



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

Office of the  
Secretary

Phone: (302) 739-9000  
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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**

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

**Order No. 2024-WH-0036**

**Issued To:**

*Served Via Personal Service*  
**Operator and/or Owner**  
Hills Classic Auto, LLC  
1865 South DuPont Highway  
Dover, Delaware 19901

*Served Via Certified Mail, Return Receipt*  
**Facility Operator and/or Owner**  
**Registered Agent**  
Hills Classic Auto, LLC  
Joseph Colbert  
1865 South DuPont Highway  
Dover, Delaware 19901

*Served Via Personal Service*  
**Property Owners**  
Frantzdy Gauthier  
Fern Joseph  
101 North Wren Way  
Harrington, Delaware 19952

*Served Via Electronic Mail:*  
Ms. Fern Joseph  
[Hillsclassicauto@gmail.com](mailto:Hillsclassicauto@gmail.com)

This is to notify Hills Classic Auto, LLC ("Hills"), facility operator and/or owner, and Frantzdy Gauthier and Fern Joseph, owners of Kent County, Delaware parcel number 2-00-08516-04-7300-000, located at 1865 South DuPont Highway, Dover, Delaware 19901 ("Facility"), collectively referred to as "Respondents" that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondents in violation of 7 *Del. C.* Chapter 60, DE Admin. Code § 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW"). 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**

Hills is owned and/or operated by Mr. Frantzdy Gauthier and Ms. Fern Joseph. Hills sells used vehicles for personal use and to individuals that salvage the vehicles. It also sells its used vehicles to scrap yards. The facility consists of a central office building, a used oil accumulation area, and surrounding property where approximately 35 to 40 vehicles, both operable and inoperable, are stored. Several of these vehicles are dismantled with piles of parts and solid waste located throughout the sides and rear of the property.

In June of 2023, the Department's Emergency Response Branch ("ERB") received a complaint regarding a large number of mosquitoes on and around the property as well as an open and overflowing container of used oil at the neighboring F&F Econo Tire ("F&F"). F&F is located at 1865 S Dupont Hwy, Dover, Delaware 19901, on a contiguous property immediately north of Hills and is also owned and/or operated by Respondents.

In August of 2023, the Department's Environmental Crimes Unit ("ECU") referred a second complaint to the Department regarding a large number of mosquitoes on and around the property as well as improperly managed, potentially hazardous waste fluids.

As a result of these complaints, on October 11, 2023, the Department conducted a compliance inspection ("Compliance Inspection") of the Facility to determine if Respondents were complying with 7 Del. C. Chapter 60 and DRGHW.

During the Compliance Inspection, multiple locations of oil-stained soils were observed. As a result, on October 11, 2023, the Department issued a field work order requiring the oil-stained soils to be cleaned up by November 27, 2023, with documentation submitted by December 27, 2023, to the Department demonstrating the cleanup had been completed. On March 18, 2024, an ERB Representative conducted a follow-up site visit to verify the cleanup. At that time, it was confirmed that oil-stained soils had been removed to the Department's satisfaction.

Based on the information gathered during the inspection at Hills, the Department found Respondents to have violated applicable state statutes and regulations governing the generation and management of solid and hazardous wastes.

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

#### **1. DRGHW Section 279.22(b)(1) and (2) states:**

*(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*

At the time of the Compliance Inspection, Department representatives observed a used oil accumulation area on the south side of the central office building where thirteen containers of various compositions and sizes were stored. Of the thirteen containers, used oil was found in two 55-gallon poly containers and one 35-gallon container. Two of the three containers had cracks located on the bottoms and sides, resulting in the release of used oil into the soil underneath and the areas surrounding the three containers.

Failure to store used oil in containers in good condition and that are not leaking violates DRGHW Sections 279.22(b)(1) and 279.22(b)(2).

**2. DRGHW Section 279.22(b)(3) states:**

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

*(3) Closed during storage, except when it is necessary to add or remove oil.*

At the time of the Compliance Inspection, Department representatives observed a used oil accumulation area on the south side of the central office building where thirteen containers of various compositions and sizes were being stored. Of the thirteen containers, used oil was found in two 55-gallon poly containers and one 35-gallon container. These containers were considered opened because the two 55-gallon containers were missing the bung that fits into the bunghole<sup>1</sup> and the 35-gallon container was missing its lid.

