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November 18, 2022

Via Hand Delivery

Delaware Environmental Appeals Board
89 Kings Highway
P.O. Box 1401
Dover, DE 19903
ATTN: Administrative Assistant to the
Environmental Appeals Board

RE: DSWA Appeal of Secretary's Order no. 2022-WH-0021 In Respect of Donovan Salvage Works, Inc. and Herbert Holdings, LLC

Dear Honorable Members of the Environmental Appeals Board:

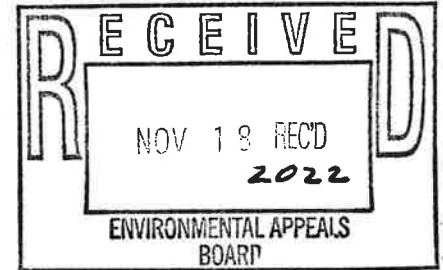
This firm represents Donovan Salvage Works, Inc. and Herbert Holdings' LLC (together "Appellants"). Appellants hereby appeal Secretary's Order No. 2022-WH-0021 (the "Order") issued by the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC") on November 2, 2022, and received by the DSWA on November 4, 2022, in respect of the salvage yard operated by Donovan Salvage Works, Inc. The Order is attached hereto as Exhibit A.

This letter provides the "Statement of Appeal" required by Section 2.0 of the Board's procedural regulations.

I. BACKGROUND

Donovan Salvage Works, Inc. operates a scrapyards located at 20262 Donovan's Road, Georgetown, DE 19947. Herbert Holdings, LLC owns the real estate on which the salvage yard is located. Donovan Salvage Works, Inc. scraps abandoned and unusable automobiles, as well as other vehicles and equipment, including farm equipment, mobile homes, and even railcars. Virtually everything of any value that comes into the facility is converted into a form that will allow it to be recycled/reused. This includes steel from automobile bodies as well as aluminum from engines and transmissions. Like all scrap yards, residue from scrapping activities that cannot be recycled or resold will inevitably accumulate as vehicles and equipment are scrapped.

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This facility provides an essential service in the recycling of automobiles and junk farm equipment. It also provides a retail outlet for used automobile parts, an essential service for lower income Sussex Countians. Appellants have owned/operated the salvage yard since 2007; however the site is known to have been operated as a salvage yard since at least the 1960s, and more than a few of the “waste piles” and “waste berms” identified in the Order long predated Appellants’ ownership and operation of the facility.

In connection with the “multimedia compliance inspection” noted by the Secretary in paragraph 5 of the Order, Appellants’ business was the subject of two cease and desist orders, causing a full or partial shutdown of the facility for two thirty-day periods, causing a loss of well over \$1 million in gross revenue. This extreme overreaction resulted in a notice of violation identifying 45 violations; however, none of these violations alleged a significant discharge of a pollutant into the environment (noting, at worst, stained soils). Instead, the violations focused on technical violations such as piles of debris (to be expected in scrap yard), improper or absent labeling on waste containers, an oversize scrap tire pile, etc.

Appellants do not take lightly these violations and have taken many corrective actions since the initial notice of violation was issued on May 19, 2022. Appellants nevertheless recognize that more needs to be done and are continuing to work on the violations. However, Appellants, as a small business, have comparatively limited resources, and addressing each violation to the 100% satisfaction of the Secretary cannot be accomplished overnight.

II. THE INTEREST WHICH HAS BEEN SUBSTANTIALLY AFFECTED

The Order substantially affects the interests of Appellants because: (i) it assesses an outrageously disproportionate administrative penalty of **\$1.7 million**; and (ii) one element that can be used by DNREC in seeking “chronic violator” status is the number of prior violations. 7 Del. C. § 7904(b)

III. THE DECISION IS IMPROPER

DNREC’s NOV is improper, as explained below.

IV. THE REASONS WHY THE DECISION IS IMPROPER

The Board’s rules contemplate that the “Statement of Appeal” provide a “concise” statement of the reasons for the appeal (Sec. 2.1), and that the parties later “[i]dentify issues” through the pre-hearing process (Sec. 3.1.6). The reasons the decision is improper are concisely stated as follows:

1. The Order identifies numerous violations of Chapter 60 of Title 7, as well as of permit condition requirements. While numerous, the majority of these violations are technical in nature (*e.g.*, exceeding permitted size of a scrap tire pile, failure to use proper labels on waste containers, etc.) and, critically, do not allege a significant release of pollutants into the environment, especially the kind of release that would cause damage to drinking water supplies, force neighbors out of their homes, cause fish kills in nearby surface waters, etc.;

2. The Order also fails to recognize the reality of appellant's business as small business operating as a scrapping facility for automobiles and various other types of vehicles and abandoned equipment, which by necessity will result in detritus from scrapping activities present at the facility – indeed, some of the material considered as “waste” in the “waste piles” identified in the Secretary's Order is not waste at all, but scrap metal awaiting processing and sale;
3. The Order further fails to take into consideration appellant's genuine efforts to address the violations between the date the notice of violation was issued and the date of the Order;
4. Notwithstanding the lack of a significant release of pollutants, the realities of scrap yard operations, Appellant's efforts to take corrective action, and the nature of the Appellants as a small business, the Order imposes an administrative penalty of ***\$1.7 million***, which appears to be by far the largest administrative penalty ever sought by the Secretary; and
5. The Secretary's attempt to justify this outlandish penalty under the factors set forth in 7 *Del. C. § 6005(b)(3)* is thoroughly lacking in meaningful detail and woefully inadequate to address these statutory factors.

Appellants reserve the right to raise other issues at the hearing. The Board is empowered under 7 *Del. C. § 6008* to “affirm, reverse or remand to the secretary with instructions...” For the foregoing reasons, Appellant respectfully requests that the Board utilize this authority and discretion to: (i) reverse the penalty assessed in the Order to the extent such penalty pertains to violations substantially corrected as of the date of the Order, and (ii) remand the penalty assessed in the Order back to the Secretary with instructions to assess a penalty of \$1,000 per violation for those violations that were not fully corrected as of the date of the Order.

V. ESTIMATED NUMBER OF WITNESSES AND TIME INVOLVED IN PRESENTING THE APPEAL

DSWA estimates it will call three witnesses and will take three to four hours to present its appeal, exclusive of the time needed to cross examine DNREC witnesses, and for DNREC to present its case or cross-examine DSWA witnesses.

Enclosed is a check in the sum of \$50.00, which represents payment of the prescribed costs.

Respectfully submitted,



MICHAEL W. TEICHMAN
MWT/bfd
Enclosure
cc: Devera Scott, Esquire