

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Regulatory Specialist, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Application of Scrap Tire Solution, Inc. ("STS") for a Solid Waste Facility Permit to aggregate scrap tires for recycling at 195 Hay Road, Wilmington, Delaware (Hearing Docket No. 2023-P-WH-0028)

DATE: April 26, 2024

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, January 24, 2024, at 6:00 p.m. via the State of Delaware Zoom Meeting Platform by the Department of Natural Resources and Environmental Control ("DNREC" or "Department") to receive comment on the pending Solid Waste Facility permit application of Scrap Tire Solution, Inc. ("STS" or "Applicant") to operate a scrap tire recycling facility ("Facility" or "Site") at 195 Hay Road, Wilmington, Delaware. The Applicant proposes to receive scrap (i.e., "used") tires from regional sources that are delivered to the Facility by truck, bale (i.e., compress) the tires together to occupy a smaller volume, and then prepare them for shipment. The finished product will be placed in containers, transported off-site by truck, and shipped to their final destination via ports of exit to customers in the crumb rubber, rubber granules, and tire scrap marketplace ("Application," "proposed project"). It should be noted that the Applicant's operation will collect, bale and export tires for recycling without changing the composition of the tires.

The above Application was submitted by STS as required by 7 *Del.C.* Ch. 60, and in accordance with 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* (Sections 4.0 and 12.0).

The proposed Site is located at 195 Hay Road, Wilmington, Delaware, and occupies approximately 6.19 acres (Tax Parcel number 0615500002). The Site is currently being leased by STS, and is zoned as New Castle County Commercial. Geographically, the Site is bound to the west and north by a Norfolk Southern rail line. A New Castle County sewer pumping station is located south of the Site with a heavy industrial parcel containing an operating business located to the northeast. Hay Road adjoins the Site to the east. The Calpine Edgemoor energy generating facility is located east of Hay Road. The Site is located on a portion of Hay Road that is maintained by the Delaware Department of Transportation, and currently does not have any buildings. The Applicant expects to add up to two (2) modular buildings to serve as offices and possibly a covered structure for bailing operations.

The Facility will only accept scrap tires for processing at the Site. Upon delivery to the Facility via truck, the tires to be recycled shall be stored in secure, covered containers at all times until processed. At processing, the tires are manually fed into a baler, which first cuts, then compresses, the tires within the baler chamber. The process is repeated until the chamber is fully loaded, creating a bale that is secured by wire. Each bale contains approximately 100 tires.

Expected sources for the scrap tires include collections from (1) local tire retailers; (2) clean-up of abandoned tires and other scrap tire locations through government issued contracts (such as through DNREC and the Environmental Control Scrap Tire Fund); and (3) through various non-governmental sponsored cleanup events that include the removal of illegally disposed tires. All vehicles transporting solid waste from the Applicant's Facility shall have a valid Delaware Solid Waste Transporter Permit issued by the Department. The Facility, if approved, would have the capacity to receive, process, and store up to 375 tons (125 tons of scrap tires daily, and maximum baled storage of 250 tons).

The Department's Division of Waste and Hazardous Substances ("DWHS") received the initial Application regarding the proposed project from STS on May 9, 2023. Following review of the Application, comments were provided to STS by the DWHS on June 14, 2023. As a result of the comments received from the Department, the Applicant provided supplemental documents to the DWHS for review on July 25, 2023.

Subsequent to the receipt of the Applicant's additional documentation, the Department once again provided STS with comments regarding the same on August 15, 2023. On December 6, 2023, the DWHS determined the Application received from STS to be administratively complete. Accordingly, Public Notice of the Application and Draft Permit was published by the Department in both the *Delaware State News* and the *News Journal* on December 10, 2023.

Shortly thereafter, as a result of having received a request for a public hearing to be held regarding this matter, the Department published Legal Notices in both the *Delaware State News* and the *News Journal* on January 3, 2024. The Legal Notices advised the public of the above-described Application, the Draft Permit prepared by the DWHS, and that a virtual public hearing would be held to consider comments on the proposed project on Wednesday, January 24, 2024. Notice of the public hearing was also placed on the State of Delaware Public Meeting Calendar at that time as well.

Department staff, representatives of the Applicant, and members of the public attended the public hearing. The public hearing was held virtually on the Zoom platform, as noted above, enabling the virtual attendees at this event to use automated closed captioning in their choice of over twenty languages to further enhance their understanding of the proposed project. The Hearing Record ("Record") remained open for public comment through February 23, 2024. Proper notice of the hearing was provided as required by law.

