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

OFFICE OF THE SECRETARY

PHONE
(302) 739-9000

NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT AND SECRETARY'S ORDER

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

Order No. 2026-WH-0030

VIA FedEx ***VIA FedEx***

Issued To:

Owner/Operator:
Lidl US, LLC
359 Auto Park Dr.
Middletown, DE 19709

Lidl US, LLC
By Serving the Resident Agent:
Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Dear Lidl US, LLC:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found ("Respondent") in violation of Title 7, Chapter 60, Subchapter IX of the Delaware Code (Recycling and Waste Reduction). 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

In an effort to minimize plastic pollution in the ocean and ensure that future generations have a clean and healthy environment to live, work and recreate in, Delaware's 151st General Assembly passed House Bill No. 212 ("HB 212") which was signed by the Governor on September 30, 2021. HB 212 amended Title 7 Ch. 60, Subchapter IX by providing a phased approach to banning the distribution of single-use plastic carryout bags by stores to customers at the point of sale. HB 212 went into full effect on July 1, 2022. Stores may still provide reusable bags[1] or paper bags to their customers.

FINDINGS OF FACT AND VIOLATION INCLUDING STATUTORY REQUIREMENTS

1. **7 *Del. C.* Chapter 60 § 6099A(a)(5) states:**

> *"Store" means a retail establishment, excluding a restaurant, engaged in the business of selling or exchanging goods or services for cash, barter, or any form of consideration on the assumption that the*

[1] Pursuant to 7 *Del. C.* Chapter 60 § 6099A(a)(4), "**reusable bag**" means a carryout bag made of polypropylene fabric, PET nonwoven fabric, nylon, cloth, cotton, jute, hemp product, or other washable fabric. The bag must also have stitched handles, a volume capacity of 4-gallons, is machine washable or made of a durable material that can be cleaned and disinfected, and does not contain lead, cadmium, or any other toxic material.

purchaser of such goods or services has acquired the goods or services for ultimate consumption or use and not resale that provides carryout bags to its customers in conjunction with the sale of such goods or services.

2. 7 *Del. C.* Chapter 60 § 6099A(b) states:

(b) The store which provides plastic bags for exemptions listed in paragraph (e)(3) of this section below shall establish an at-store recycling program pursuant to this section that permits a customer of the store to return clean and dry plastic bags and film to the store.

3. 7 *Del. C.* Chapter 60 § 6099A(d) states in relevant part:

(d) An at-store recycling program provided by a store shall include all of the following:

(1) [Repealed.]

(2) A plastic bag and film collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags.

(3) All plastic bags and film collected by the store shall be collected and recycled in a manner consistent with the intent of this section. In no instance, shall a store permit collected plastic bags and film to be disposed of or to further any act other than the recycling of such bags.

(4) The store shall maintain records describing the collection and recycling of plastic bags and film collected by such store and shall make the records available to the Department of Natural Resources and Environmental Control (DNREC), upon request, to demonstrate compliance with this section.

> *(5) The store shall make reusable bags available to customers within the store, which bags may be purchased by such customer and used in lieu of using a plastic carryout bag or paper bag. This subsection is not applicable to a retail establishment specified pursuant to subsection (c) of this section above.*

The Lidl Middletown Store located at 359 Auto Park Dr, Middletown, DE, 19709 (the "Store") is owned or operated by Respondent. It sells groceries, household goods and lifestyle products and is a "store" as defined by 7 *Del. C.* § 6099A(a)(5).

On September 3, 2026, Department representatives observed plastic carryout bags being provided to customers to package loose fruits and vegetables sold in the Store. These plastic carryout bags were provided for goods that qualify under an exception stated in 7 *Del. C.* Chapter 60 § 6099A(e)(3)(h). Accordingly, 7 *Del. C.* § 6099A(b) requires the Store establish An At-store Recycling Program "that permits a customer of the store to return clean and dry plastic bags and film to the store."

There was no At-store Recycling Program provided by the Store. Per 7 *Del. C.* § 6099A(d) an At-store Recycling Program includes, among other things, a bin made available for customers to recycle plastic carryout bags that is visible in the store, easily accessible to the customer, and clearly marked for collection of plastic bags and film.

CONCLUSIONS

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

SECRETARY'S ORDER

In consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* § 6005(b)(2), that Respondent is responsible for achieving compliance with all applicable laws and regulatory requirements by undertaking and submitting the following within thirty (30) days:

1. Provide written affirmation that an At-store Recycling Bin Program has been established as detailed in 7 *Del. C.* Chapter 60 § 6099A(d).

Submit all compliance documentation and correspondence to:

Kathleen Rocco
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Compliance and Permitting Section
89 Kings Highway
Dover, DE 19901
Kathlee.Rocco@delaware.gov

ASSESSMENT OF PENALTY

Pursuant to 7 *Del. C.* § 6005(b)(3), the Secretary may impose an

administrative penalty of not more than $40,000.00 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:**

   Not providing an At-store Recycling Program violates the current statutory requirements cited herein which require a properly labeled and easily accessible plastic bag and film recycling bin visible for customer use if the store is providing plastic carryout bags for customers to package loose fruits and vegetables or for any other goods that qualify for an exception under 7 *Del. C.* Chapter 60 § 6099A(e)(3).

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

   The record contains no information that Respondent lacks the ability to

pay the administrative penalty assessed.

3. **Prior History of Violations:**

   The record contains no information that Respondent has a prior history of the violations.

4. **Degree of Culpability:**

   7 Del. C. § 6099A requires a store that provides plastic bags which meet an exception to provide an At-Store Recycling Program. Had Respondent employed reasonable oversight, this violation 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 designed 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 based on the above findings and factors, an administrative penalty of $750.00 is assessed for the violation identified in this Secretary's Order.

Respondent shall submit one check to the Department in the amount of $750.00 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 include the Secretary's Order number on the check's memo line and be directed to: Enforcement Coordinator-DNREC, 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 violation 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 $750.00 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**

If you have any questions, please contact, or have your attorney contact Travis Groski, Deputy Attorney General, at (302) 395-2521 or Travis.Groski@delaware.gov.

September 26, 2026

Date

Gregory Patterson
Secretary
Delaware Department of Natural Resources
and Environmental Control

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

WAIVER OF STATUTORY RIGHT TO A HEARING

Lidl US, 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. **Lidl US, LLC** will pay the administrative penalty in the amount of $750.00 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 Enforcement Coordinator-DNREC, 89 Kings Highway SW, Dover, DE 19901

Lidl US, LLC

Date: _____ By: _____

(Signature)

Title: _____ Name: _____

(Print)