



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-0025

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

Issued To:

Mr. Tim Dyson
Owner/Registered Agent
West Auto Repair & Salvage, LLC
36540 Bi State Boulevard
PO Box 116
Delmar, DE 19952

The Department of Natural Resources and Environmental Control ("Department") has found West Auto Repair & Salvage, LLC ("Respondent" or "West Auto") 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

On February 9, 2017, the Department sent a mass mailing to businesses that the Department had reason to believe generate scrap tires. West Auto was included in that mass mailing. In that mass mailing, the Department notified the businesses of the regulatory requirements for scrap tire businesses under DRGSW. The regulations provided that by April 17, 2017, a qualifying scrap tire business must apply for a scrap tire facility permit, and a non-qualifying scrap tire business must apply for a solid waste facility permit. In the alternative, a non-qualifying scrap tire business must close its facility as required by DRGSW §12.11. The letter mailed to West Auto was not returned to the Department as being non-deliverable.

On May 25, 2018, Department representatives conducted a scrap tire compliance inspection at Respondent's property. On the day of the inspection, Respondent was not classified as a scrap tire qualifying business. At that time, Department representatives explained the regulatory requirements applicable to the Respondent, specifically that a solid waste facility permit is required.

On June 13, 2018, the Department notified Respondent of its violations by issuing Notice of Violation ("NOV") No. 18-SW-35. West Auto received the NOV on June 16, 2018. The NOV identified violations of DRGSW and required the Respondent to comply immediately with the cited requirements. The NOV also required West Auto to submit documentation demonstrating compliance to the Department within thirty (30) days of receipt of the NOV. The deadline for Respondent to respond was July 16, 2018.

After the July 16, 2018 deadline, a Department representative contacted Respondent by telephone. Following the telephone discussion, Respondent stated that he would submit the required information. On July 23, 2018, Respondent sent the Department an e-mail that supplied a partial response. Also on July 23, 2018, a Department representative informed Respondent that the response provided was not sufficient because Respondent was required to submit six (6) items as part of a closure plan, and Respondent had only submitted one (1) of the required items. Since then, Respondent has failed to respond to the Department.

To date, Respondent has not submitted the complete compliance documentation required and the scrap tires remain on the West Auto property.

FINDINGS OF FACT AND VIOLATIONS INCLUDING REGULATORY REQUIREMENTS

1. At the time of the compliance inspection, the Department found that Respondent was storing 100 or more scrap tires or passenger tire equivalents (PTE's) outdoors. Respondent does not have a qualifying business, and Respondent failed to achieve compliance with DRGSW related to the management of scrap tires because Respondent did not secure a valid permit or approval from the Department, which is a violation 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 §12.11.1, 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. 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-35. 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.

Submit all documentation and correspondence to:

Tara C. 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 Respondent does not achieve full compliance with the requirements identified in this Assessment and Order within thirty (30) days, then 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.

Within thirty (30) days from the receipt of this Assessment and Order, 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. 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 on the penalty assessment and Order, pursuant to 7 *Del.C.* §6005(b)(3). 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 whose interest is 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: (1) an action under 7 *Del.C.* §6005(b)(1) seeking penalties for past violations; (2) an action under 7 *Del.C.* §6005(b)(2) seeking penalties for continuing violations; (3) an action in the Court of Chancery pursuant to 7 *Del.C.* §6005(b)(2) seeking a temporary restraining order or an injunction; and (4) 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.

5/27/19

Date



Shawn M. Garvin, Secretary

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

WAIVER OF STATUTORY RIGHT TO A HEARING

West Auto Repair & Salvage, 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. **West Auto Repair & Salvage, 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. **West Auto Repair & Salvage, 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.

West Auto Repair & Salvage, LLC

Date: _____

By: _____

Title: _____

