



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

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. §§6005(b)(2) and (b)(3)

Order No. 2019-WH-0023

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

Issued To:

Mr. Qamer Mall
Owner
Mall's Tire Center, LLC
23436 Sussex Highway
Seaford, Delaware 19973

Bonnie M. Benson, P.A.
Registered Agent
306 E. Camden-Wyoming Ave
Camden, Delaware 19934

The Department of Natural Resources and Environmental Control ("Department") has found Mall's Tire Center, LLC ("Respondent" or "Mall's Tire") in violation of 7 Del. C. Chapter 60 and 7 Del. Admin. Code §1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order, pursuant to 7 Del. C. §6005.

BACKGROUND

Respondent sells used passenger vehicle tires at its site located at 23436 Sussex Highway, Seaford, Delaware. During the operation of its site, Respondent generates scrap tires. As such, Respondent is subject to compliance inspections conducted by the Solid and Hazardous Waste Management Section ("SHWMS"), pursuant to DRGSW.

On February 9, 2017, the Department undertook a mass mailing to businesses that possibly generate scrap tires. The purpose of the mailing was to notify those parties that qualified scrap tire businesses must apply for a scrap tire facility permit by April 17, 2017. Likewise, non-qualifying businesses must either apply for a solid waste facility permit, or non-permitted scrap tire facilities must close their scrap tire operations as required by DRGSW §12.11. The letter mailed to Respondent was not returned to the Department as being non-deliverable.

On July 31, 2018, Department representatives conducted a scrap tire compliance inspection at Respondent's facility. During the compliance inspection, Department representatives observed approximately 900 scrap tires on-site. The scrap tires were located on the ground and inside of a fifty-three (53) foot semi-trailer. At the time of the compliance inspection, no application or notification form was submitted to the Department for the on-site storage of scrap tires. In addition, none of the applicable regulatory requirements in DRGSW §12.0, for the management of scrap tires, were being met.

On the day of the inspection, Respondent was classified as a scrap tire qualifying business. At that time, Department representatives explained the regulatory requirements applicable to the facility, providing the required notification and permitting forms and instructions to assist with Respondent's compliance.

On October 2, 2018, the Department notified Respondent of its violations by issuing Notice of Violation ("NOV") No. 18-SW-66. Respondent received the NOV via certified mail on October 5, 2018. The NOV notified Respondent of the violations observed at the July 31, 2018, compliance inspection and required Respondent to comply immediately with the applicable law and cited requirements. In addition, the NOV required Respondent to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV. The deadline for Respondent to submit compliance documentation to the Department was November 5, 2018, but the Department received no response.

Following the receipt of the NOV, but prior to its compliance deadline, Department representatives telephoned Respondent to offer compliance assistance and reminded Respondent of the November 5, 2018 deadline to submit compliance documentation to the Department. To date, Respondent has not submitted the required documentation to the Department and the scrap tires remain on the Mall's Tire property.

FINDINGS OF FACT AND VIOLATIONS INCLUDING REGULATORY REQUIREMENTS

1. At the time of the inspection, Respondent was found to be storing 100 or more scrap tires or passenger tire equivalents ("PTE's") outdoors. As a qualifying business, Respondent is subject to the notification and permitting requirements of DRGSW §12.0. Failure to notify or obtain the required scrap tire facility permit are violations of 7 Del. C. §6003(a)(4), which reads in part:

"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; ...

And DRGSW §12.3.1, which reads:

*"Scrap tire facilities in existence prior to the effective date of these regulations:
12.3.1.1 Scrap tire facilities meeting the requirements of Group 1 must apply to the Department for a permit pursuant to these regulations no later than 90 days after the effective date of these regulations.*

12.3.1.2 Scrap tire facilities meeting the requirements of Group 2 must apply to the Department for a permit pursuant to these regulations no later than 180 days after the effective date of these regulations.

12.3.1.3 Scrap tire facilities meeting the requirements of Group 3 may operate without a permit if no later than 90 days from the effective date of these regulations, the facility achieves compliance with the requirements of subsection 12.3.2.2."

