



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

Office of the
Secretary

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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-0043

Issued To:

Via Personal Service
Facility Owner/Operator
DIVI Enterprises, LLC
469 Old Airport Road
New Castle, DE 19720
Attn: Mr. Ronald Bennett

*Via Certified Mail, Return
Receipt*
Property Owner
469 Old Airport Road
415 Old Airport, LLC
4 Star Point, Suite 204
Stamford, CT 06902

*Via Certified Mail, Return
Receipt*
Property Owner
495 Old Airport Road
Necastro, Inc.
495 Old Airport Road
New Castle, DE 19720
Attn: Charles E. Wahl, III

*Via Certified Mail, Return
Receipt*
**Facility Owner/Operator
Registered Agent**

A Registered Agent, Inc.
8 The Green, Ste. A
Dover, DE 19901

*Via Certified Mail, Return
Receipt*
**Property Owner Registered
Agent**
469 Old Airport Road
415 Old Airport LLC
Corporation Service Company
215 Little Falls Drive
Wilmington, DE 19808

*Via Certified Mail, Return
Receipt*
**Property Owner
Registered Agent**
495 Old Airport Road
Necastro, Inc.
Edward F. Eaton
8 E 13th Street
Wilmington, DE 19801

This is to notify DIVI Enterprises, LLC, ("DIVI"), facility operator and/or owner, 415 Old Airport, LLC, owner of 469 Old Airport Road, New Castle, Delaware 19720 (Parcel No. 1000800009), and Necastro, Inc. owner 495 Old Airport Road, New Castle, Delaware 19720 (Parcel No. 1000800002) (collectively "Respondents"), 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, 7 DE Admin. Code § 1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW") and 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

DIVI is an automobile salvage yard facility operating on two adjoining properties, located at 469 Old Airport Road, New Castle, Delaware 19720 and on a portion of the property at 495 Old Airport Road, New Castle, Delaware 19720 (the "Facility"). Unwanted vehicles are brought to the Facility and processed, where some of the vehicles are ultimately crushed.

On November 3, 2023, the Department conducted a compliance inspection ("the Compliance Inspection") at the Facility to determine if Respondents were complying with 7 *Del. C.* Chapters 60 and 63, DRGSW and DRGHW.

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*

During the Compliance Inspection Department representatives observed a full and opened 5-gallon poly bucket¹ at the Facility, northwest of "Kevin's Warehouse."² The bucket had a three-inch vertical crack in its side. The soil beneath the poly bucket was stained by releases of used oil.

Failing to store used oil in containers that are in good condition, and that are not leaking, is a violation of DRGHW Section 279.22(b)(1) and (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.*

During the Compliance Inspection Department representatives observed: 1) an open 5-gallon poly bucket full of used oil northwest of "Kevin's Warehouse;" 2) an open and nearly full 10-gallon portable oil lift drain⁴ accumulating used oil northwest of "Kevin's Warehouse;" 3) two open 5-gallon portable oil lift drains accumulating used oil at the vehicle draining station³ located near the back of the Facility, southeast of the jersey barriers;⁵ and 4) a 275-gallon poly tote

¹ A container composed of polyethylene, a light and versatile synthetic resin.

² The sole building on the 469 Old Airport Road property is referred to as "Kevin's Warehouse."

³ A portable device used to collect fluids, e.g., used oil, from vehicles being drained. The device is composed of a funnel attached to a telescoping pipe which in turn is connected to an accumulation container.

⁴ A device on which vehicles are staged to facilitate access to locations under a vehicle to more easily remove vehicle fluids such as engine oil, coolant, and brake fluid.

⁵ A structure composed of concrete designed to prevent vehicle damage while also preventing a vehicle crossover

accumulating used oil to the northwest of the vehicle draining station, and southeast of the jersey barriers.

Failing to close containers or tanks of used oil DIVI is a violation of 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'.

During the Compliance Inspection, Department representatives observed multiple unlabeled containers accumulating used oil.

These unlabeled containers include: 1) a 5-gallon poly bucket; 2) a 10-gallon portable oil lift drain; 3) four 55-gallon steel drums accumulating oil with "Chevron Supreme Motor Oil" manufacturer's labels;⁴ 4) two unlabeled 5-gallon portable oil lift drains accumulating used oil at the vehicle draining station towards the back of the Facility, southeast of the jersey barriers; and 5) an unlabeled 275-gallon poly tote accumulating used oil northwest of the vehicle draining station.

