



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* §§ 6005(b)(2) and (b)(3)

Order No. 2023-WH-0014

Issued To:

Mr. Scott Perin
Delaware Recyclable Products, Inc.
246 Marsh Lane
New Castle, Delaware 19720

Registered Agent:

Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Dear Mr. Perin:

The Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found Delaware Recyclable Products, Inc. (“Respondent” or “DRPI”) in violation of 7 *Del. C.* Chapters 60, and 7 DE Admin. Code § 1301, Delaware’s *Regulations Governing Solid Waste* (“DRGSW”). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary’s Order (“Order”), pursuant to 7 *Del. C.* § 6005.

BACKGROUND

DRPI operates an industrial waste landfill located at 246 Marsh Lane, New Castle, Delaware 19720 ("landfill"). During the operation of its landfill, DRPI accepts industrial dry waste for disposal. As such, Respondent is subject to compliance inspections conducted by the Department's Compliance and Permitting Section ("CAPS"), pursuant to 7 DE Admin. Code § 1301. Regulations pertaining to the collection, storage, transportation, treatment, and disposal of industrial solid wastes have been established to assure the safe and adequate management of solid wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.

A routine inspection was conducted by Department representatives on September 27, 2022. At that time six (6) violations were found. DRPI was instructed to rectify the violations by October 7, 2022.

On November 1 and 18, 2022, DRPI's Environmental Compliance Specialist¹ conducted follow up inspections and found that there were still outstanding violations.

On November 30, 2022, the Department formally notified DRPI of its violations by issuing Notice of Violation ("NOV") 22-SW-40. DRPI received the NOV via certified mail on December 5, 2022. The NOV notified DRPI of the violations observed during the September 27 compliance assessment and follow-up assessments conducted on November 1 and 18. In addition, the NOV required DRPI to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV. DRPI's deadline to submit compliance documentation to the Department was January 4, 2023, but no such documentation was furnished.

On December 5 and 29, 2022, Department representatives observed additional violations including soil erosion and exposed waste.

¹ DRPI's Environmental Compliance Specialist is a DNREC employee assigned to oversee activity at DRPI.

On January 3, 2023, another facility inspection was conducted by Department representatives. At that time, the Department identified additional violations related to the liner overlay system and verified that not all of the prior violations had been remedied.

On January 26, 2023, Department representatives observed four active leachate seeps on the exterior side-slopes of landfill Cells 1 and 6 and notified DRPI Management of same. DRPI was directed by the Department to ensure that the seeps were immediately repaired.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. Condition III.K of the DRPI Solid Waste Permit SW-15/02 states:

“DRPI shall cover the working face a minimum of once a week. On windy days, or when strong wind is forecast for the area, DRPI shall immediately cover the working face. Cover shall consist of a minimum of six inches of clean fill or other material acceptable to the Department. The Department may require that certain loads be covered immediately if needed to prevent nuisance conditions.”

During a routine compliance inspection conducted on September 27, 2022, Department representatives observed exposed waste in a hauler clean-out area on Cell 6.² On that same date, the Department representatives spoke with the DRPI District Manager about the deficient operational cover and directed that all of the areas identified during the assessment be covered by October 7. An operational cover was placed over the exposed waste by October 7, thereby satisfying the Department's compliance requirement.

² Hauler clean-out areas must have 6 inches of operational cover over the waste.

In addition to the Department's observations during the September 27 compliance assessment, the DRPI Environmental Compliance Specialist performed follow-up cover assessments on November 1 and November 18. During those assessments, as described above, large areas of Cells 1 through 3 Overlay and Cell 4 did not have the required operational cover placed over the waste. A majority of the Cells 1 through 3 Overlay and Cell 4 did not have the required 6 inches of cover material. On January 3, 2023, Department representatives observed the placement of operational cover over some of the deficient areas observed during the Fall of 2022, but approximately one (1) acre of Cell 4 still lacked sufficient operational cover. An additional inspection was conducted on April 25, 2023 which identified at least two (2) acres of Cell 6, which received waste, but was left uncovered for a period longer than one (1) week.

Failure to cover cells with sufficient operational cover is a violation of Permit Condition III.K. As of the date of this Order, DRPI has not corrected this violation to the satisfaction of the Department.

2. Condition III.L of the DRPI Solid Waste Permit SW-15/02 states:

“Any area that receives operational cover and is not expected to receive either additional solid waste or a capping system within six months shall be covered with intermediate cover. Intermediate cover shall consist of at least 12 inches of compacted soil (total), or an alternative material approved by the Department.”