Failure to close containers or tanks of used oil violates DRGHW Section 279.22(b)(3).

**3. DRGHW Section 279.22(c)(1) states**

*(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".*

At the time of the Compliance Inspection, Department representatives observed a used oil accumulation area on the south side of the central office building where thirteen containers of various compositions and sizes were being stored. Of the thirteen containers, used oil was found in two 55-gallon poly containers and one 35-gallon container. These containers were unlabeled.

Failure to label tanks or containers of used oil violates DRGHW Section 279.22(c)(1).

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<sup>1</sup> One of the round openings on the top of an upright drum used for filling and emptying.

**4. DRGHW Section 279.22(d) states:**

*(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.*

At the time of the Compliance Inspection, Department representatives observed an employee of the neighboring F&F Facility carrying a pan of used oil from F&F to Hills' used oil accumulation area. The employee poured the used oil from the pan into one of the 55-gallon containers in the used oil accumulation area, without the use of a funnel. As a result, used oil pooled on the top of the container and was not removed or cleaned up. Near the containers in the used oil accumulation area, a large area of stained soil was observed, indicating that releases of used oil occurred and were not properly remediated.

Additionally, Department representatives observed a GMC Terrain Sport Utility Vehicle placed on top of cinderblocks, adjacent to the used oil accumulation area. The vehicle was being dismantled and the vehicle's engine was placed directly on the ground beneath the engine bay. Under the engine was a large area of stained soil. There were also several areas where used oil had pooled on the ground. Additionally, oil-soaked rags were observed placed on top of the removed engine.

Failure to appropriately respond to releases of used oil by immediately stopping the release and cleaning up used oil contaminated soils violates DRGHW Section 279.22(d).

**5. 7 Del. C. § 6003(a)(4) states in part:**

*(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...*

At the time of Compliance Inspection, Department representatives observed multiple instances of soil stained with used oil, as described in Violations #1 and #4, above. Used oil is a solid waste and allowing used oil to drip onto the ground constitutes disposal.

Disposing of solid waste without having first obtained a permit from the Department violates 7 *Del. C.* § 6003(a)(4).

**6. 7 *Del. C.* § 6028(a) states:**

*Any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air, or a pollutant, including petroleum substances, into surface water, groundwater or on land, or disposal of solid waste in excess of any reportable quantity specified under either regulations implementing § 102 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [42 U.S.C. § 9602], § 311 of the Clean Water Act of 1980, as amended [33 U.S.C. § 1321], or Department regulations, whichever restriction is most stringent, shall report such an incident to the Department as soon as the person has knowledge of said environmental release or discharge and activating their emergency site plan if appropriate unless circumstances exist which make such notification impossible.*

At the time of the Compliance Inspection, Department representatives observed multiple instances of soil stained with used oil as described in Violations #1 and #4, above, which indicated that used oil was released into the environment. Said releases were not reported to the Department.

Failure to report these releases to the Department violates 7 *Del. C.* § 6028.

**7. DRGHW Section 262.11 states:**

*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.*

At the time of the Compliance Inspection, Department representatives observed used oil filters discarded on the ground and atop used oil containers throughout the facility. Department representatives were told by Respondents that they do not puncture nor hot drain<sup>2</sup> used oil filters before discarding them into vehicles that are being salvaged. Used oil filters that are neither punctured nor hot drained must continue to be managed as used oil, which is a solid waste requiring an accurate hazardous waste determination at the point of generation.

Failure to make an accurate hazardous waste determination on a solid waste at its point of generation violates DRGHW Section 262.11.

**8. DRGHW Section 279.24 states:**

*Except as provided in paragraphs (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers and a Delaware Waste Transporter Permit.*

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<sup>2</sup> Draining oil close to or at engine temperature.



At the time of the Compliance Inspection, Department representatives observed the ongoing generation and handling of used oil. While Respondents stated that used oil is removed from the facility twice each year, Respondent was unable to provide receipts, or the name and contact information for the used oil removal service transporter. Respondents stated that the transporter typically arrives unannounced and removes the used oil with neither party making payment.

