



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

Office of the  
Secretary

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**SECRETARY'S ORDER TO CEASE AND DESIST**

Pursuant to 7 *Del. C.* § 6018

**Order No. 2018-WH-0070**

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

**Issued To:**

F&F Auto Sales, LLC  
d/b/a F&F Econo Tires  
1861 South DuPont Highway  
Dover, DE 19901  
Attn: Mr. Frantzdy Gauthier  
Co-Owner

**Registered Agent:**

Parkway Law, LLC  
3171 DuPont Parkway  
Suite B  
Townsend, DE 19734

Dear Mr. Gauthier:

This is to notify F&F Auto Sales, LLC, doing business as F&F Econo Tires ("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 *Del. Admin. C.* § 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 1861 South DuPont Highway, Dover, Delaware (hereinafter referred to as “South DuPont Highway facility”). Upon the Department’s information and belief, Respondent has conducted the following activities from or at its South DuPont Highway facility without a permit: (1) transporting scrap tires; and (2) storing scrap tires. Respondent’s aforementioned activities have occurred in the past, and they are continuing. On October 2, 2018, the Department conducted a scrap tire compliance inspection at Respondent’s South DuPont Highway facility. The purpose of the scrap tire compliance inspection was to determine if the site is subject to the scrap tire facility management standards of DRGSW Section 12.0, and to provide guidance related to achieving and maintaining compliance. During the scrap tire compliance inspection, the Department estimates it observed approximately 3,900 scrap tires. Accumulating 100 or more scrap tires, or passenger tire equivalents, subjects the site to the scrap tire facility management standards in DRGSW.

## APPLICABLE REGULATORY CITATIONS

1. 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.*

2. 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 rolloffs, trailers, and fenced areas. For scrap tires weighing more than 200 pounds each, the first 10 scrap tires are exempt from the accumulation amount.*

3. 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.*

4. 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.*

5. Section 12.1.1 of DRGSW, Scrap Tire Facility Applicability:

*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 has concluded that Respondent is in violation of provisions of 7 Del. C. Chapter 60 and DRGSW, including, but not limited to:

1. **Section 6003(a)(4) of Title 7:**

*(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...*

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**DRGSW Section 7.1.1:**

*No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations.*

During the scrap tire compliance inspection, Respondent informed the Department that Respondent transported scrap tires from its South DuPont Highway facility to the Delaware Solid Waste Authority's Sandtown Landfill in Felton, Delaware without first obtaining a permit from the Department. Transporting scrap tires without first obtaining a permit are violations of 7 Del. C. § 6003(a)(4) and DRGSW Section 7.1.1.

**2. DRGSW Section 12.3.2:**

*Each scrap tire facility created after the effective date of these regulations must: ...*

*12.3.2.1 For Groups 1 and 2, prior to commencing operation, the scrap tire facility must comply with subsection 4.1.1.3 of these regulations...*

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**DRGSW Section 4.1.1.3:**

*No person that is subject to the requirements of Section 12.0 of these regulations shall construct or operate a scrap tire facility without first having obtained a permit from the Department.*

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**Section 6003(a)(4) of Title 7:**

*(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...*

During the scrap tire compliance inspection, Department representatives observed approximately 3,900 scrap tires at Respondent's South DuPont Highway facility. As Respondent stored 100 or more scrap tires outdoors at its site, Respondent is subject to DRGSW Section 12.3.2, which requires scrap tire facilities to obtain a permit in accordance with DRGSW Section 4.1.1.3. Failing to obtain the required permit is a violation of 7 Del. C. § 6003(a)(4) and DRGSW Section 4.1.1.3.

**3. DRGSW Section 12.2.1:**

*All scrap tire facilities must either fall into one of three groups, as defined below. A property may have only one scrap tire facility. All other scrap tires facilities are prohibited.*

At the time of the scrap tire compliance inspection, Respondent had scrap tires stored in two locations on its South DuPont Highway facility: (1) commingled with used tires on the ground inside the fenced area designated for used tires; and (2) in a large pile on the ground along the perimeter of the aforementioned fence. Having more than one scrap tire facility is a violation of DRGSW Section 12.2.1.

