



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

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

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

Order No. 2021-WH-0015

Via Personal Service¹:

Facility Location:

Diamond Town Tire Pros &
Auto Care, LLC
5221 Summit Bridge Road
Middletown, DE 19709
Attn: Mr. James Barnes

Via Certified Mail:

Property Owner

NUCAR Middletown, LLC
44 Tally Ho Drive
Elkton, MD 21921

Via Personal Service:

Registered Agent:

Donald L. Boyer, CPA
2392 Limestone Road
Wilmington, DE 19808

Via Personal Service:

Property Owner Registered Agent:

Incorporating Services, Ltd.
3500 S. DuPont Highway
Dover, DE 19901

Via Certified Mail:

Facility Owner/Operator/Legal

Representative:

James Barnes, Jr.
Sara Francis E. Barnes
65 Cabot Court
Warwick, MD 21912

¹ All service made in person was effected by a DNREC Environmental Crimes Unit Officer.

The Department of Natural Resources and Environmental Control ("Department") has found Mr. James Barnes, d/b/a Diamond Town Tire Pros & Auto Care, facility operator and/or owner, and NUCAR Middletown, LLC, property owner, 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

Mr. James Barnes, d/b/a Diamond Town Tire Pros & Auto Care, (hereinafter referred to as "Mr. Barnes" or "Diamond Town") facility operator and/or owner, and NUCAR Middletown, LLC, property owner, sells new passenger vehicle tires at a site located at 5221 Summit Bridge Road in Middletown, Delaware. During the operation of its site, Diamond Town generates scrap tires. As such, Diamond Town is classified as a qualifying business and is subject to scrap tire facility compliance inspections conducted by the Department, pursuant to DRGSW. The scrap tires located at Diamond Town on the property owned by NUCAR Middletown, LLC will be referred to hereinafter as the "scrap tire facility" or "scrap tire pile."

On May 17, 2019, Department representatives conducted a scrap tire compliance inspection at Diamond Town's facility. During the inspection, Department representatives observed approximately 250 scrap tires located on the ground. At the time of the inspection, Diamond Town had not submitted a permit application to the Department for the on-site storage of scrap tires. In addition, Diamond Town was not complying with the applicable regulatory requirements in DRGSW §12.0 for the management of scrap tires.

On June 3, 2019, the Department notified Diamond Town of its violations by issuing Notice of Violation ("NOV") 19-SW-11. Diamond Town received the NOV via certified mail on June 5, 2019. The NOV notified Diamond Town of the violations observed during the May 17, 2019 inspection and required Diamond Town to comply immediately with the applicable law and cited requirements. In addition, the NOV required Diamond Town to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV.

The deadline for Diamond Town to submit compliance documentation to the Department was July 5, 2019, but the Department did not receive a response.

Following the receipt of the NOV, but prior to its compliance deadline, Department representatives attempted three (3) times to telephone Mr. Barnes. The Department attempted to contact Mr. Barnes to answer any questions related to compliance and remind Mr. Barnes of the July 5, 2019 deadline to submit compliance documentation to the Department. To date, Diamond Town has not submitted the required documentation to the Department.

On November 13, 2020, Mr. Barnes contacted the Department of Justice regarding a separate enforcement action related to a failure to submit the 2019 Scrap Tire Annual Report. At that time, Mr. Barnes stated that he had less than one hundred (100) scrap tires remaining on the Diamond Town site and questioned whether DRGSW §12.0 continued to apply to his business. On December 7, 2020, Department representatives conducted a follow-up compliance inspection at Diamond Town's business location. Mr. Barnes told Department representatives that based on information received from his scrap tire hauler, there were fifty (50) to sixty (60) scrap tires remaining on the site. However, Department representatives counted a total of 150 scrap tires on the Diamond Town property and determined that Diamond Town continues to be subject to the regulatory requirements of DRGSW §12.0.

Based on the observations made during the May 17, 2019 compliance inspection and December 7, 2020 follow up compliance inspection of Diamond Town at 5221 Summit Bridge Road, Middletown, Delaware, the Department finds that Diamond Town is in violation of applicable state statutes and regulations governing the generation and management of scrap tires.

FINDINGS OF FACT AND VIOLATIONS INCLUDING REGULATORY REQUIREMENTS

1. According to Section 6040(a)(1) of Title 7 of the Delaware Code, Mr. James Barnes, d/b/a Diamond Town Tire Pros & Auto Care, 5221 Summit Bridge Road, Middletown, Delaware 19709, is the operator of a scrap tire facility or scrap tire pile.