Comments were received from the public during both the pre- and post-hearing phases of this permitting matter, as well as at the time of the public hearing. Subsequent to the Record closing for receipt of comment, this Hearing Officer requested a Technical Response Memorandum ("TRM") from the Department's subject matter experts in the DWHS for the benefit of the Record being generated in this matter. The Department's TRM, dated March 27, 2024, is discussed in greater detail below.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

(1) The official verbatim Transcript of Proceedings from Veritext Legal Solutions, generated from the virtual public hearing of January 24, 2024;

(2) Nineteen (19) exhibits identified as the Department's Exhibits regarding the Application as referenced above, introduced by responsible Department staff at the aforementioned hearing, and marked accordingly as "Dept. Exh. 1-19";

(3) Copy of the Applicant's presentation offered at the public hearing, marked accordingly by this Hearing Officer as "Applicant's Exhibit 1," identified as such on the hearing web page dedicated to this matter under the "Applicant's Exhibits" section;

(4) TRM prepared by the Department's DWHS, dated March 27, 2024; and

(5) STS Revised Draft Permit Comparison Memorandum prepared by the Department's DWHS, dated April 25, 2024.

The Department's person in the DWHS primarily responsible for reviewing the Application, Doug Godfrey, Environmental Scientist III, developed the Record with the relevant documents in the Department's files.

As set forth previously herein, at the request of this Hearing Officer, the Department's technical experts in the DWHS prepared the aforementioned TRM to (1) specifically address the concerns associated with the STS Application, as set forth in the public comments received by the Department; and (2) offer conclusions and recommendations regarding the proposed project for the benefit of the Record. The TRM, dated March 27, 2024, provides a summary of the public comments received by the Department and offers responses to the same.

I find that the TRM, as provided by the Department’s technical experts in the DWHS, addresses the areas of concern voiced by the public comments received by the Department in this permitting matter, and provides responses to those comments in a balanced manner, accurately reflecting the information contained in the Record.

It should be noted that, as a result of the Department’s review of the Record during the post-hearing phase of this permitting matter, significant revisions were made by the DWHS to the original Draft Permit that was publicly noticed on December 10, 2023, and presented at the public hearing held on January 24, 2024. To offer additional clarity for the benefit of the Record with regard to those revisions, the DWHS provided to this Hearing Officer a brief memorandum summarizing the revisions to the Draft Permit. The STS *Revised* Draft Permit Comparison Memorandum, dated April 25, 2024, sets forth the overarching modifications made by the DWHS to the original Draft Permit, including, but certainly not limited to, the inclusion of compliance conditions applicable to all State of Delaware permitted solid waste facilities, and a site map specifically detailing where on the property the permitted solid waste facility activity is to occur.

For the Secretary’s review, the TRM, the STS *Revised* Draft Permit Comparison Memorandum, and the *revised* Draft Permit are expressly incorporated into the Hearing Record and attached hereto as Appendices “A” through “C,” respectively.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the above-described Application submitted by STS for a permit to operate a Solid Waste Facility at 195 Hay Road, Wilmington, Delaware. I find that the Applicant is required to obtain the requisite permit, for the reasons noted above. I further find that the Application is subject to various state and federal regulatory requirements, including, but not limited to, the requirements of 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* (Sections 4.0 and 12.0), and as provided for under 7 *Del.C.* Ch. 60.

The aforementioned TRM provided by the Department's subject matter experts in the DWHS acknowledges the comments received from the public in this matter, and provides responses to those comments that are within the permitting authority of the DWHS, accurately reflecting the information contained in the Record generated in this matter. As noted previously, the DWHS significantly *revised* the original Draft Solid Waste Facility Permit following the post-hearing review of the Record. As a result of those revisions, many of the concerns voiced in the comments are directly addressed by the Department with the addition of specific conditions set forth in the *revised* Draft Permit, as discussed below.