**4. DRGSW Section 12.5.1.4.6:**

*The owner/operator must attempt to make arrangements with the local fire department to familiarize them with the layout of the facility and places where facility personnel would normally be working.*

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**DRGSW Section 12.7.3.1.4:**

*12.7.3.1 The following records must be maintained for a period of three (3) years and made available for inspection by the Department upon request...*

*12.7.3.1.4 Documentation of arrangements with fire departments, as required in subsection 12.5.1.4.6.*

At the time of the scrap tire compliance inspection, Respondent failed to notify the fire department and familiarize it with the facility layout and the location where personnel will be working. As such, records of the notification were also not available. Failure to notify the fire department and maintain records of such notification are violations of DRGSW Section 12.5.1.4.6 and DRGSW Section 12.7.3.1.4.

**5. DRGSW Section 12.5.1.4.1:**

*All grasses, weeds, brush, debris, and other combustible material must not be present in or on the scrap tire facility.*

At the time of the scrap tire compliance inspection, scrap tires were stored on a grassy area on Respondent's South DuPont Highway facility where weeds and brush were present. Grasses, weeds, and brush are not permitted within a scrap tire facility. Failing to keep grass, weeds, and brush out of the scrap tire facility is a violation of DRGSW Section 12.5.1.4.1.

**6. DRGSW Section 12.6.1.1:**

*Removing any water held in scrap tires immediately prior to placement in the facility via hole punching, boring, or drilling throughout tires or other sufficient means, and storing scrap tires in such a way that water does not accumulate in the scrap tires or containers where scrap tires are held; or...*

At the time of the scrap tire compliance inspection, scrap tires were found to be holding water. Upon information and belief, Respondent did not implement measures to mitigate the accumulation of water within the scrap tires. This is a violation of DRGSW Section 12.6.1.1. 7.

**DRGSW Section 12.6.1.2:**

*12.6.1.2 If any scrap tires hold water that is not removed within 24 hours of placement in the scrap tire facility or within 24 hours of a precipitation event, a larvicide that is registered for use for mosquito control by the U.S. Environmental Protection Agency must be effectively applied to the water-holding tires within 48 hours of placement in the scrap tire facility.*

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**DRGSW Section 12.7.3.1.5:**

*12.7.3.1 The following records must be maintained for a period of three (3) years and made available for inspection by the Department upon request...*

*12.7.3.1.5 Mosquito control records in accordance with subsection 12.6.1.2.2.*

At the time of the scrap tire compliance inspection, Department representatives observed a large number of mosquitos in the vicinity of the scrap tire piles. Although Respondent provided to the Department the name of the product used to attempt to control mosquitos around the scrap tire piles, the product is an adulticide, not a larvicide, as required by DRGSW Section 12.6.1.2. Respondent also failed to maintain records of the application of the adulticide utilized at the site. Failure to use a larvicide and maintain records of application are violations of DRGSW Section 12.6.1.2 and DRGSW Section 12.7.3.1.5.

**8. DRGSW Section 12.7.1.1:**

*The owner/operator shall take whatever measures are necessary to familiarize all personnel responsible for operation of the scrap tire facility with relevant sections of the operations manual required in subsection 12.7.2, including training on the procedures to be followed in case of an emergency, including, but not limited to, fires.*

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**DRGSW Section 12.7.3.1.1:**

*12.7.3.1 The following records must be maintained for a period of three (3) years and made available for inspection by the Department upon request...*

*12.7.3.1.1 Documentation of personnel training required in subsection 12.7.1.1.*

During the scrap tire compliance inspection, Respondent stated it had not provided training to employees regarding the operation of the scrap tire facility. As such, Respondent was unable to provide training records. Failure to provide training and maintain training records are violations of DRGSW Section 12.7.1.1 and DRGSW Section 12.7.3.1.1.