“Operator” means any person or entity who has or had a contractual or other responsibility for security, maintenance, sales or operations of a scrap tire pile or of any real property on which a scrap tire pile is located, at any time after July 20, 1999; provided that this definition does not include a person or entity whose only ownership interest is as a mortgagee.

2. According to Section 6040(a)(2) of Title 7 of the Delaware Code, NUCAR Middletown, LLC, is the owner of real property located at 5221 Summit Bridge Road, Middletown, Delaware, 19709, on which a scrap tire pile is located.

“Owner” means any person or entity who has or had legal or equitable ownership interest in a scrap tire pile, or in any real property on which a scrap tire pile is located, at any time after July 20, 1999.

3. At the time of the May 17, 2019 and December 7, 2020 inspections, Diamond Town was found to be storing 100 or more scrap tires or passenger tire equivalents (“PTE’s”) outdoors. As a qualifying business, Diamond Town is subject to the permitting requirements of DRGSW §12.0. Failure to obtain the required scrap tire facility permit 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 §12.3.1, 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."

4. At the time of the May 17, 2019 inspection, a trailer, shed, and dumpster were present in the required 20-foot firebreak. Failure to maintain a 20-foot firebreak is a violation of DRGSW §12.5.1.4.3, which reads:

"For Group 1, a 20 foot fire break consisting of either a mineral strip free of combustible materials or well maintained, regularly mowed grass must be constructed around the perimeter of the scrap tire facility."

5. At the time of the May 17, 2019 inspection, Diamond Town failed to attempt in notifying 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 attempt 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 17, 2019 inspection, scrap tires were found to be holding water. Diamond Town 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 17, 2019 inspection, Diamond Town had not provided training to employees regarding the operation of the scrap tire facility. As such, Diamond Town 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 17, 2019 inspection, Diamond Town had an open dump trailer filled with scrap metal, and a shed placed within the scrap tire facility. 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."

9. At the time of the May 17, 2019 and December 7, 2020 inspections, the Department observed Diamond Town could not secure its scrap tire facility during non-business hours because it's outdoor scrap tire facility is not enclosed by a fence. Failure to implement measures 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."

10. At the time of the May 17, 2019 inspection, Diamond Town was utilizing an unpermitted transporter to transport scrap tires. Further, Diamond Town was unaware of the destination facility receiving the scrap tires for proper management. Failure to ensure scrap tires are transported properly, with delivery to an authorized treatment, storage, disposal, or recycling facility ("TSDRF"), is a violation of DRGSW §12.7.1.7, which reads:

"Any scrap tire(s) removed from the facility must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF)."

11. At the time of the May 17, 2019 inspection, Diamond Town could not produce records documenting scrap tire facility related 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."

12. At the time of the May 17, 2019 inspection, Diamond Town 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;"

13. At the time of the May 17, 2019 inspection, Diamond Town had not submitted an annual report for calendar year 2018. The annual report was to be submitted no later than March 1, 2019. In addition, as of the date of this order, Diamond Town has not submitted an annual report for calendar year 2020. The annual report was to be submitted no later than March 1, 2021. Failure to submit required annual reports by the deadline is a violation of DRGSW §12.7.4.1, which reads:

“The owner/operator must prepare and submit an annual report to the Department by March 1st of each calendar year. The report shall be submitted on a form provided by the Department and is to cover scrap tire facility activities during the previous calendar year.”

CONCLUSIONS

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

SECRETARY'S ORDER

Diamond Town has failed to comply with the requirements cited in the Department's Notice of Violation 19-SW-11. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 Del. C. §6005(b)(2), that Diamond Town, as facility operator and/or property owner, and NUCAR Middletown, LLC, property owner, are jointly and severally responsible for achieving compliance with all applicable laws and regulatory requirements by submitting the following within thirty (30) days:

1. A completed Group 1 or Group 2 Scrap Tire Facility permit application, as applicable.
2. A photograph demonstrating Diamond Town is maintaining the regulatory required firebreak around the scrap tire facility.