On September 27, 2022, Department representatives observed several areas with insufficient intermediate cover. A majority of Cell 6 required intermediate cover as said areas had not received waste in more than six months. Department representatives spoke with the District Manager of DRPI on September 27 regarding the deficient intermediate cover and directed that all of the areas identified during the assessment have a cover of 12 inches of soil placed over the waste by October 7.

Intermediate cover was not placed over all of the identified waste by October 7. Failure to place the requisite intermediate cover over the waste by October 7 is a violation of Permit Condition III.L. As of the date of this Order, DRPI has not corrected this violation to the satisfaction of the Department.

3. Condition IV.A.1 of the DRPI Solid Waste Permit SW-15/02 states:

“DRPI shall maintain a stormwater management system on the landfill to prevent erosion of the waste and cover, prevent the accumulation of standing water, and minimize stormwater water runoff into the waste. The stormwater conveyance and discharge system (SCDS) shall be kept free of leachate (including condensate from the gas collection system), debris, waste, and sediment buildup.”

On December 5, 2022, Department representatives observed erosion of operational cover soil (“rilling”) on the eastern exterior side-slope of DRPI, near Cell 3. On that same date, the Department notified the District Manager of DRPI of the rilling and advised DRPI that they needed to repair the landfill cover. On December 29, Department representatives observed exposed waste in the rill. The aforementioned rill measured approximately 30 feet long, four feet wide (maximum), and four feet deep (maximum). The Department observed evidence that stormwater ran onto the waste, then off of the landfill, and into the perimeter swale of the landfill, which is covered by the surface water management plan outlined in the next violation of Permit Condition IV.A.4.

Additionally, on January 26, 2023, Department representatives observed four active leachate seeps on the exterior side-slopes of Cell 1 and Cell 6. The Department notified the District Manager of DRPI of the active seeps immediately after they were observed. On January 27, Department representatives discovered that the repairs made to the seeps were ineffective, and leachate continued to enter the perimeter swale of the landfill.

Failure to properly repair a landfill cover and failure to prevent leachate is a violation of Permit Condition IV.A.1. As of the date of this Order, DRPI has not corrected this violation to the satisfaction of the Department.

4. Condition IV.A.4 of the DRPI Solid Waste Permit SW-15/02 states:

“DRPI shall take all necessary steps to identify and prevent the discharge of pollutants from the waste into surface water and shall initiate corrective actions to confirm, quantify, and remediate such discharges. For the purposes of this permit, contaminated stormwater means stormwater which comes in direct contact with landfill wastes or landfill wastewater. Landfill wastewater means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated stormwater, and groundwater from monitoring or production wells on-site. Landfill wastewater includes leachate, gas collection condensate, laboratory derived wastewater, contaminated stormwater, and contact wash-water used to wash solid wastes from equipment.”

On December 29, 2022, Department representatives observed evidence that stormwater ran onto the waste, then off of the landfill, and into the perimeter swale of the landfill. On January 26, 2023, Department representatives observed four active leachate seeps on the exterior side-slopes of Cell 1 and Cell 6. The Department notified the District Manager of DRPI of the active seeps immediately after they were observed. On January 27, 2023, Department representatives discovered that the repairs made to the seeps were ineffective, and leachate continued to enter the perimeter swale of the landfill.

Failure to take all necessary steps to identify and prevent the discharge of pollutants from the waste into surface water is a violation of Permit Condition IV.A.4 . DRPI corrected this violation on January 29, 2023, to the satisfaction of the Department.

5. Condition IV.A.5 of the DRPI Solid Waste Permit SW-15/02 states:

“In the event a leachate seep is found to be contaminating surface water, DRPI shall sample the impacted surface water and the downstream stormwater pond at both the inlet and the outfall (if discharging). DRPI shall record their visual observations and sample in accordance with the Groundwater, Leachate, and Stormwater Monitoring and Reporting Program Plan (February 2020).”

On December 29, 2022, Department representatives observed evidence that stormwater ran onto the waste, then off of the landfill, and into the perimeter swale of the landfill. On January 3, 2023, the Department requested that DRPI sample the water in the potentially impacted perimeter swale and receiving stormwater management structure as per permit conditions. DRPI collected water samples from the swale on January 4, 2023, and also collected water samples from the inlet and outlet of the receiving stormwater structure. The Department received the analytical results from the samples on January 27, 2023, contained within a report titled *2023 Cell 4BS Rill Investigation*. Although the analytical results indicated that the perimeter swale and receiving stormwater management structure were not impacted, the water samples were not collected until seven (7) days after the Department observed the exposed waste. Samples should be collected as soon as practicable after DRPI observes evidence that stormwater runs onto waste, then off of the landfill, and into the perimeter swale. DRPI sampled the water only after the Department requested that they do so.