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

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.*

⁴ At the time of the compliance inspection, Respondents representatives did not know if the contents of the four 55-gallon steel drums were a petroleum product or used oil. Following the inspection, Respondents' informed the Department that the four 55-gallon steel drums contained used oil.

At the time of the Compliance Inspection Department representatives observed several unremediated releases of used oil, which include: 1) used oil stained soil beneath a full and opened 10-gallon portable; 2) used oil stained soil beneath a full and opened 5-gallon poly bucket accumulating used oil with a vertical crack in its side spanning approximately three inches; 3) soil beneath and surrounding a vehicle draining station was stained and saturated with used oil; 4) large pools of standing water covered in an oily sheen, indicative of releases of used oil, southwest of the vehicle draining station; and 5) used oil stained soil beneath a discarded vehicle fuel tank in a pile of discarded vehicle fuel tanks on the ground.

At the time the observations were made there was no spill equipment or other evidence demonstrating that Respondents had attempted to contain used oil releases or mitigate oil contaminated soils. Failing to address releases of used oil is a violation of DRGHW Section 279.22(d).

5. 7 Del. C. § 6003(a)(4) of Title 7 states:

(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...

During the Compliance Inspection an improperly drained used oil filter was observed on the ground towards the back of the Facility, southeast of the jersey barriers near a scrap tire pile. Placing a used oil filter and a damaged lead acid battery onto the ground constitute disposal.

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

6. DRGHW Section 273.9 states:

"Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, lamps, or aerosol cans, calculated collectively) at any time.

"Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of this Part 273:

- (1) Batteries as described in §273.2;*
- (2) Pesticides as described in §273.3;*
- (3) Mercury-containing equipment as described in §273.4;*
- (4) Lamps as described in §273.5; and*
- (5) Aerosol cans as described in §273.6.*

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.*

During the Compliance Inspection Department representatives observed five waste aerosol cans on the ground near the vehicle draining station located towards the back of the Facility, immediately southeast of the jersey barriers. A cardboard box, outdoors and exposed to the weather, was found next to the aerosol cans which indicates that the cans were initially placed in the box and that the box had fallen onto the ground resulting in the cans spilling out. The universal waste requirements of DRGHW Part 273 require that universal waste aerosol cans must, in order to prevent the release of universal waste or a component of a universal waste, be accumulated in a container that is structurally sound to prevent leakage, spillage, exposure to heat sources or damage to the aerosol cans. The cardboard box used by Respondents to accumulate the universal waste aerosol cans was clearly not structurally sound, because the box did not prevent the cans from spilling out onto the ground and thereby created the potential for a damaged can release universal waste, or a component of a universal waste, into the environment.

Failing to accumulate universal waste aerosol cans in a structurally sound container is a violation of DRGHW Section 273.13(e)(1).

Following the conclusion of the compliance inspection, Department representatives informed Respondents of the requirements for the management of universal waste aerosol cans. In an email dated November 14, 2023, Respondents submitted documentation correcting this violation to the Department's satisfaction.

7. 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).'

During the Compliance Inspection, Department representatives observed five waste aerosol cans on the ground near the vehicle draining station located towards the back of the DIVI facility and immediately southeast of the jersey barriers. The spent aerosol cans were unlabeled.

By failing to properly label universal waste aerosol cans DIVI has violated DRGHW Section 273.14(f).

Following the conclusion of the compliance inspection, Department representatives informed Respondents of the requirements for the management of universal waste aerosol cans. In an email dated November 14, 2023, Respondents submitted documentation correcting this violation to the Department's satisfaction.

8. 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.*

During the compliance inspection, Department representatives inquired as to how universal waste aerosol cans are managed. Respondents stated that they are discarded along with municipal waste. As such, respondents do not maintain a method to determine the length of time universal waste aerosol cans are accumulated on site.

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

9. DRGHW Section 273.11(a) states:

A small quantity handler of universal waste is:

- (a) Prohibited from disposing of universal waste.*

During the Compliance Inspection a universal waste lead acid battery was observed disposed of on the ground towards the back of the Facility, southeast of the jersey barriers near a scrap tire pile. Additionally, Respondents' facility manager told Department representatives that Respondents do not manage waste aerosol cans as universal waste but instead discard the aerosol cans with the facility's municipal solid waste which is disposed of in a landfill.

By improperly disposing of universal waste batteries and aerosol cans as a small quantity handler of universal waste DIVI has violated DRGHW Section 273.11.

