxes in the railcar deconstruction area and lead-acid batteries throughout the site, including in a waste pile across from the scale house.

26. DRGHW Section 273.15(c):

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

- (2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;*
- (3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;*
- (4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;*
- (5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or*
- (6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.*

Based on the observations made, it does not appear that Donovan's had a mechanism in place to demonstrate the length of time universal waste has been accumulated onsite. Failing to have a mechanism to demonstrate the length of time universal waste is accumulated is a violation of DRGHW Section 273.15(c).

27. DRGHW Section 273.16:

Section 273.16 Employee training.

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

Based on the improper management of spent lamps, spent aerosol cans, and spent batteries as identified above, Department representatives conclude that Donovan's did not provide adequate training for its employees. Failing to inform all employees on the proper management of universal waste is a violation of DRGHW Section 273.16.

28. DRGHW Section 279.22(b)(3):

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

- (1) In good condition (no severe rusting, apparent structural defects or deterioration); and*
- (2) Not leaking (no visible leaks); and*
- (3) Closed during storage, except when it is necessary to add or remove oil.*

At the location of the crushing pad, Donovan's crushes vehicles and other equipment, including appliances, on a large concrete surface. The concrete surface is sloped to a three-sided secondary containment system constructed of concrete designed to collect any liquids generated from the crushing. At the time of the assessment, Department representatives observed a significant quantity of oily water in the secondary containment area. Department representatives also observed an oil skimming device in operation that removes used oil from the surface of the water. Department representatives had visited the site the day before, on April 12, 2022, and observed standing oily water in the secondary containment area then too. Because the oily water has sufficient used oil to recover for recycling, the oily water mixture is considered used oil. It is acceptable to allow used oil to temporarily collect in the secondary containment area while operations are occurring in the area; however, the collected used oil must be pumped into a tank or container that can fully comply with DRGHW Part 279. At a minimum, the used oil must be pumped into an appropriate tank or container at the end of each work shift to avoid storing used oil in the secondary containment system. By accumulating used oil in the secondary containment system, as opposed to immediately pumping it into an appropriate tank or container, the concrete secondary containment system meets the definition of a tank.

DRGHW Sections 279.22(b)(1) and (2) require the tank to be in good condition and not leaking. Because the tank is constructed of concrete, is sitting on the ground, and contained several inches of oily water, the bottom of the tank cannot be inspected to ensure it is in good condition and not leaking.

Department representatives observed the following open containers or tanks of used oil:

- a. A 2.5-gallon poly container with approximately 1 inch of used oil in the bottom in the area south of the waste pit near the two (2) step-van vehicles.
- b. A 5-gallon poly bucket approximately half full of used oil in the area south of the waste pit near the two (2) step-van vehicles.
- c. An approximately 1,500-gallon aboveground storage tank of used oil in the pole building east the smelter building.

- d. One (1) approximately 200-gallon tank of used oil integrated with a vehicle lift system designed to drain fluids from vehicles in the pole building in front of (to the south of) the smelter building.
- e. A silver drum that had been cut in half that contained used oil in the pole building in front of (to the south of) the smelter building.
- f. An approximately 750-gallon aboveground storage tank of used oil in the pole building in front of (to the south of) the smelter building.
- g. Five (5) 55-gallon drums of used oil in the back left corner of the pole building in front of (to the south of) the smelter building.
- h. The open concrete secondary containment system of the crushing pad where used oil is stored.

Failing to close containers or tanks of used oil is a violation of DRGHW Section 279.22(b)(3).

29. DRGHW Section 273.16:

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words 'Used Oil'.

Department representatives observed the following unlabeled containers of used oil:

- a. A 2.5-gallon poly container with approximately 1 inch of used oil in the bottom in the area south of the waste pit near the two (2) step-van vehicles.
- b. A 5-gallon poly bucket approximately half full of used oil in the area south of the waste pit near the two (2) step-van vehicles.
- c. A silver drum that had been cut in half that contained used oil in the pole building in front of (to the south of) the smelter building.
- d. An approximately 750-gallon above ground storage tank located in the secondary containment of the crushing area of the crushing pad.

- e. The open concrete secondary containment system of the crushing pad where used oil is stored.
- f. An approximately 1,000-gallon aboveground storage tank of used oil in the Smelter Staging Area.

Failing to label tanks or containers of used oil is a violation of DRGHW Section 279.22(c)(1).

