



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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Secretary's Order to Cease and Desist

Issued Pursuant to 7 *Del. C.* § 6018

ORDER NO. 2016-WH-0032

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:

Ms. Martia McGinnis
McGinnis Auto & Mobile Home Salvage, LLC
4160 Downs Chapel Rd.
Clayton, DE 19938

Registered Agent:

Martia Keating
4160 Downs Chapel Rd.
Clayton, DE 19938

This is to notify Martia McGinnis and McGinnis Auto & Mobile Home Salvage, LLC ("Respondent" or "McGinnis") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. C.* Chapter 60 and 7 DE Admin. Code Section 1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW"). Accordingly, the Department is issuing this Secretary's Order to Cease and Desist, pursuant to 7 *Del. C.* § 6018.

BACKGROUND

1. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of the improper, inadequate, or unsound management of solid wastes, by establishing a program of regulation over the storage, transportation, handling and disposal of solid wastes, and to assure the safe and adequate management of solid wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.

Delaware's Good Nature depends on you!

2. Respondent owns and operates an auto and mobile home salvaging facility located at 4160 Downs Chapel Road, in Clayton, Kent County, Delaware (“the facility”). Respondent salvages and dismantles primarily discarded and dilapidated mobile homes at the facility.
3. The Department conducted a site visit at Respondent’s facility on February 25, 2015 to determine the facility’s compliance with 7 *Del. C.* Chapter 60 and DRGSW. Department representatives observed two (2) statutory violations and one (1) regulatory violation. The violations included improper storage of a solid waste and operating a materials recovery facility without a permit. During the site visit, Respondent was instructed not to add any additional waste to the waste pile. The Department followed up with the issuance of Notice of Violation (“NOV”) No. 15-SW-03 to Respondent in August 2015.
4. Respondent received the NOV on August 19, 2015, which required Respondent to submit a detailed plan for the cleanup and removal of the waste, including a time table for the cleanup operations to commence and an anticipated date for completion. Respondent was also required to submit a completed Resource Recovery Facility Permit application within ninety (90) days of receipt of the NOV. Due to a delay by the Department in providing the application documents to Respondent, the deadline for submission of a completed application was extended to December 15, 2015.
5. In September 2015, Respondent submitted a solid waste removal plan that indicated the solid waste removal would be completed by July 2016. However, Respondent did not submit a permit application by December 15, 2015, nor has one been submitted to date.
6. On March 30, 2016, the Department conducted a follow-up site visit at Respondent’s facility. Department representatives observed the same violations identified during the February 2015 site visit. Department representatives observed, as well, that Respondent had added waste to the original waste pile, failing to heed the Department’s verbal instruction during the February 25, 2015 site visit, in addition to failing to comply with the Department’s NOV.
7. During the March 30, 2016 site visit, Respondent claimed that some waste had been removed from the waste pile but Respondent could not provide an estimate of the volume or tonnage removed, nor could Respondent provide documentation of proper disposal. Department representatives believe the waste pile has not been diminished, or minimally so, and believe, based on photo documentation, additional waste had been added since the February 2015 site visit.
8. Respondent further claimed, during the March 30, 2016 site visit that the Resource Recovery Facility Permit Application had been forwarded to Respondent’s attorney, with the understanding that the attorney would be contacting the Department. Department representatives informed Respondent that the Department had not been contacted by Respondent’s attorney.

9. Respondent failed to comply with the Department's requirements and, therefore, remains in violation of 7 Del. C. Chapter 60 and DRGSW.

FINDINGS

The Department has found Respondent in violation of 7 Del. C. Chapter 60 and DRGSW including, but not limited to:

1. **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...”

- and **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 Section 2.3, without first having obtained a permit from the Department.”

Respondent continues to operate a materials recovery facility without a Resource Recovery Facility Permit. The site's specific activities requiring the permit include bringing in a solid waste (primarily discarded, dilapidated mobile homes), storing a solid waste, and processing solid waste for reuse or recycling. NOV No. 15-SW-03 was issued to Respondent in August 2015 requiring a completed Resource Recovery Facility Application to be submitted within ninety (90) days of receipt of the NOV. Due to a delay by the Department in providing the application documents to Respondent, the deadline for submission of a completed application was extended to December 15, 2015. To date, the Department has not received a Resource Recovery Facility Permit Application from Respondent.

2. **7 Del. C. § 6025(b)(2) states in part:**

“(b) No person shall cause or contribute to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

(2) In solid waste disposal facilities which have received a permit from the Department ...”

On March 30, 2016, the Department conducted a site visit at McGinnis and observed that additional waste, consisting of discards of lumber, wallboard, plastics, insulation, and

some metal, had been added to the waste pile that was first observed in February 2015. Respondent was instructed, during the February 2015 site visit, not to add more waste to the waste pile. During the March 30, 2016 site visit, Respondent stated that the waste in the pile had been accumulating since 2001.

ORDER

IT IS HERBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 *Del. C.* § 6018 that Respondent shall:

1. Upon receipt of this Order, immediately cease and desist receiving and dismantling mobile homes and construction and demolition waste.
2. Within 30 days of receipt of this Order, remove all solid wastes including, but not limited to, discarded mobile homes and piles of construction and demolition waste on land and in containers. However, in accordance with the approval issued by Kent County in 1995, Respondent may store no more than two mobile homes.
3. Complete the above-referenced requirements in compliance with all applicable laws and regulations, and only utilize transportation companies, disposal facilities, and contractors holding valid permits.
4. Within 30 days of receipt of this Order, provide written documentation to the Department confirming the proper disposal or recycling of the solid wastes. Documentation shall include, but not be limited to, identification of the hauler used to transport the solid wastes as well as weigh tickets or other valid documentation representing authorized disposal or recycling.
5. Within 30 days of receipt of this Order, provide to the Department a list of all mobile homes received by McGinnis since 2001¹, including, but not limited to, the date each mobile home was received by McGinnis, the vehicle identification number for each mobile home, and date of manufacture of each mobile home. Respondent shall also identify those mobile homes currently at the facility.
6. Within 30 days of receipt of this Order, provide a detailed explanation of McGinnis' inspection, handling, storage, disposal, and recycling procedures for all materials removed from, or contained within, mobile homes.
7. Should Respondent desire to continue receiving, dismantling and recycling mobile homes or other construction and demolition debris, Respondent shall provide to the Department a completed Resource Recovery Facility Permit Application within 30 days of receipt of this Order. Respondent shall not accept

¹ Calendar year 2001 is the date that Ms. McGinnis indicated the waste pile first originated.

mobile homes or construction and demolition waste prior to such a permit being issued by the Department.

The Department reserves the right to take additional enforcement actions regarding these and other violations at the facility, 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).

If you have any questions, please contact Mindy Anthony at (302) 739-9403, option 8.

Date:

5/2/14



David S. Small, Secretary
Department of Natural Resources
and Environmental Control

cc: John Paradee, Attorney, Baird Mandalas Brockstedt, LLC
Ralph K. Durstein III, Deputy Attorney General
Marjorie A. Crofts, Director, WHS
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William D. Miller, III, Program Manager, SHWMS
Mindy Anthony, Environmental Scientist, SHWMS
Susan S. Baker, DNREC Enforcement Coordinator
Shannon Morris, Chief Code Enforcement Officer, Kent County
Office of the Secretary
SHWMS File