



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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## Secretary's Order to Cease and Desist

Issued Pursuant to 7 *Del. C.* § 6018

**ORDER NO. 2017-WH-0023**

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

**Issued To:**

Thomas L. Anderson, Sr.  
Anderson's Recycling, Inc.  
9320 Old Racetrack Rd  
Delmar, DE 19940

**Registered Agent:**

Thomas L. Anderson, Sr.  
Anderson's Recycling, Inc.  
9320 Old Racetrack Rd  
Delmar, DE 19940

This is to notify Anderson's Recycling, Inc. ("Anderson's" or "Respondent") 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**

Respondent operates a business at 9320 Old Racetrack Road, Delmar, Delaware. It is known to the Department that Respondent has transported and received scrap tires for storage and transfer. Respondent has also previously processed scrap tires in an onsite grinding operation, but Respondent stated that this activity ceased in 2009.

Since 2015, the Department has conducted three (3) mailings to all known and potential scrap tire facilities in Delaware, including Respondent, notifying them of the pending implementation of scrap tire regulations. The most recent mailing on February 9, 2017, notified the facilities that qualifying scrap tire businesses must apply for a scrap tire facility permit by April 17, 2017, and the need for non-qualifying businesses to apply for a solid waste facility permit or close a non-permitted scrap tire facility as required by Section 12.11 of DRGSW, by submitting a closure plan within thirty (30) days of non-compliance. Letters mailed to Respondent were not returned to the Department as being non-deliverable.

*Delaware's Good Nature depends on you!*

The Department attempted to conduct an onsite compliance assessment at the Respondent's facility on May 26, 2017 to determine Respondent's compliance with 7 Del. C. Chapter 60 and DRGSW. While unable to access the site, Department representatives observed from the public right-of-way well over 100 scrap tires at the facility. Accumulating more than 100 scrap tires subjects the facility to the scrap tire facility management standards in DRGSW. The Department was unable to further estimate the number of scrap tires beyond the well over 100 observed from the public right-of-way, given that Department representatives were unable to access the property.

Also on May 26, 2017, Department representatives observed a vehicle owned by Respondent transporting scrap tires along a public roadway.

On May 30, 2017; May 31, 2017; and June 1, 2017, Department representatives called Respondent and left voice mail messages requesting Respondent contact the Department to schedule a site assessment. Respondent did not respond to any of those voicemail messages.

Further, the Department viewed an aerial photograph of Respondent's facility, dated April 2017, available to the public via Google Earth, and estimated that there are thousands of scrap tires located on Respondent's property. The Department concluded Respondent is in violation of the scrap tire facility management standards in DRGSW.

### **DEFINITIONS AND APPLICABLE REGULATORY CITATIONS**

Section 3 of DRGSW, specifically the definition of "Scrap Tire:"

*"means a tire that is no longer prudent or practical for vehicular use; or a tire that has not been used on a vehicle for more than 6 months after the last date it was used on a vehicle; or a tire that is six years or older from the date of manufacture."*

Section 3 of DRGSW, specifically the definition of "Prudent and Practical:"

*"means*  
*a) Tread depth shall not be less than 2/32 of an inch deep;*  
*b) Free from chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent materials; and*  
*c) Tire cords or belting materials shall not be exposed, either to the naked eye or when cuts or abrasions on the tire are probed."*

Section 3 of DRGSW, specifically the definition of "Scrap Tire Facility:"

*"means an accumulation of 100 or more scrap tires wherein each scrap tire weighs 25 pounds or less; or 100 or more scrap passenger tire equivalents; or any combination thereof that, upon conversion, results in 100 or more passenger*

*tire equivalents, in the same general vicinity that is not enclosed by a building, including, but not limited to, open fields, woodlots, pavement, dumpsters or rollofs, trailers, and fenced areas. For scrap tires weighing more than 200 pounds each, the first 10 scrap tires are exempt from the accumulation amount.”*

Section 3 of DRGSW, specifically the definition of “Enclosed by a Building:”

*“means a permanent fixed structure surrounded on all sides by four solid walls, a structurally sound roof, and an impermeable floor, with no permanent openings.”*

Section 3 of DRGSW, specifically the definition of “Passenger Tire Equivalent” or “PTE”:

*“means a conversion measurement using the assumption that one passenger car tire is equal to 25 pounds. A tire weighing more than 25 pounds shall be evaluated by dividing its total weight by 25 pounds to equal the number of PTEs.”*

Section 12.1.1 Scrap Tire Facility Applicability of DRGSW reads:

*“This section applies to new and existing areas established for scrap tires that are associated with a qualifying business. A qualifying business is a business that generates and accumulates scrap tires but whose primary purpose is not to accumulate scrap tires. Examples of qualifying businesses may include but are not limited to: tire retreading businesses; automobile graveyards or junkyards; local and state governmental agencies and/or facilities such as county maintenance, police, and fire; military institutions and/or facilities; farmers; and other automotive businesses. This section does not apply to owner/operators who have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management. This section also does not apply to persons who are registered with, and actively participating in, the Scrap Tire Management Program, administered by the Department. All transporters of solid waste, including scrap tires, must comply with any applicable provisions in Section 7.0. All scrap tire facilities whose primary purpose is to accumulate scrap tires must comply with any applicable provisions in Sections 9.0 and 10.0, as applicable.”*

### **FINDINGS**

The Department finds Respondent is operating a scrap tire facility as defined in Section 3 of DRGSW based on: (1) the observations made from the public right-of-way by Department representatives on May 26, 2017 and (2) the aerial photograph of Respondent's facility dated April 2017, available to the public via Google Earth.

The Department, in addition to finding Respondent is managing a scrap tire facility, finds that Respondent is not a qualifying business as defined in Section 12.1.1 of DRGSW, for Respondent's business operation is not one of primarily generating scrap tires, but rather, is one of accepting and accumulating scrap tires generated by others. Therefore, Respondent cannot avail itself to the permitting or notification mechanisms for Group 1, Group 2 or Group 3 scrap tire facilities as set forth in Section 12 of DRGSW. Facilities that do not meet Group 1, Group 2, or Group 3 standards are prohibited in accordance with Section 12.11.1 of DRGSW.

Further, the Department finds that Respondent has engaged in the transportation, acceptance, storage, and transfer of scrap tires, without having obtained the appropriate permits or approvals from the Department.

### **CONCLUSIONS AND VIOLATIONS**

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

1. Engaging in the operation of a scrap tire facility without a permit and transporting scrap tires without a permit are violations of 7 Del. C. § 6003(a)(4) which reads 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, regardless of the geographic origin or source of such solid wastes...”*

2. Having failed to obtain a permit for the operation of a scrap tire facility is also a violation of Section 4.1.1.1 of DRGSW which reads:

*“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.”*

3. As Respondent is not operating a qualifying business as defined in Section 12.1.1 of DRGSW, and does not hold a valid resource recovery facility permit or other approval issued pursuant to DRGSW, and is not registered to participate in the Scrap Tire Management Fund Program to remove qualifying piles of scrap tires, Respondent is subject to Section 12.11.1 of DRGSW which reads:

*“All other scrap tire facilities not complying with the requirements of Group 1, Group 2, or Group 3 or owner/operators who do not have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management; or persons who are not registered with, and actively participating in, the Scrap Tire Management*

*Program are prohibited and all scrap tires must be removed in accordance with this subsection and the facility shall be closed in a manner that will eliminate the need for further maintenance of the facility."*

4. Further, Respondent is transporting scrap tires without having obtained the appropriate transportation permit as required by DRGSW, Section 7.1.1 which reads:

*"No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations. Refer to Section 4 of these Regulations, PERMIT REQUIREMENTS AND ADMINISTRATIVE PROCEDURES."*

**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:

1. Cease and desist in the act of transporting scrap tires without a permit in the State of Delaware; and
2. Cease and desist in accepting, storing, processing, or transferring scrap tires at its unpermitted facility.

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) and (c)(1).

If you have any questions, please contact Karen G. J'Anthony at (302) 739-9403, Option 8.

Date:

9/21/17



Shawn M. Garvin, Secretary  
Department of Natural Resources  
and Environmental Control

cc: Devera B. Scott, Deputy Attorney General  
Marjorie A. Crofts, Director, WHS  
Nancy C. Marker, Program Administrator, SHWMS  
Susan S. Baker, DNREC Enforcement Coordinator  
Karen G. J'Anthony, Program Manager II, SHWMS