Because Respondents were unable to provide the name of the used oil removal service transporter, they have failed to ensure that their used oil is transported only by transporters who have obtained an EPA identification number and a Delaware waste transporter permit.

Their failure violates DRGHW Section 279.24.

**9. DRGHW Section 273.13(e)(1) states:**

*(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.*

At the time of the Compliance Inspection, Respondents told Department representatives that waste aerosol cans are not accumulated in a structurally sound container but are instead discarded in salvaged vehicles.

Failure to accumulate waste aerosol cans as universal waste in a structurally sound container violates DRGHW Section 273.13(e)(1).

**10. DRGHW Section 273.14(f) states:**

*(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).'*

At the time of the Compliance Inspection, Respondents told Department representatives that waste aerosol cans are not labeled as universal waste.

Failure to properly label universal waste aerosol cans violates DRGHW Section 273.14(f).

**11. DRGHW Section 273.15(c) states:**

*(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.*

At the time of the Compliance Inspection, Respondents told Department representatives that waste aerosol cans are discarded into vehicles to be salvaged, and remain in the vehicles when they go to salvage. No action is taken by Respondents to indicate the date that each can becomes waste. As such, Respondents do not maintain a method to demonstrate the amount of time universal waste aerosol cans have been accumulated on-site.

Respondents' inability to demonstrate the length of time universal waste is accumulated onsite violates DRGHW Section 273.15(c).

**12. DRGHW Section 273.18(a) states:**

*(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.*

At the time of the Compliance Inspection, Respondents told Department representatives that waste aerosol cans are not sent or taken to another universal waste handler, a destination facility, or a foreign destination, but are instead discarded in vehicles sent for salvage.

Failure to send or take universal waste aerosol cans to another universal waste handler, a destination facility, or a foreign destination violates DRGHW Section 273.18(a).

**13. DRGHW Section 273.16 states:**

*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.*

At the time of the Compliance Inspection, Respondents told Department representatives that waste aerosol cans are discarded in salvaged vehicles. Based on the mismanagement of these aerosol cans, Department representatives concluded that Respondents failed to provide adequate training for employees to ensure lawful management of universal waste aerosol cans.

Failure to inform all employees of the proper management of universal waste violates DRGHW Section 273.16.

**14. DRGHW Section 273.19 states:**

*A small quantity handler of universal waste must keep a record onsite of shipments of universal waste for a minimum of three years. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document.*

At the time of the Compliance Inspection, Respondents told Department representatives that waste aerosol cans are discarded in vehicles sent for salvage, however, Respondents maintain no records indicating that this is the manner in which cans are discarded. As such, documentation of universal waste shipments does not exist.

Failure to obtain and maintain records of shipments of universal waste violates DRGHW Section 273.19.

**CONCLUSIONS**

Based on the foregoing, the Department has concluded that Respondents have violated the above-cited statutory and regulatory provisions.

**SECRETARY'S ORDER**

As Respondents have failed to comply with the cited requirements of DRGHW, and 7 *Del. C.* Chapter 60, the Department requires that Respondents shall demonstrate compliance with the applicable law to resolve the outstanding violations. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* § 6005(b)(2), that Respondents shall achieve compliance by undertaking the following actions.

In a manner in full compliance with all applicable laws and regulatory requirements, Respondents shall, within 30 days of receipt of this Order:

1. Submit documentation in the form of a procedure demonstrating compliance with the requirement to maintain used oil containers in good condition and free of leaks and cracks as set forth in DRGHW Section 279.22(b)(1) and Section 279.22(b)(2). Provide photographs of all closed and labeled containers used to accumulate used oil. Additionally, provide a written statement affirming Respondents' understanding of the requirement to implement the procedure to maintain used oil containers in good condition, without cracks or leaks.
2. Submit documentation in the form of a procedure demonstrating compliance with the requirement to close containers accumulating used oil unless actively adding or removing used oil as set forth in DRGHW Section 279.22(b)(3). Documentation shall include a written statement affirming Respondents' understanding of the requirement to implement the procedure to keep containers accumulating used oil closed unless actively adding or removing used oil.
3. Submit documentation in the form of a procedure demonstrating compliance with the requirement to label containers accumulating used oil with the words "Used Oil" as set forth in DRGHW Section 279.22(c)(1). Documentation shall include a written statement affirming Respondents' understanding of the requirement to implement the procedure to appropriately label containers accumulating used oil.
4. Submit documentation in the form of a procedure detailing the steps to be implemented to remediate releases of used oil as required in DRGHW Section 279.22(d). At a minimum, the procedure shall include steps to prevent, immediately stop, contain, and clean up releases of used oil. The procedure is to also include instructions for managing used oil contaminated soils and waste and for repairing or replacing leaking or damaged used oil storage containers. Documentation shall also include a written statement affirming Respondents' understanding of the requirement to implement the procedure to appropriately address releases of used oil.

5. Submit documentation in the form of a written statement affirming Respondents' understanding that the onsite disposal of used oil, a solid waste, without first having obtained a permit from the Department as set forth in 7 Del. C. § 6003(a)(4) is prohibited.
6. Submit documentation in the form of a procedure for reporting the discharge of used oil and other hazardous pollutants to the Department as set forth in 7 Del. C. § 6028 and the regulations of 7 DE. Admin. Code § 1203 *Reporting of a Discharge of a Pollutant or Air Contaminant*, promulgated thereunder. Documentation shall include a written statement affirming Respondents' understanding of the requirement to report discharges of used oil and other hazardous pollutants to the Department.
7. Submit documentation in the form of a procedure for making accurate hazardous waste determinations on all solid waste at the point of generation, as set forth in DRGHW Section 262.11(a). Include a written statement affirming Respondents' understanding of the requirement to make accurate hazardous waste determinations when solid wastes are generated.
8. Submit documentation demonstrating compliance with the requirement to ensure that transportation of used oil is conducted only by a transporter who has obtained an EPA identification number and a Delaware waste transporter permit as set forth in DRGHW Section 279.24. Documentation shall include records of shipments of used oil for the previous three years. Additionally, provide a written statement affirming Respondents' understanding of the requirement to implement the procedure to retain records of used oil shipments for a minimum of three years.

9. Submit documentation in the form of a procedure for ensuring universal waste aerosol cans are accumulated in a compatible container as set forth in DRGHW Section 273.13(e)(1). Submit photos to the Department showing the closed and compatible container to be used for future accumulation of universal waste aerosol cans. Provide a written statement affirming Respondents' understanding of the requirement to implement the procedure to accumulate universal waste aerosol cans in an appropriate and closed container.
10. Submit documentation in the form of a procedure demonstrating compliance with the requirement to accumulate universal waste aerosol cans in a labeled container as set forth in DRGHW Section 273.14(f). Include a written statement affirming Respondents' understanding of the requirement to implement the procedure to accumulate universal waste aerosol cans in a labeled container.
11. Submit documentation in the form of a procedure demonstrating compliance with the requirement to maintain a means to track the length of time an accumulation of universal waste has been onsite as set forth in DRGHW Section 273.15(c). Include a written statement affirming Respondents' understanding of the of the requirement to implement the procedure so as not to exceed the one (1) year accumulation time limit.
12. Submit documentation in the form of a procedure demonstrating compliance with the requirement to send universal waste aerosol cans to a universal waste handler, destination facility, or foreign destination as set forth in DRGHW Section 273.18(a). Include a written statement affirming Respondents' understanding of the requirement to implement the procedure.

13. Submit documentation in the form of a procedure demonstrating compliance with the requirement to provide adequate universal waste training to employees as set forth in DRGHW Section 273.16. Include a copy of the information provided to Respondents' employees. Additionally, submit a written statement affirming Respondents' understanding of the requirement to implement the procedure to provide adequate universal waste training to employees.
  
14. Submit documentation in the form of a procedure demonstrating compliance with the requirement to maintain universal waste shipment records as set forth in DRGHW Section 273.19. Include a written statement affirming Respondents' understanding of the requirement to implement the procedure to maintain shipping records of each shipment of universal waste for three years from the date of shipment.