2. At the time of the inspection, Respondent had scrap tires stored in two locations on its Sussex Highway property: (1) in a 53-foot semi-trailer and (2) in a large pile on the ground. Having more than one scrap tire facility is a violation of DRGSW §12.2.1, which reads:

"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."

3. At the time of the 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 §12.5.1.4.6, which reads:

"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."

And DRGSW §12.7.3.1.4, which reads:

"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."

4. At the time of the inspection, scrap tires were found to be holding water. Respondent does not implement measures to mitigate the accumulation of water within the scrap tires. This is a violation of DRGSW §12.6.1, which reads in part:

"The owner/operator of a scrap tire facility must implement and maintain mosquito control by either:

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..."

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."

5. At the time of the inspection, Respondent 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 §12.7.1.1, which reads:

"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."

And DRGSW §12.7.3.1.1, which reads:

"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."

6. At the time of the inspection, used tires were observed in the large scrap tire facility pile on the ground. Failure to maintain only scrap tires in the scrap tire facility is a violation of DRGSW §12.7.1.3, which reads:

"Only scrap tires may be stored in the designated scrap tire facility."

7. At the time of the inspection, the Department observed that Respondent could not secure its scrap tire facility during non-business hours because the large scrap tire facility pile on the ground is not enclosed by a fence. Failure to secure a scrap tire facility during non-business hours is a violation of DRGSW §12.7.1.5, which reads:

"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."

8. At the time of the inspection, Respondent could not produce records documenting its inspections, because Respondent is not performing inspections, which must be conducted at least monthly. Failure to conduct and maintain documentation of facility inspections are violations of DRGSW §12.7.1.8, which reads:

"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."

And DRGSW §12.7.3.1.6, which reads:

"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."

9. At the time of the inspection, Respondent failed to develop and implement the required operations manual. Failure to do so is a violation of DRGSW Section §12.7.2.1, which reads:

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

10. At the time of the inspection, not all delivery receipts of scrap tires to an authorized treatment, storage, disposal, or recycling facility (TSDRF) were available. Receipts were requested from January 2017 through the day of the scrap tire compliance inspection. Failure to maintain documentation demonstrating delivery is a violation of DRGSW §12.7.3.1.3, which reads:

"Documentation demonstrating delivery (e.g. tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF as required by subsection 12.7.1.7."

11. At the time of the inspection, the Department concluded that Respondent did not comply with the scrap tire facility management standards, as identified above. Additionally, Respondent was 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 §12.11.1, which reads in part:

"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..."

CONCLUSIONS

Despite the Department's multiple efforts to notify Respondent of its regulatory obligations and to assist Respondent in achieving compliance, the Department has concluded that Respondent has violated and continues to violate the above-cited regulatory provisions.

SECRETARY'S ORDER

Respondent has failed to comply with the requirements cited in the Department's Notice of Violation No. 18-SW-66. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 Del. C. §6005(b)(2), that Respondent shall achieve compliance with all applicable laws and regulatory requirements by submitting the following within thirty (30) days:

1. A site closure plan, as set forth in DRGSW §12.11.1.1. The submitted closure plan shall, at a minimum, include:
 - a. An inventory of all tires on-site, to include new tires, used tires, and scrap tires. For those tires that are used tires, include a justification as to why the tires do not meet the definition of a scrap tire as defined in DRGSW §3.0; and
 - b. A description of the methods, procedures, and processes that will be used to close the non-permitted scrap tire facility; and
 - c. The name(s) of the Delaware permitted scrap tire transporter(s) that will haul the scrap tires off of the premises; and

- d. The name(s) of the authorized treatment, storage, disposal, or recycling facility(ies) (TSDRF) to which the scrap tires will be hauled; and
- e. Written affirmation that closure must begin within thirty (30) days of receipt of the Department's written approval of the plan and be completed within ninety (90) days unless a written extension is provided by the Department; and
- f. Affirmation that Respondent will notify the Department within ten (10) days following the completion of removal activities; and
- g. A sediment and stormwater management plan if required under, and in accordance with the sediment and stormwater regulations promulgated pursuant to 7 *Del. C.* Ch. 40; and
- h. A procedure to be implemented immediately detailing how Respondent will document the scrap tire delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to an authorized TSDRF by a Delaware permitted scrap tire transporter. Such documentation must be maintained for a period of at least three years and made available for inspection upon request by the Department; and
- i. A description of restrictions that Respondent will implement immediately to prohibit delivery or placement of any additional scrap tires into an unpermitted scrap tire pile; and
- j. A statement as to whether Respondent will continue to generate, accumulate and store scrap tires on-site; and
- k. If applicable, a description as to how newly generated scrap tires will be managed pursuant to the requirements of DRGSW §12.0.

