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-0036

VIA FEDEX

Issued To:

Owner/Operator:
Fenwick Hardware
37520 Lighthouse Road
Fenwick Island, DE 19944

Dear Fenwick Hardware:

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

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") 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.

On August 17, 2026, Department Representatives observed that plastic carryout bags were being distributed at the point of sale at the Fenwick Hardware store located at 37520 Lighthouse Road, Fenwick Island, DE 19944.

[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.

FINDINGS OF FACT AND VIOLATION INCLUDING STATUTORY REQUIREMENTS

1. **7 *Del. C.* Chapter 60 § 6099A(a)(3) states:**

   "Plastic carryout bag" means a plastic bag provided by a store to a customer at the point of sale made from plastic and not specifically designed and manufactured to be reusable.

2. **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 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.

The Fenwick Hardware store located at 37520 Lighthouse Road, Fenwick Island, DE 19944 is a "store" owned or operated by Respondent. It sells building, lawn and garden supplies and equipment, hardware and home goods.

3. **7 *Del. C.* Chapter 60 §6099A(e) states:**

   (e) Effective January 1, 2021, a "store" as defined in subsection (a) of this section shall not provide any single-use plastic carryout bag, as defined in subsection (a) of this section, to a customer at the point of sale except as provided in this section:

   (1) A store may make available for purchase or distribution at the

> *point of sale a reusable grocery bag that meets the requirements of paragraph (a)(4) of this section.*
> *(2) A store may make paper bags available for no cost or charge any price at their discretion.*
> *(3) A store may provide plastic carryout bags for any of the following purposes:*
>
> *a. Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness.*
> *b. Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste.*
> *c. Bags used to contain live animals such as fish or insects sold in pet stores.*
> *d. Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals.*
> *e. Nonhandled bags used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or a reusable grocery bag.*
> *f. Bags provided to contain an unwrapped food item.*
> *g. Nonhandled bags that are designed to be placed over articles of clothing on a hanger.*
> *h. Bags used by customers inside a business to package loose items, such as nuts, ground coffee, grains, fruits, vegetables, or candies.*

On August 17, 2026, Department representatives observed plastic carryout bags being provided to customers at the point of sale at Fenwick Hardware store located at 37520 Lighthouse Road, Fenwick Island, DE 19944. These plastic carryout bags were provided for goods that do not qualify for any of the exceptions stated in 7 *Del. C.* Chapter 60 § 6099A(e)(3). Providing a plastic carryout bag to a customer at the point of sale violates 7 *Del. C.* Chapter 60 § 6099A(e).

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. Do not provide to customers a plastic carryout bag at the point of sale except in accordance with 7 *Del. C.* Chapter 60 § 6099A(e).

2. Provide a written affirmation that a plastic carryout bag will not be provided to customers at the point of sale except for those purposes that are allowed as detailed in 7 *Del. C.* Chapter 60 § 6099A(e)(3).

Submit all compliance documentation and correspondence to:

Gregory Williams
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Compliance and Permitting Section
89 Kings Highway
Dover, DE 19901
Gregory.Williams@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:**

   Furnishing a plastic carryout bag at the point of sale violates the current statutory requirements cited herein which ban the distribution of plastic bags. Rather than adhere to the current law, Respondent chose to provide plastic bags instead of providing paper bags, reusable bags or no bags.

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 states why plastic carryout bags are not to be provided by stores in the State and Respondent must help protect the environment by adhering to this law. 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", shall include the Secretary's Order number on the check's memo line and shall 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 Caitlin Barrett, Assistant Attorney General, at (302) 257-3303 or Caitlin.Barrett@delaware.gov.

October 11, 2026

Date

Gregory Patterson
Secretary
Delaware Department of Natural Resources
and Environmental Control

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

WAIVER OF STATUTORY RIGHT TO A HEARING

Fenwick Hardware 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. **Fenwick Hardware** 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 include the Secretary's order number on the check's memo line and shall be directed to Enforcement Coordinator-DNREC, 89 Kings Highway SW, Dover, DE 19901

Fenwick Hardware

Date: _____ By: _____

(Signature)

Title: _____ Name: _____

(Print)