



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

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

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

Order No. 2023-WH-0034

VIA CERTIFIED MAIL, RETURN RECEIPT

Issued To:

Mr. George Heath
BFI Waste Services, LLC, d/b/a
Allied Waste Services of Delaware
1420 New York Avenue
Wilmington, DE 19801

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

Dear Mr. Heath:

The Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found BFI Waste Services, LLC (“Respondent”) in violation of Title 7, Chapter 60 of the Delaware Code and 7 DE Admin. Code § 1305, Delaware’s *Universal Recycling Regulations* (“DURR”). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary’s Order (“Secretary’s Order”), pursuant to 7 *Del. C.* § 6005.

BACKGROUND

Respondent provides solid waste hauling and transportation services to residential and commercial customers in the State of Delaware and is required to comply with the rules and regulations pursuant to 7 *Del. C.* § 6053 and 7 DE Admin. Code § 1305.

On April 3, 2023, the Department received an initial complaint from a homeowner (the "First Complaint") in New Castle County that stated the Respondent was commingling source-separated recyclables¹ with other solid waste into one vehicle. The Department conducted field visits at the address indicated in the First Complaint on April 13 and April 20, 2023, to investigate the allegations.

On April 13, 2023, the Department observed that the residential homeowner who initiated the First Complaint had correctly separated their yard waste, single stream recyclables,² and other solid waste into the three marked containers provided by the Respondent as required by 7 *Del. C.* § 6053 and placed them at the curb for collection. Photographic and video evidence obtained on April 13, 2023, substantiated the homeowner's claim that they had segregated the yard waste, recyclables and solid waste. During the April 13th inspection, the Department observed that the collection containers were emptied by three (3) of Respondent's trucks, which kept the separated streams segregated.

¹ As per 7 *Del. C.* § 6052(14), "source-separated' means recyclable materials, including single stream recyclables, are segregated at the point of generation and kept apart from the waste stream by the generator thereof for the purpose of collection and recycling."

² As per 7 *Del. C.* § 6052(13), "single stream' means a system in which all fibers (including but not limited to paper, cardboard, etc.) and containers (including but not limited to plastic, glass and metal) are commingled for collection into 1 container instead of being sorted into separate commodities and multiple containers."

During the April 20, 2023, inspection, the Department observed that the homeowner who initiated the First Complaint had two (2) containers placed curbside for collection: one (1) containing source-separated recyclables and one (1) containing other solid wastes. In addition, the house directly across the street from the complaining homeowner also had two (2) distinctly marked containers provided by the Respondent. These containers were placed curbside for collection and included one (1) for source-separated recyclables and one (1) for other solid wastes. During this inspection, the Department witnessed all four (4) containers at both residences picked up by the same truck, resulting in the commingling of the source-separated recyclables with other solid wastes.

On June 8, 2023, the complaining homeowner made a second complaint (the "Second Complaint"), causing the Department to conduct a third inspection on June 15, 2023. The Department conducted inspections of three (3) of the Respondent's customers. The first customer had one (1) source-separated recyclable container and one (1) container for other solid wastes curbside. The second customer had one (1) yard waste container, one (1) source-separated recyclable container, and one (1) container for other solid waste curbside. The third customer had a single container for other solid waste curbside. During this inspection, the Department witnessed four (4) containers from two (2) of the customers' houses (trash and source-separated recyclables) picked up by the same truck, resulting in the commingling of the source-separated recyclables with other solid wastes.

As a result of the violations observed on April 20th and June 15th, the Department, on July 24, 2023, issued a Notice of Violation (NOV), 23-SW-28, via certified mail to the Respondent. Respondent received the certified mail on July 27, 2023. This NOV required the Respondent to furnish detailed documentation to the Department demonstrating that it had corrected the violations outlined in said NOV. In response to the Department's email, the Respondent, on August 24, 2023, stated that it was unaware that a response to the NOV was required. The next day, the Respondent emailed the Department and affirmed that it had taken the following actions:

- (1) Required supervisors and frontline employees to review its No Commingling Waste Streams directive, which included a video and written policy;
- (2) Issued a written Corrective Action to the individuals responsible for the violations of Respondent's No Commingling Waste Streams policies; and
- (3) Implemented random supervisor inspections of its frontline employees.

On August 10, 2023, the Department received a third complaint (the "Third Complaint") against the Respondent from a different New Castle County homeowner. The Third Complaint, similar to the earlier complaints, stated that the Respondent collected source-separated recyclables and other solid wastes in the same truck. On August 17, 2023, the Department investigated this new complaint. The evidence gathered on August 17th demonstrated that the Respondent was once again emptying all of the containers at the curb into one truck, resulting in the commingling of the source-separated recyclables with other solid wastes.

