



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

Office of the  
Secretary

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

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

**Order No. 2019-WH-0026**

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

**Issued To:**

Mr. Robert Bayly  
Owner  
Bayly's Garage  
36671 Sussex Highway  
Delmar, Delaware 19940

The Department of Natural Resources and Environmental Control ("Department") has found Bayly's Garage ("Respondent" or "Bayly's") 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 new and used passenger vehicle tires at its site located at 36671 Sussex Highway Delmar, 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 May 25, 2018, Department representatives conducted a scrap tire compliance inspection at Respondent's facility. On the day of the inspection, Department representatives classified Respondent as a scrap tire qualifying business. At the time of the compliance inspection on May 25, 2018, Respondent had not submitted a permit application or notification to the Department for the storage of scrap tires. In addition, none of the regulatory requirements in DRGSW §12.0, for the management of scrap tires were being met.

On July 13, 2018, the Department notified Respondent of its violations by issuing Notice of Violation ("NOV") No. 18-SW-46. Respondent received the NOV via certified mail on July 18, 2018. The NOV identified violations of DRGSW and required Respondent to comply immediately with the cited requirements. The NOV also required Respondent to submit documentation demonstrating compliance to the Department within thirty (30) days of receipt of the NOV. The deadline for Respondent to respond was August 18, 2018.

Following the receipt of the NOV, but prior to its compliance deadline, Department representatives telephoned Respondent to offer compliance assistance and remind Respondent of the August 18, 2018, deadline to submit compliance documentation to the Department.

On August 28, 2018, the Department again contacted Respondent by telephone in an attempt to offer compliance assistance and secure the required compliance documentation. Following that telephone call, Department representatives conducted a follow-up compliance inspection on September 21, 2018. During the follow-up compliance inspection, Department representatives determined one (1) of the eleven (11) violations identified during the May 25, 2018 compliance inspection was corrected. Department representatives extended the deadline to submit the required compliance documentation for the remaining ten (10) violations cited in NOV No. 18-SW-46 to September 28, 2018. To date, Respondent has not submitted the compliance documentation required and the scrap tires remain on the Bayly's property.

#### **FINDINGS OF FACT AND VIOLATIONS INCLUDING REGULATORY REQUIREMENTS**

1. At the time of the May 25, 2018, compliance 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 May 25, 2018, compliance inspection, Respondent had scrap tires stored on the ground in three locations on its Sussex Highway property. 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 May 25 and September 21, 2018, compliance inspections, grasses, weeds, and brush were observed throughout the scrap tire piles located in the rear of the salvage yard. Failing to keep the scrap tire facility free of grasses is a violation of DRGSW §12.5.1.4.1, which reads:

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

4. At the time of the May 25 and September 21, 2018, compliance inspections, a gasoline powered vehicle was stored within the required fire break of the scrap tire pile located directly behind the garage This is a violation of DRGSW §12.5.1.4.2, which reads:

*"No activities involving the use of open flames, blow torches, or highly flammable substances shall be conducted within the scrap tire facility or within the required fire break. Smoking is also prohibited within the scrap tire facility and within the required fire break."*

5. At the time of the May 25 and September 21, 2018, compliance inspections, 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."*

6. At the time of the May 25 and September 21, 2018, compliance inspections, 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."*

7. At the time of the May 25 and September 21, 2018, compliance inspections, 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."*

8. At the time of the May 25 and September 21, 2018, compliance inspections, used tires, automobile parts, rims, and a utility trailer were observed in the scrap tire facilities. Failure to maintain only scrap tires in a 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."*

9. At the time of the May 25 and September 21, 2018, compliance inspections, Respondent could not produce records documenting its 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."*

10. At the time of the May 25 and September 21, 2018, compliance inspections, Respondent had 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;"*

11. At the time of the May 25 and September 21, 2018, compliance inspections, 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-46. 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 Bayly's Garage 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 written procedure addressing how Respondent will maintain a scrap tire pile free of grasses, weeds, brush, debris and other combustible material. The procedure must also address how the scrap tire pile will be inspected for grasses, weeds, brush, debris and other combustible materials and how each will be removed immediately upon discovery. The written procedure may include affirmation that only Group 3 Scrap Tire Facility trailer storage will be used, thus eliminating grasses, weeds, brush, and debris from accumulating in store scrap tires.
4. A written procedure to address how Respondent will prohibit the use of open flames, blow torches, highly flammable substances and other sources of ignition are prohibited within the scrap tire facility and within the fire break.

5. 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 a copy of the notification and the Certified Mail Return Receipt Post Card or other document showing receipt by the fire department on-site.
6. 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.
7. 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.
8. A photograph demonstrating that all used tires, automobile parts, rims and utility trailer have been removed from the designated scrap tire facility and are stored separately from the scrap tire facility.
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.

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-3<sup>rd</sup> 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.

5/27/19

Date



Shawn M. Garvin, Secretary

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

**WAIVER OF STATUTORY RIGHT TO A HEARING**

**Bayly's Garage** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Bayly's Garage** 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-3<sup>rd</sup> Floor, Dover, Delaware 19904; and
2. **Bayly's Garage** 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-3<sup>rd</sup> Floor, Dover, Delaware 19904.

**Bayly's Garage**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