Numerous comments received from the public in this matter concerned the potential fire and pollution hazards of stock piling tires. Questions were raised as to how STS will ensure that fire at the Facility will be prevented, or contained and managed if a fire occurred. In response, the Department's TRM confirms that STS will not be burning tires as any part of their recycling process. Also, the combined tonnage of loose scrap tires and baled scrap tires at the Facility is not permitted to exceed 375 tons at any given time. This limits the total amount of scrap tires that can be at the Facility. The *revised* Draft Permit clarifies that a total of twenty (20) storage containers, no larger than fifty-three (53) feet in length, will be the maximum waste capacity for STS. All loose scrap tires will be stored in up to ten (10) of the enclosed containers, with the remaining ten (10) containers to be used for baled tire storage. Furthermore, no loose or baled scrap tires shall be stored outside of the enclosed trailers, nor shall any tires be placed or remain on the ground outside of operating hours. The storage containers must be maintained in good condition to prevent precipitation from accumulating and must be kept locked during non-operating hours. The TRM further notes that baled tires are harder to burn, and easier to extinguish, than unbaled tires. The storage of scrap tires in the enclosed trailers also decreases the possibility of fire.

The *revised* Draft Permit explicitly states the minimum actions that must be implemented by STS to minimize the likelihood of fires occurring at the Facility. Specifically, as a condition of the *revised* Draft Permit, the Facility shall not be open to the general public, and STS must control access to the Facility to prohibit the entry of unauthorized individuals on the Site (thus minimizing the likelihood of arson occurring on Site).

Additionally, no smoking shall be permitted in or near the permitted Facility, and any designated smoking areas must be at least 50 feet from the Facility. The Applicant must also maintain the capability to react appropriately to emergencies such as fires, and that contact information for fire services shall be made readily available for staff at the Facility. Furthermore, all employees who work with the scrap tires are required to have training that includes fire prevention and protection. Lastly, as another condition of the *revised* Draft Permit, STS shall review annually and update the *Fire Control Plan* as needed.

With regard to the pollution concerns surrounding this proposed operation, the DWHS notes that the scrap tires stored in the enclosed containers will not be exposed to environmental conditions, as the scrap tires will not be permitted to be stored outside of the enclosed trailers. Further, as a condition of the *revised* Draft Permit, STS shall inspect each operating day for any instance(s) where there is a potential to discharge pollutants and contaminated stormwater from the Facility. All findings and corrective actions shall be documented and provided to the Department, in accordance with Condition VI.B.5 and V.C.4 of the *revised* Draft Permit, respectively.

Once an enclosed trailer is completely filled with baled tires, it will be picked up from the STS location and delivered directly to ports of exit. Furthermore, the TRM noted that periodic inspections will be conducted by DNREC to verify compliance with the Facility's permit, and DNREC will respond to complaints received about the Facility, should the same be reported by the public.

Additional concerns were voiced that the Facility's location may cause damage to the New Castle County's Edgemoor Sewer Pump Station and associated underground force main infrastructure. Specific questions were raised as to whether an analysis had been made to determine whether the weight of the containers, balers, and other heavy equipment would negatively impact the underground sewer force main that runs through the property. In response, the Department's TRM noted that STS is required by permit to maintain all setbacks and right of ways, and that enclosed trailers will not be located within those areas.

Additionally, the Applicant's Site Plan has now been updated in the *revised* Draft Permit to specifically identify the setbacks and storage areas, as the entire STS property is not to be used for the permitted activity. The updated Site Plan now excludes the area noted to be the approximate alignment of the force main. Further, STS has now included an additional 10-foot setback from the approximate boundary of the force main alignment. No activities are to occur over the force main.

Additional miscellaneous comments voiced concern that scrap tire piles are mosquito breeding grounds. In response, the Department's TRM noted that, since STS must store both the unbaled and baled tires in enclosed trailers, the possibility of water collection in the tires (which is the attraction for breeding mosquitos) is removed from the Site. Other comments raised concern over the possibility of elevated unhealthy air levels in New Castle County as a result of the diesel emissions coming from the truck traffic traveling to and from the Facility. In response, the Department's TRM noted that the Applicant's proposed project was determined to not require a permit from DNREC's Division of Air Quality.

The public comments received in this matter also voiced concerns that there was a lack of public engagement related to the Department's permitting process, and that the public must have access to information related to the STS Facility. As noted previously, the Department provided proper notice (in both newspapers and online) of the Application submitted by STS, the Draft Permit that was prepared by the subject matter experts in the DWHS, and of the public hearing held in this matter. The Record further reflects that the Department made accommodations for members of the public to submit comments regarding this Application throughout this permitting process, both before and after the hearing, as well as the providing the public an opportunity to comment live at the hearing itself. Comments were accepted from the public from the time the Public Notice of the Application was first published on December 10, 2023, until the Record closed for receipt of comment on February 23, 2024 (a total of 75 days). Additionally, the public hearing was held virtually on the State of Delaware's Zoom platform, enabling attendees to learn more about the Applicant's proposed project in their choice of over twenty languages. As is always the case with all DNREC public hearings, closed captioning was also available for attendees to utilize, should they wish to do so.