**FINDINGS OF FACT AND VIOLATION INCLUDING
REGULATORY REQUIREMENTS**

1. 7 Del. C. § 6053(1)(a) states:

(1) Effective no later than September 15, 2011, the Authority shall cease providing curbside recycling services, including yard waste collection, and all persons providing solid waste collection services in the State shall also provide:

a. Single-stream curbside recycling collection services to all of their Delaware single-family residential customers, including delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers use such that recycling is encouraged and disposal of recyclables is discouraged; and the recyclables collection service shall be provided at a frequency of not less than once every other week.

On April 20, June 15 and August 17, 2023, the Respondent provided distinctly identified containers to its customers so as to enable its customers to properly separate source-separated recyclables from yard waste as well as other solid wastes, thereby encouraging recycling and discouraging disposal of recyclables. However, Respondent's subsequent commingling of the source-separated recyclables and other solid wastes into one truck deprived customers of their ability to participate in a recyclables collection service as required under 7 Del. C. Ch. 60.

2. 7 Del. C. § 6053(7) states:

(7) Persons engaging in the collection, transportation, processing, or marketing of source separated recyclable materials shall conduct such activities in a manner that the source separated recyclable materials enter the marketplace and are otherwise not disposed via a landfill or by incineration.

On April 20, June 15 and August 17, 2023, the Department observed that source-separated recyclables were not able to enter the marketplace, as they were mixed with other solid wastes and unlawfully disposed via a landfill.

3. DURR Section 4.1.1 states:

4.1.1 Waste service providers shall not commingle source-separated recyclables with other solid waste.

On April 20, June 15 and August 17, 2023, the Department observed that the customer's source-separated recyclables were mixed with other solid wastes in violation of this requirement prohibiting the commingling of source-separated recyclable with other solid waste.

CONCLUSIONS

Based on these foregoing violations by the Respondent, the Department has concluded that Respondent has violated the above-cited statutory and regulatory provisions.

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 Secretary's Order. This Secretary's 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 Secretary's 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 Secretary's Order identifies and describes three (3) separate regulatory violations: 1) failing to ensure that separate recyclables collection services are provided to customers; 2) failing to ensure that source-separated recyclables enter the marketplace; and 3) commingling recyclables with other solid waste. These violations are significant deviations from the statutory and regulatory requirements cited herein.

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:

As previously stated, NOV 23-SW-28 was issued to the Respondent and Respondent documented that the violations had been addressed.

4. Degree of Culpability:

The degree of culpability is significant. *7 Del. C. § 6051*, supported by DURR, states why source-separated recyclables are being separated from other solid wastes and that all solid waste collectors in the State must adhere to this law and provide these services appropriately to their customers. Had Respondent employed reasonable oversight, 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.

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 \$10,000.00 is assessed for the

violations identified in this Secretary's Order.

Respondent shall submit one check to the Department in the amount of \$10,000.00 to pay the administrative penalty within thirty (30) days from the receipt of this Secretary's Order. The check shall be made payable to the "State of Delaware" and shall be directed to: Leslie Reese, 89 Kings Highway SW, Dover, DE 19901.

PUBLIC HEARING AND APPEAL RIGHTS

This Secretary's 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 **twenty (20) days** of the receipt of the Secretary's Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* § 6005(b)(3), request a public hearing on the Secretary's Order within **thirty (30) days** of receipt of the Secretary's 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 thirty (30) days of Respondent's receipt of this Secretary's 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)).

At this time, the Department is not seeking costs from Respondent. In the event that Respondent appeals this Secretary's Order pursuant to 7 Del. C. § 6008 or requests a public hearing pursuant to 7 Del. C. § 6005(b)(3) the Department reserves the right to issue a detailed billing statement of all costs incurred as a result and seek recovery of that amount. The Department will issue Respondent that detailed billing and Cost Recovery Order following exhaustion of Respondent's appeal rights.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$10,000.00 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 Sawyer Traver, Deputy Attorney General, at sawyer.traver@delaware.gov or (302) 395-2600.

02/01/24

Date



For Shawn M. Garvin, Secretary

cc: Sawyer Traver, Deputy Attorney General
Timothy Ratsep, Division Director

WAIVER OF STATUTORY RIGHT TO A HEARING

BFI Waste Services, LLC hereby waives its right to a public hearing and its opportunity to appeal or contest this Secretary's Order, and agrees to the following:

1. **BFI Waste Services, LLC** will pay the administrative penalty in the amount of \$10,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Secretary's Order. The check shall be directed to Leslie Reese. 89 Kings Highway SW, Dover, DE 19901

BFI Waste Services, LLC

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)