10. 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' facility manager stated that aerosol cans are received with incoming vehicles and left inside the vehicles prior to the vehicles being crushed resulting in the cans being crushed along with the vehicles. The crushed vehicles are subsequently shipped to Sims Metal Management. Sims Metal Management is not a universal waste handler, a destination facility or a foreign destination.

Directing universal waste aerosol cans to locations other than a universal waste handler, a destination facility, or a foreign destination as a small quantity handler of universal waste is a violation of DRGHW Section 273.18.

11. 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, Department representatives observed the improper management of universal waste aerosol cans. Based on this finding, Department representatives concluded that Respondents failed to provide adequate training for its employees.

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

12. DRGHW Section 262.11 states in part:

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.

During the Compliance Inspection Department representatives observed a damaged lead-acid battery among a pallet of intact, spent, lead-acid batteries. which were being managed under the exemption of DRGHW Section 266.8. The damaged battery, a solid waste, did not qualify for the DRGHW Section 266.8 exemption as it was not intact and therefore could not be reclaimed. As such, the damaged battery required an accurate hazardous waste determination be made at the point of generation.

By failing to make an accurate hazardous waste determination on a solid waste at its point of generation DIVI has violated DRGHW Section 262.11.

13. 7 Del. C. §6003(a)(4) states in part:

“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...”

DRGSW Section 4.1.1.1 states:

“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.”

On January 3, 4, 11, 18 and March 7, 2023, Department representatives observed seven (7) instances where roll-off containers filled with solid waste were received and dropped at the 469 Old Airport Road property.

By receiving solid waste without having first obtained a solid waste management facility permit from the Department, Respondents are operating a solid waste management facility without a permit. Operating a solid waste management facility without a permit violates 7 Del. C. §6003(a)(4) and DRGSW Section 4.1.1.1.

14. DRGSW Section 12.3.2 states:

*“Each scrap tire facility created after the effective date of these regulations must:
12.3.2.1 For Groups 1 and 2, prior to commencing operation, the scrap tire facility
must comply with subsection 4.1.1.3 of these regulations.”*

DRGSW Section 4.1.1.3 states:

“No person that is subject to the requirements of Section 12.0 of these regulations shall construct or operate a scrap tire facility without first having obtained a permit from the Department.”

7 Del. C. §6003(a)(4) states:

(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 the Compliance Inspection, Department representatives observed two separate outdoor piles of scrap passenger tire equivalents, containing 100 or more scrap tires in total. One pile was located outside on the 469 Old Airport Road property, immediately southeast of “Kevin’s Warehouse.” The second pile was located at the rear of the Facility, southeast of the jersey barriers. Scrap tires were also observed scattered throughout the Facility. As a qualifying business operating after October 1, 2016, Respondents are subject to the notification and permitting requirements of DRGSW Section 12.3.2 which require that any business storing more than 100 scrap tires outside, obtain a permit from the Department prior to accumulating scrap tires.

By failing to obtain a permit for the operation of a scrap tire facility DIVI is in violation of DRGSW Sections 12.3.1.2 and 4.1.1.3, and 7 *Del. C.* § 6003(a)(4).

15. 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.

7 *Del. Admin. C.* 1203-3.5 states:

In all cases, discharges of petroleum substances of any quantity or of any type are subject to these notification requirements unless the petroleum substance is contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater, or is confined to the location of the discharge on an impervious surface. . .

At the time of the Compliance Inspection, Department representatives observed multiple releases of used oil, a petroleum substance, into soils at the Facility. Failure to report these releases to the Department is a violation of 7 *Del. C.* § 6028.

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, DRGSW, and 7 *Del. C.* Chapters 60 and 63, the Department requires that Respondents 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 thirty (30) days of receipt of this Order:

1. Submit documentation in the form of a procedure demonstrating compliance with the requirement to maintain containers of used oil in good condition and free of leaks and cracks as set forth in DRGHW Sections 279.22(b)(1) and 279.22(b)(2). Provide photographs of all containers accumulating 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). Provide photographs of all containers accumulating used oil demonstrating each to be closed. Documentation shall also 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). Provide photographs of all containers accumulating used oil demonstrating each to be labeled. 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 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.
5. 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.
6. 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.
7. Submit documentation in the form of a written statement affirming Respondents understanding that the onsite disposal of solid and hazardous waste, without having first obtained a permit from the Department as set forth in 7 Del. C. § 6003(a)(4) is prohibited.
8. Submit documentation in the form of a written procedure demonstrating compliance with DRGHW Section 273.11(a) to prevent the illegal disposal of universal wastes. Documentation shall include a written statement affirming Respondents understanding of the requirement to implement the procedure.