On January 26, Department representatives observed four active leachate seeps on the exterior side-slopes of Cell 1 and Cell 6. The Department notified the District Manager of DRPI of the active seeps immediately after they were observed. On January 27, Department representatives discovered that the repairs made to the seeps were ineffective, and leachate continued to enter the perimeter swale of the landfill.

On January 30, 2023, the Department requested that DRPI sample the water in the potentially impacted perimeter swale and receiving stormwater management structure as per permit conditions. DRPI collected water samples from the swale and the inlet and outlet of the receiving stormwater structure on January 30, 2023. DRPI has yet to furnish the Department with a copy of the test results from its water sample collection.

Failure to sample the surface water is a violation of Permit Condition IV.A.5. DRPI corrected this violation on January 30 2023, to the satisfaction of the Department.

6. Condition VII.D.1.h of the DRPI Solid Waste Permit SW-15/02 states:

“DRPI shall immediately notify the Department in the event of any of the following occurrences... Written notification (to include narrative, response and follow-up required) shall be submitted to the Department within five business days... Damage to the landfill liner system.”

On January 3, 2023, Department representatives observed damage to the liner overlay system of Cell 3. As part of previous landfill expansion, DRPI installed a liner overlay on Cells 1 through 3 of the landfill. Upon further inquiry, the Department learned from DRPI's management that the liner overlay system was damaged in late June 2022. DRPI failed to notify the Department of the liner overlay system damage and also neglected to repair the damage as required by the industrial waste landfill permit.

DRPI failed to timely notify the Department of damage to the landfill liner system in violation of Permit Condition VII.D.1.h. As of the date of this Order, DRPI has not corrected this violation to the satisfaction of the Department.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent has violated the above-cited permit conditions.

ASSESSMENT OF PENALTY

Pursuant to 7 *Del. C.* § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$10,000.00 for each day of violation detailed in this Order. This Order is written notice to Respondent, that, based upon its findings, the Department is assessing Respondent an administrative penalty for the violations identified in this Assessment and Order. In assessing the administrative penalty, 7 *Del. C.* § 6005(b)(3) instructs the Secretary to consider the following factors: (1) the nature, circumstances, extent, and gravity of the violation, or violations; (2) the ability of the violator to pay; (3) any prior history of such violations; (4) the degree of culpability; (5) the economic benefit or savings (if any) resulting from each violation; and (6) such other matters as justice may require. A brief discussion of these factors is set forth below.

1. The Nature, Circumstances, Extent and Gravity of the Violation, or Violations:

The nature, circumstances, extent, and gravity of the violations are significant. This Order identifies and describes six (6) separate permit violations. Failing to ensure compliance with permit conditions for covering waste with operational and intermediate cover, failure to maintain the stormwater management system, failure to prevent leachate from entering the stormwater management system for the landfill, failure to sample potentially impacted surface water and stormwater management structures in accordance with permit conditions, and failure to notify the Department of a reportable occurrence in accordance with permit conditions.

2. Respondents' Ability to Pay:

The record contains no information that Respondent lacks the ability to pay the administrative penalty assessed.

3. Prior History of Violations:

Respondent has had prior violations of some of the same or similar regulatory requirements. A Notice of Violation (NOV- 22 SW-02) was previously issued to Respondent on December 5, 2022, which documented the following violations: (1) failing to cover the working face³ a minimum of once per week; (2) failure to place operational cover⁴ in accordance with permit conditions.

Respondent's history of similar violations supports imposition of a higher administrative penalty for the violations cited herein in order to deter Respondent from future violations.

4. Degree of Culpability:

The degree of culpability is significant, as Respondent was previously provided notice of many of these same regulatory violations and afforded the opportunity to come into voluntary compliance. In addition, had Respondent employed reasonable oversight measures as DRGSW require, these violations would not have occurred.

5. Economic Benefit or Savings Resulting from the Violation(s):

With respect to the economic benefit, the record contains no information that Respondent incurred any meaningful economic benefit from these violations, and thus this was not a factor in the administrative penalty assessment.

³ The working face is the "active" part of the landfill where waste is being deposited during a given time.