3. Documentation, such as a Certified Mail Return Receipt Post Card, showing an attempt to notify the local fire department in writing of the existence of Diamond Town's scrap tire facility was made. Diamond Town must maintain a copy of the notification and the Certified Mail Return Receipt Post Card or other document demonstrating the notification attempt.
4. A written procedure detailing the measures implemented to prevent the accumulation of precipitation/water in scrap tires and the mosquito control methods employed, including the type of larvicide that will be applied.
5. Documentation of the training that Diamond Town provided to each employee related to the on-site scrap tire facility and emergency procedures. Diamond Town must submit a copy of the training provided to its employees. Diamond Town must also provide a procedure to document how employee training records will be maintained for a period of at least three (3) years and made available when requested by a Department representative.
6. A photograph demonstrating that the open dump trailer filled with scrap metal, the shed, and any other prohibited materials have been removed from the designated scrap tire facility and are stored separately from the scrap tire facility.
7. A written procedure to be shared with Diamond Town's employees, as to how it will secure the scrap tire facility during non-working hours (e.g., storing scrap tires within a locked fence), and a photograph demonstrating that the procedure has been implemented.
8. The name and permit number of the permitted Delaware Solid Waste Transporter that is hired to remove scrap tires from the Diamond Town scrap tire facility. Also, provide the name and location of the treatment, storage, disposal, and recycling facility (ies) (TSDRF) receiving the scrap tires being transported.

9. A written procedure detailing how Diamond Town will implement the required scrap tire facility inspections at least monthly, document these inspections, and maintain the documentation for a minimum of three (3) years. In addition, Diamond Town must acknowledge the inspection records must be made 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 complete and accurate Scrap Tire Annual Report for calendar year 2018 and 2020.

Submit all documentation and correspondence to:

Tara C. Grazier
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Compliance and Permitting Section
89 Kings Highway
Dover, Delaware 19901
Tara.Grazier@delaware.gov

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this is written notice to Diamond Town that on the basis of its findings, the Department is assessing Diamond Town and NUCAR Middletown, LLC, jointly and severally, an administrative penalty of \$31,540.00 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, Diamond Town and NUCAR Middletown, LLC, jointly and severally, shall pay a stipulated penalty of \$1,000.00 for each day of continued non-compliance.

In addition to the penalty assessment, Diamond Town and NUCAR Middletown, LLC, jointly and severally, is hereby assessed, pursuant to 7 *Del.C.* §6005(c), costs in the amount of \$800.90 which were incurred by the Department in the investigation of the noted violations.

Diamond Town shall submit one check to the Department in the amount of \$31,540.00 to pay the penalty and one check to the Department in the amount of \$800.90 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: Kayli H. Spialter, Deputy Attorney General, Department of Justice, Environmental Unit, 391 Lukens Drive, New Castle, Delaware 19720.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Diamond Town or NUCAR Middletown, LLC. 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, Diamond Town or NUCAR Middletown, LLC 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 against Diamond Town or NUCAR Middletown, LLC regarding these and other violations at the scrap tire facility, located at 5221 Summit Bridge Road, Middletown, DE 19709, 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

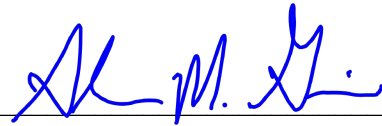
To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

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 Kayli H. Spialter, Deputy Attorney General at (302) 577-8508.

June 3, 2021

Date



Shawn M. Garvin, Secretary

Enclosure:

Scrap Tire Facility Permit Application (Group 1 and Group 2)
Scrap Tire Facility Notification Form (Group 3)
Scrap Tire Operations Manual
Scrap Tire Facility Operations Manual: A Guide (Group 1 and Group 2)
Scrap Tire Facility Operations Manual: A Guide (Group 3)
Scrap Tire Facility Monthly Inspection Log
Scrap Tire Facility Annual Report Form

WAIVER OF STATUTORY RIGHT TO A HEARING

Diamond Town Tire Pros & Auto hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Diamond Town Tire Pros & Auto Care** will pay the administrative penalty in the amount of \$31,540.00 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 Kayli H. Spialter, Deputy Attorney General, Department of Justice, Environmental Unit, 391 Lukens Drive, New Castle, Delaware 19720; and
2. **Diamond Town Tire Pros & Auto Care** will reimburse the Department in the amount of \$800.90 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 Kayli H. Spialter, Deputy Attorney General, Department of Justice, Environmental Unit, 391 Lukens Drive, New Castle, Delaware 19720.

Diamond Town Tire Pros & Auto Care

Date: _____

By: _____

Title: _____

WAIVER OF STATUTORY RIGHT TO A HEARING

NUCAR Middletown, LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

3. **NUCAR Middletown, LLC** will pay the administrative penalty in the amount of \$31,540.00 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 Kayli H. Spialter, Deputy Attorney General, Department of Justice, Environmental Unit, 391 Lukens Drive, New Castle, Delaware 19720; and
4. **NUCAR Middletown, LLC** will reimburse the Department in the amount of \$800.90 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 Kayli H. Spialter, Deputy Attorney General, Department of Justice, Environmental Unit, 391 Lukens Drive, New Castle, Delaware 19720.

NUCAR Middletown, LLC

Date: _____

By: _____

Title: _____