30. DRGHW Section 279.22(d):

*(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the **Delaware Regulations Governing Underground Storage Tanks (UST)** and which has occurred after the effective date of Delaware's recycled used oil management program, a generator must perform the following cleanup steps:*

- (1) Stop the release;*
- (2) Contain the released used oil;*
- (3) Clean up and manage properly the released used oil and other materials; and*
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.*

Department representatives observed approximately ¼ to ½ inch of standing used oil in the rear of the pole building east of the smelter building. Department representatives also observed that cinderblocks had been removed in the area of the rear left (northwest) corner, which appears to be a low point of the building where liquids collect. Removal of the cinderblocks creates a breach in the designed containment, allowing used oil to be released to an approximately 4-inch space of soil between the edge of the poured concrete floor and the rear exterior wall of the building and to the environment. Department representatives observed that the soil in this area was dark in color and had liquid used oil pooled on the surface.

On the backside of the bermed area, Department representatives observed a 3-4" diameter pipe coming through the concrete berm. It appears the pipe is in place to allow standing liquid to be removed from the concrete pad. At the time of the assessment, the pipe was capped. The soil in this area had dark stains and had been partially dug out. It appeared that used oil had been released from the secondary containment system to the soil and had

run approximately 100 feet down a hill into a man-made pond north of the secondary containment system. Department representatives observed an oil spill boom in the pond. While the source of the release may have been stopped, Donovan's did not contain the released used oil, nor did Donovan's clean up and properly manage the released used oil or any cleanup wastes.

Failing to properly clean up a release of used oil to the environment is a violation of DRGHW Section 279.22(d), which was cited above.

31. DRGHW Section 262.11:

Section 262.11 Hazardous waste determination.

A person who generates a solid waste, as defined in §261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to these regulations. A hazardous waste determination is made by using the following steps:

(a) The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous waste classification of the waste may change.

(b) A person must determine whether the solid waste is excluded from regulation under §261.4 of these regulations.

(c) If the waste is not excluded under §261.4 of these regulations, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Part 261, Subpart D of these regulations. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under §§260.20 and 260.22 of these regulations to demonstrate to the Secretary that the waste from this particular site or operation is not a hazardous waste.

(d) The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in Part 261, Subpart C of these regulations by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both.

(1) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process

knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Part 261, Subpart C of these regulations, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at §260.10 of these regulations.

(2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in Part 261, Subpart C of these regulations and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at §260.10 of these regulations.

(ii) Where a test method is specified in Part 261, Subpart C of these regulations, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator must refer to Parts 261, 264, 265, 266, 268, and 273 of these regulations for other possible exclusions or restrictions pertaining to management of the specific waste.

Department representatives observed the following waste requiring a hazardous waste determination:

- a. A desktop computer tower on a pallet in the Smelter Staging Area. The pallet was sitting in the oily water collecting in the secondary containment system. Electronics are potentially exempt from regulation if they are to be donated or sent for reclamation/reuse through a reverse logistics center. However, this requires the generator to treat the electronic waste as if it has value and accumulate the electronic waste in a manner that prevents releases to the environment. By storing the computer tower outdoors subject to the elements and in a pool of oily water,

Donovan's is not managing the computer in a manner in which it could be donated or sent for reuse/reclamation. Because the computer tower has been discarded by Donovan's and not managed as if it had value, it is a solid waste and Donovan's was required to make a hazardous waste determination at the point of generation. There are several components within a computer tower that are potentially hazardous waste, including printed circuit boards that have heavy metal components (e.g., lead, cadmium, chromium), batteries, and mercury switches. Failing to make a hazardous waste determination is a violation of DRGHW Section 262.11.

- b. A broken Dell laptop on the ground in the area where scrap vehicles are accumulated. The laptop was broken, with the electronic components open to the environment. Computer equipment contains heavy metals, such as chromium, beryllium, cadmium, mercury, and lead. Waste containing each of these metals has the potential to be hazardous waste.

Failing to make a hazardous waste determination is a violation of DRGHW Section 262.11.

ORDER

IT IS HEREBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 *Del. C.* §6018, that Respondents:

Cease and desist all business operations unrelated to those specifically directed and approved by the Department associated with Donovan Salvage Works, Inc. including those activities allowed by the Scrap Tire Facility Permit No. DE-ST-000128-01 and Aluminum Furnace Permit APC-2009/0060-Construction/Operation (Amendment1) (MACT) at the location of 20262 Donovans Road, Georgetown, Delaware.

The Department reserves the right to take additional enforcement actions regarding these or other violations at the site, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1), seeking penalties for past violations; an action under 7 *Del. C.* § 6005(b)(2), seeking penalties for continuing violations; an action in the Court of Chancery pursuant to 7 *Del. C.* §6005(b)(2), seeking a temporary restraining order or an injunction; and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§6005(b)(3) and (c)(1).

If you have any questions, please contact Devera B. Scott, Deputy Attorney General, at (302) 739-4636.

Date: April 22, 2022



Shawn M. Garvin, Secretary

cc: Devera B. Scott, Deputy Attorney General
Michael W. Teichman, Parkowski, Guerke & Swayze, P.A.