Insofar as the public having access to information regarding STS and the proposed project, the Department's online hearing page dedicated to this pending matter contains all documentation entered into the Record to date, including, but certainly not limited to, copies of all Exhibits, a copy of the certified hearing transcript, a copy of the Applicant's presentation offered to the public at the time of the public hearing, and all comments received by the Department in this matter. As set forth on the Legal Notices published by the Department in this matter, the public was encouraged to review the Application, the Draft Permit, and related documents online, and to contact the DWHS directly if additional information was desired.

DNREC places a high priority on engaging with stakeholders in Delaware communities in a transparent and public process during the development of the Record in permitting matters. The Department is interested in hearing concerns from residents who live in communities potentially impacted by Environmental Justice issues. In the present matter, DNREC has heard from Environmental Justice advocates regarding concerns about this proposed project and the potential impact of the STS operation on nearby communities. As noted previously, in response to the concerns raised in the comments received from the public in this matter, significant revisions were made to the original Draft Permit. The *revised* Draft Permit directly addresses those concerns, and ensures that the Applicant will be required to establish necessary protocols and standards to minimize and/or eliminate any threat to human health.

The mission of DNREC is to engage stakeholders to ensure the wise management, conservation, and enhancement of the State's natural resources; protect public health and the environment; provide quality outdoor recreation; improve quality of life; lead energy policy and climate preparedness; and educate the public on historic, cultural, and natural resource use, requirements, and issues. Furthermore, it is the policy of DNREC that no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance, as provided by Title VI of the *Civil Rights Act of 1964*, the *Rehabilitation Act of 1973*, the *Civil Rights Restoration Act of 1987*, and all other related nondiscrimination laws and requirements.

The Record generated in this matter reflects that the Department's subject matter experts in the DWHS have reviewed the Record generated in this matter in the light of potential Environmental Justice issues existing in the area surrounding STS and its Application, and have determined that the same is consistent with the Department's Environmental Justice policy. As noted above, the Department has provided the public with multiple avenues and ample opportunities to offer comment regarding this permitting matter, including pre-registration to offer live comment at the time of the public hearing, links to obtain further information on the Department's website, and the issuance of several Legal Notices advising the public of the ability to review all documents compiling the Record that has been generated to date, and to attend the public hearing held by the Department in this matter.

Based on the Record developed, I find and conclude that the Record supports the issuance of the finalized *revised* Draft Permit, authorizing STS to operate a Solid Waste Facility at their Site located at 195 Hay Road, Wilmington, Delaware, as set forth above. Upon approval, the finalized Permit to be issued to STS by the Department would be consistent with the *revised* Draft Permit authorizations prepared by the DWHS, with appropriate conditions, to ensure continued protection of public health and the environment, and reflective of the Record developed in this matter. Accordingly, this Report recommends the issuance of the same.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Ch. 60, 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* (Sections 4.0 and 12.0), and all other relevant statutory authority, to make a final determination on the aforementioned pending Application after holding a public hearing, considering the public comments, and all information contained in the Record generated in this matter;

2. The Department provided proper public notice of the Application submitted by STS, and of the public hearing held on January 24, 2024, and held the hearing to consider any public comments that may be offered on the Application, in a manner required by the law and regulations.
3. The Department considered all timely and relevant public comments in the Record prior to making any final decision;
4. The Department has carefully considered the factors required to be weighed with regard to the issuance of this permit, as required by the Application submitted by STS, and finds that the Record supports approval of the same;
5. The Department has reviewed the Record generated in this matter, and has determined that the issuance of this permit is consistent with the Department's Environmental Justice policy;
6. The Department shall issue to the Applicant a State of Delaware Solid Waste Permit, authorizing the operation of the STS proposed project, as described above, with the appropriate conditions as set forth herein, consistent with the *revised* Draft Permit authorization prepared by the Department's DWHS, and consistent with the Record developed in this matter, to ensure that Delaware's environment and public health will be protected from harm;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall serve and publish its Order on its internet site.

/s/Lisa A. Vest
LISA A. VEST
Regulatory Specialist

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Appendix "A": STS TRM (March 27, 2024)

Appendix "B": STS Revised Draft Permit Comparison Memorandum (April 25, 2024)

Appendix "C": *Revised* Draft Permit