In the event Mall's Tire will continue to generate and store scrap tires on-site, in addition to the compliance documentation required of item 1, above, Respondent shall also submit the following within thirty (30) days:

2. A completed Group 1, 2 or 3 Scrap Tire Facility permit application or notification form. Please be advised, you must meet the requirements for the group specifications you are requesting.
3. A photograph demonstrating that scrap tires have been placed in one area.
4. Documentation, such as a Certified Mail Return Receipt Post Card, showing the local fire department has been notified in writing of the existence of Respondent's scrap tire facility. Respondent must maintain on-site, a copy of the notification and the Certified Mail Return Receipt Post Card or other document showing receipt by the fire department.
5. A written procedure documenting plans to prevent the accumulation of precipitation/water in scrap tires and implementation of mosquito control methods, including the type of larvicide that will be applied. The written procedure may include affirmation that only Group 3 Scrap Tire Facility trailer storage will be used, thus eliminating precipitation from accumulating in stored scrap tires.
6. Documentation of the training that Respondent provided to each employee related to the on-site scrap tire facility and emergency procedures. Respondent must also submit the training record and a procedure to document how employee training records will be maintained on-site for a period of at least three years.
7. A photograph demonstrating that all used tires have been removed from the designated scrap tire facility and are stored separately from the scrap tire facility.

8. A written procedure to be shared with Respondent's employees, as to how it will secure the scrap tire facility during non-working hours (e.g., storing the scrap tires in a locking trailer, storing scrap tires within a locked fence), and a photograph demonstrating that the plan has been implemented.
9. A written procedure that ensures Respondent will conduct inspections on at least a monthly basis and will maintain documentation of inspections on-site for a minimum of three years. Documentation will also need to be immediately available when requested by a Department representative.
10. A copy of a complete and accurate Site Operations Manual. Include a statement affirming a copy of the completed manual is maintained on-site.
11. A written procedure as to how documentation demonstrating delivery of Respondent's scrap tires to an authorized TSDRF will be maintained on-site.

Submit all documentation and correspondence to:

Tara Grazier
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, Delaware 19901

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$5,000.00 for the violations identified in this Assessment and Order.

In addition, if full compliance with the requirements identified in this Assessment and Order is not achieved within thirty (30) days, Respondent shall pay a stipulated penalty of \$1,000.00 for each day of continued non-compliance.

In addition to the penalty assessment, Respondent is hereby assessed, pursuant to 7 *Del.C.* §6005(c), costs in the amount of \$475.00 which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$5,000.00 to pay the penalty and one check to the Department in the amount of \$475.00 to pay the Department's costs within 30 days from the receipt of this Assessment and Order.

The checks shall be made payable to the "State of Delaware" and shall be directed to: Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to §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 **20 days** of the receipt of the Assessment and Order. In the alternative, within **30 days** of receipt of the Assessment and Order, Respondent may request a public hearing, pursuant to *7 Del.C.* §6005(b)(3), on the penalty assessment and Order. A hearing 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.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Respondent's 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). 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.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent 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
Ph: (302) 739-9000

If you have any questions, please contact Devera B. Scott, Deputy Attorney General at (302) 257-3218.

5/21/19

Date



Shawn M. Garvin, Secretary

cc: Devera B. Scott, Deputy Attorney General
Timothy T. Ratsep, WHS Director

WAIVER OF STATUTORY RIGHT TO A HEARING

Mall's Tire Center, LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Mall's Tire Center, LLC** will pay the administrative penalty in the amount of \$5,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904; and
2. **Mall's Tire Center, LLC** will reimburse the Department in the amount of \$475.00 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

Mall's Tire Center, LLC

Date: _____

By: _____

Title: _____