Submit all documentation and correspondence to:

John M. Murdaugh  
Department of Natural Resources and Environmental Control  
Division of Waste and Hazardous Substances  
Compliance and Permitting Section  
89 Kings Highway  
Dover, Delaware 19901  
[John.Murdaugh@delaware.gov](mailto:John.Murdaugh@delaware.gov)



### **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 Respondents, that, based upon its findings, the Department is assessing Respondents 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 the 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 twelve (12) regulatory violations and two (2) statutory violations. Failing to ensure compliance with the regulatory requirements, including labeling of containers, properly managing universal waste, properly managing solid waste, properly managing hazardous waste, properly managing used oil, and operating a solid waste disposal facility without a permit resulted in significant deviations from the statutory and regulatory requirements cited herein.

**2) Respondent's Ability to Pay:**

The record contains no information that Respondents lack the ability to pay the administrative penalty assessed.

**3) Prior History of Violations:**

Respondents have not previously incurred the same or similar statutory and regulatory violations at the identified properties. The administrative penalty assessed for the violations cited herein is to deter Respondents from future violations.

**4) Degree of Culpability:**

The degree of culpability is significant. Had Respondents employed reasonable oversight measures as DRGSW and DRGHW 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 Respondents 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 calculated to deter Respondents, and those similarly situated, from engaging in future violations.

Pursuant to *7 Del. C. § 6005(b)(3)*, this is written notice to Respondents that based on its findings, the Department is assessing the Respondents an administrative penalty of \$10,000.00 for the violations identified in this Secretary's Order.

Respondents shall submit one check to the Department in the amount of \$10,000.00 to pay the administrative penalty within 30 days from the receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and shall be directed to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901

**PUBLIC HEARING AND APPEAL RIGHTS**

This Secretary's Order affects Respondents legal rights and is effective and final on receipt by Respondents. 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 Secretary's Order. In the alternative, Respondents may, pursuant to *7 Del. C. § 6005(b)(3)*, request a public hearing on the Secretary's Order within **30 days** of receipt of the 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.

**Respondents are further advised that the above assessed administrative penalty shall be due and owing within 30 days of Respondents receipt of this Assessment and Order.** In the event of nonpayment of the administrative penalty assessed above, and after Respondents have 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  
Ph: (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  
Ph: (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 Del. Admin. C. § 105*.

The Department, to the extent necessary, reserves the right to take additional enforcement actions regarding these and other violations by Respondents, 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.

Pursuant to *7 Del. C. § 6005(c)*, Respondents are 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)*).

The Department is not seeking costs from Respondents in this Secretary's Order. Please be advised, however, this is not a waiver of the Department's right to cost recover for past costs. Further, additional costs, which you may be liable, may accrue through the exhaustion of Respondents appeal rights. The Department reserves the right to issue a detailed billing statement of all costs incurred and seek recovery of that amount.

**PAYMENT**

If Respondents do not wish to exercise their legal rights to a hearing or appeal, Respondents may pay the administrative penalty of \$10,000.00 prior to the end of the appeal period, in the manner described in the attached "**Waiver of Statutory Right to A Hearing.**" **By doing so, Respondents waive the right to a hearing and the opportunity to appeal or contest this Secretary's Order.**

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

09/27/2024

\_\_\_\_\_  
Date



\_\_\_\_\_  
For Shawn M. Garvin, Secretary

cc: Kayli Spialter, Deputy Attorney General  
Timothy Ratsep, Division Director

**WAIVER OF STATUTORY RIGHT TO A HEARING**

Hills Classic Auto Sales, LLC, Fern Joseph, and Frantzdy Gauthier hereby waive their right to a public hearing and its opportunity to appeal or contest this Secretary's Order, and agree to the following:

1. Hills Classic Auto Sales, LLC, Fern Joseph, and Frantzdy Gauthier 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 Assessment and Secretary's Order. The check shall be directed to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901

**Hills Classic Auto Sales, LLC**

Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Print)

**Fern Joseph**

Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Print)

**Frantzdy Gauthier**

Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Print)