**9. DRGSW Section 12.7.1.5:**

*The scrap tire facility is required to be secured at all times during non-business hours. For completely enclosed containers, such as trailers, security can be achieved by locking the trailer. For all other situations, the facility must be enclosed by a locked security fence.*

During the scrap tire compliance inspection, the Department observed that Respondent could not secure its scrap tire facility during non-business hours because the scrap tire pile was not enclosed by a fence. Failure to secure a scrap tire facility during non-business hours is a violation of DRGSW Section 12.7.1.5.

**10. DRGSW Section 12.7.1.8:**

*12.7.1.8 The following inspections must be conducted at least monthly:*

*12.7.1.8.1 The owner/operator must inspect the scrap tire facility for litter and unauthorized materials. All litter and unauthorized materials must be removed from the scrap tire facility.*

*12.7.1.8.2 The owner/operator must inspect the fire break constructed around the perimeter of the scrap tire facility to ensure it meets the requirements in subsection 12.5.1.4.*

*12.7.1.8.3 The owner/operator must inspect the scrap tire facility and the surrounding area to ensure emergency equipment identified in its Operations Manual as required by subsection 12.7.2.1.3.2 is available and accessible.*

*12.7.1.8.4 The owner/operator must inspect the scrap tire facility to ensure the perimeter is secure in accordance with subsection 12.7.1.5.*

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**DRGSW Section 12.7.3.1.6:**

*12.7.3.1 The following records must be maintained for a period of three (3) years and made available for inspection by the Department upon request....*

*12.7.3.1.6 Documentation of inspections as required by subsection 12.7.1.8.*

During the scrap tire compliance inspection, Respondent stated that he had not conducted the requisite inspections and therefore, he could not produce records documenting its inspections. Inspections must be conducted at least monthly. Failure to conduct and maintain documentation of facility inspections is a violation of DRGSW Sections 12.7.1.8 and 12.7.3.1.6.

**11. DRGSW Section 12.7.2.1:**

*The owner/operator must develop and implement an operations manual. A paper copy of the operations manual must be readily available on-site. The manual must include:*

*12.7.2.1.1 Procedures for clean-up and maintenance of the facility;*

*12.7.2.1.2 Procedures to ensure compliance with the operational requirements of subsections 12.7.1 and 12.7.3.*

*12.7.2.1.3 Emergency procedures, including, but not limited to:*

*12.7.2.1.3.1 A list of names and telephone numbers of persons to be contacted in an emergency, including, but not limited to, the scrap tire facility's emergency coordinator, the Department's emergency number (1-800-662-8802) and 9-1-1.*

*12.7.2.1.3.2 A list of emergency response equipment present at the scrap tire facility or available for use at the facility and the location of the equipment;*

*12.7.2.1.3.3 Procedures to be followed by facility personnel from discovery of the emergency until the situation is corrected;*

*12.7.2.1.3.4 Location of known water supplies, fire hydrants, dry chemical extinguishers, or other materials that may be used for fire fighting purposes;*

During the scrap tire compliance inspection, Respondent was unable to produce the required operations manual. Failure to develop and implement the required operations manual is a violation of DRGSW Section 12.7.2.1.

**12. DRGSW Section 12.11.1:**

*12.11.1 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...*

During the scrap tire compliance inspection, the Department concluded that Respondent did not comply with the scrap facility management standards, as identified above. Additionally, Respondent is not in possession of any other permit or approval issued by the Department addressing the management of scrap tires. As such, the scrap tire facility is subject to and has violated the closure requirements in DRGSW Section 12.11.1.

**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 generating or accumulating scrap tires until compliance is achieved at the location of 1861 South DuPont Highway; and
3. Submit a closure plan to the Department within fifteen days of receipt of this Order, as required by DRGSW Section 12.11.

The Department reserves the right to take additional enforcement actions regarding these or other violations at the site, 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, or have your attorney contact Devera B. Scott, Deputy Attorney General, at 302-257-3218.

Date: \_\_\_\_\_

12/9/18

  
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Shawn M. Garvin, Secretary

cc: Devera B. Scott, Deputy Attorney General  
C&L Associates, Property Owner of F&F Econo Tires