⁴ For this permit, Operational Cover is defined as the cover DRPI uses to overlay the working face on a weekly basis to cover the deposited waste.

6. Such Other Matters as Justice May Require:

Lastly, considering such other matters as justice may require, the Secretary has determined that the penalty assessed is proportional to the violations cited herein and has been calculated to deter Respondent, and those similarly situated, from engaging in future violations.

Pursuant to *7 Del. C. § 6005(b)(3)*, this is written notice to Respondent that on the basis of the above findings and factors, an administrative penalty of **\$34,020.00** is assessed for the violations identified in this Order.

Respondent shall submit one check to the Department in the amount of **\$34,020.00** to pay the administrative penalty within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order affects Respondent's legal rights and is effective and final upon receipt by Respondent. Pursuant to Section 6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to *7 Del. C. § 6005(b)(3)*, request a public hearing on the Assessment and Order within **30 days** of receipt of the Assessment and Order. A public hearing pursuant to *7 Del. C. § 6005(b)(3)* would be conducted pursuant to *7 Del. C. § 6006*, and the Secretary's order following the hearing would be subject to appeal, pursuant to *7 Del. C. § 6008*, by any person substantially affected.

Respondent is further advised that the above assessed administrative penalty shall be due and owing within 30 days of Respondent's receipt of this Assessment and Order. In the event of nonpayment of the administrative penalty assessed above, and after Respondent has exhausted all legal appeals, if any, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty and/or costs shall **not** be subject to review pursuant to *7 Del. C. §§ 6005(b)(3) and (c)*.

To request a public hearing pursuant to *7 Del. C. § 6005(b)(3)*, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Telephone: (302) 739-9000

To submit an appeal to the Environmental Appeals Board pursuant to *7 Del. C. § 6008*, you must file your written statement of appeal and submit a check, made payable to: "Environmental Appeals Board," for the \$50.00 filing fee, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Telephone: (302) 739-9000

For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at *7 DE Admin. Code §105*.

The Department, to the extent necessary, reserves the right to take additional enforcement actions regarding these and other violations by Respondent, 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) & (c)(1)*. Nothing in this document shall be deemed to estop, or in any way preclude any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

SECRETARY'S ORDER FOR COST RECOVERY

Pursuant to *7 Del. C. § 6005(c)*, Respondent is liable for all expenses incurred by the Department in abating the violations detailed in this Secretary's Order. "Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary." (*7 Del. C. § 6005(c)(1)*).

Respondent is liable for **\$8,061.38** in costs, which costs the Department has incurred **to date** in abating the violations detailed in this Secretary's Order. The Department has attached to this Secretary's Order a detailed billing of expenses detailing these costs. Respondent shall remit a check payable to the State of Delaware in the amount of **\$8,061.38** within thirty (30) days of receipt of this Secretary's Order, to Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

In the event that Respondent appeals this Secretary's Order pursuant to 7 Del. C. § 6608 or requests a public hearing pursuant to 7 Del. C. § 6005(b)(3), or in the event Respondent fails to comply with this Secretary's Order, the Department will rescind the detailed billing attached to this Secretary's Order. The Department will issue Respondent a new detailed billing and Cost Recovery Order following exhaustion of Respondent's appeal rights that will include all additional recoverable costs incurred by the Department. Respondent is further advised that Respondent may challenge the Department's final detailed billing in accordance with 7 Del. C. § 6005(c)(2).

PRE-PAYMENT

Respondent may prepay the administrative penalty of **\$34,020.00** and the Department's costs in the amount of **\$8,061.38** in the manner described in the attached "**Waiver of Statutory Right to A Hearing.**" **By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Secretary's Order and the Department's Cost Recovery.**

If you have any questions, please contact, or have your attorney contact Travis Groski, Deputy Attorney General, at (302) 395-2600.

6/21/23

Date



Shawn M. Garvin, Secretary

cc. Travis Groski, Deputy Attorney General
Timothy Ratsep, Division Director

WAIVER OF STATUTORY RIGHT TO A HEARING

Delaware Recyclable Products, Inc. hereby waives its right to a public hearing and its opportunity to appeal or contest this Assessment and Order, and agrees to the following:

1. **Delaware Recyclable Products, Inc.** will pay the administrative penalty in the amount of **\$34,020.00** by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle 19720.
2. **Delaware Recyclable Products, Inc.** will pay the Department's Costs in the amount of **\$8,061.38** by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle 19720.

Delaware Recyclable Products, Inc.

Date: _____

By: _____

Title: _____