9. 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.
10. Submit documentation in the form of a procedure for making accurate hazardous waste determinations on all solid waste at the point of generation as required by DRGHW Section 262.11, and for the subsequent lawful management of any solid waste determined to be a hazardous waste. Include a written statement affirming Respondents understanding of the requirement to make accurate hazardous waste determinations when solid wastes are generated. In addition, submitted documentation shall include:
 - a. An accurate hazardous waste determination for the damaged lead-acid battery
 - b. Written affirmation and photographs demonstrating that all hazardous waste are being managed onsite in accordance with all applicable DRGHW requirements.
11. Submit documentation demonstrating compliance with the requirement to obtain a permit for the receipt and/or disposal of solid waste, as required by 7 Del. C. § 6003(a)(4) and DRGSW Section 4.1.1.1. In lieu of obtaining a permit, Respondents may submit documentation in the form of a written statement to demonstrate compliance, to include:
 - a. Affirmation that the acceptance of all solid waste from any off-site property has ceased;
 - b. Affirmation that solid waste will not be received from off-site properties in the future; and
 - c. Affirmation that solid waste will no longer be received or disposed of on any property owned or operated by Respondents without first securing a solid waste management facility permit from the Department.
12. Submit a plan detailing actions to correct the noncompliance with the scrap tire management facility requirements of DRGSW Section 12.0. This plan must include:

- a. The name(s) of the Delaware permitted solid waste transporter(s) that will haul the scrap tires from Respondents properties; and
 - b. The name(s) of the authorized treatment, storage, disposal, or recycling facility(ies) (TSDRF) that will receive the scrap tires removed from Respondents properties; and
 - c. Written affirmation that documentation of scrap tire delivery (e.g., tolling agreement, letter of acceptance, manifest, or other documentation deemed acceptable by the Department) to the authorized TSDRF will be submitted to the Department weekly once removal begins and until all improperly stored scrap tires are removed; and
 - d. Written affirmation that the scrap tire removal will begin within fifteen (15) days and be completed within thirty (30) days of receipt of the Department's written approval of the removal plan unless a written extension is provided by the Department.
 - e. A statement as to whether Respondents will continue to generate, accumulate, and store scrap tires on the 469 and/or 495 Old Airport Road properties.
 - f. If applicable, a description as to how newly generated scrap tires will be managed pursuant to the requirements of DRGSW Section 12.0. Please know, no more than ninety-nine (99) newly generated scrap tires or scrap passenger tire equivalents may be stored outdoors without first securing the appropriate scrap tire facility permit or submitting the required notification and achieving compliance with the scrap tire regulatory provisions of DRGSW Section 12.0.
13. Submit documentation demonstrating compliance with the requirement to address used oil releases, pursuant to DRGHW Section 279.22(d). At a minimum, the documentation shall include:
- a. Actions to be implemented to prevent releases of used oil from occurring during routine operations at the site; and
 - b. Actions to be immediately implemented should an unexpected release of used oil occur so as to prevent contamination of environmental media both on and off of the Delaware Auto Salvage, Inc. property; and
 - c. A plan to be approved by the CAPS prior to implementation, for the purpose of evaluating past releases of used oil that have occurred at the Respondents properties. At the time of the November 3, 2023, compliance inspection, evidence of used oil releases was observed in locations near, under, and around the lift stations and the vehicle crusher; however, the plan must evaluate all areas

of the property where used oil releases have occurred. At a minimum, the submitted plan must identify the source of each release, the source location, the procedures to be employed to identify both the vertical and horizontal extent of each release, and the actions to be implemented in remediating and managing all contaminated media resulting from the releases. The plan must also include a schedule for the work to be completed

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

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 three (3) 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 in whole or in part have 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.

SECRETARY'S ORDER FOR COST RECOVERY

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 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 Travis Groski, Esq., Deputy Attorney General, at (302) 395-2600.

10/22/2024

Date



For Shawn M. Garvin, Secretary

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

WAIVER OF STATUTORY RIGHT TO A HEARING

DIVI Enterprises, LLC 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. DIVI Enterprises, LLC; 415 Old Airport, LLC; and Necastro, Inc. 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 Order. The check shall be directed to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901

DIVI Enterprises, LLC

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)

415 Old Airport, LLC

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)

Necastro, Inc

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)