



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

SECRETARY'S ORDER TO CEASE AND DESIST

Pursuant to 7 *Del. C.* § 6018

Order No. 2021-WH-0033

Via Certified Mail:

Facility Owner/Operator

S & A Marketing Company, Inc.
2754 Kingsbridge Terrace
Bronx, NY 10463-7457
Attn: Chris Reyes

Via Personal Service¹:

Property Operator

GT USA Wilmington, LLC.
1 Hausel Road
Wilmington, DE, 19801
Attn: Michael Hall, COO

Via Certified Mail:

Facility Owner/Operator

Registered Agent

Spiegel & Utrera P.A., P.C.
1 Maiden Lane
5th Floor
New York, NY 10038

Via Personal Service¹:

Property Operator Registered Agent

Corporate Creations Network, Inc.
3411 Silverside Road
Tatnall Building Suite 104
Wilmington, DE 19810

This is to notify S & A Marketing Company, Inc. (hereinafter referred to as “S & A Marketing” or “Mr. Reyes”) facility operator and/or owner, and GT USA Wilmington, LLC. (“GT USA”), property operator, collectively referred to as “Respondents” that the Secretary of the Delaware Department of Natural Resources and Environmental Control (“Department”) has found Respondents in violation of 7 *Del. C.* Chapter 60 and 7 *Del. Admin. C.* §1301, Delaware’s *Regulations Governing Solid Waste* (“DRGSW”). Accordingly, the Department is issuing this Secretary’s Order to Cease and Desist, pursuant to 7 *Del. C.* §6018.

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

BACKGROUND

1. The Secretary of the Department is responsible for the protection of the public health and safety, and the health of organisms and the environment from the effects of the improper, inadequate, or unsound management of solid wastes, by establishing a program of regulation over the storage, transportation, handling, and disposal of solid wastes, and to assure the safe and adequate management of solid wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60.
2. On December 6, 2021, the Department received notice from the Office of the State Fire Marshal of the existence of a scrap tire operation at the location of 104 Hay Road, Wilmington, Delaware.
3. On December 10, 2021, the Department conducted a compliance inspection to assess the operation on the 104 Hay Road, Wilmington, Delaware property and to determine if Respondents were in compliance with 7 *Del. C.* Chapter 60 and DRGSW.

APPLICABLE REGULATORY CITATIONS

1. Section 3 of DRGSW, specifically the definition of “Scrap Tire:”
...means a tire that is no longer prudent or practical for vehicular use; or a tire that has not been used on a vehicle for more than 6 months after the last date it was used on a vehicle; or a tire that is six years or older from the date of manufacture.
2. Section 3 of DRGSW, specifically the definition of “Prudent and Practical:”
...means
 - a) Tread depth shall not be less than 2/32 of an inch deep;
 - b) Free from chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent materials; and
 - c) Tire cords or belting materials shall not be exposed, either to the naked eye or when cuts or abrasions on the tire are probed.

3. Section 3 of DRGSW, specifically the definition of "Solid Waste" states in part:

"Solid Waste" means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities,...

4. Section 3 of DRGSW, specifically the definition of "Solid Waste Management" or "Management:"

...means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

5. Section 3 of DRGSW, specifically the definition of "Transfer Station:"

...means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling, or disposal.

6. Section 3 of DRGSW, specifically the definition of "Recycling:"

...means the process by which recyclable materials, which would otherwise be disposed of as solid waste, are returned to the economic mainstream in the form of raw materials or products.

7. Section 3 of DRGSW, specifically the definition of "Transportation:"

... means the movement of solid waste by air, rail, water, over the roadway, or on the ground.

8. Section 3 of DRGSW, specifically the definition of "Vehicle:"

... means a motorized means of transporting something. "Vehicle" includes both the motorized unit and all containerized units of a conveyance attached thereto.

FINDINGS

Upon the Department's information and belief, the Department has concluded Respondents are in violation of 7 Del. C. Chapter 60 and DRGSW, including, but not limited to:

1. Section 6003(a)(4) of Title 7:

(a) 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...

DRGSW Section 7.1.1:

No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations.

During the December 10, 2021 compliance inspection, Mr. Reyes informed the Department that S & A Marketing transported scrap tires to the 104 Hay Road, Wilmington, Delaware location without first obtaining a solid waste transporter permit from the Department. Transporting solid waste without first obtaining a permit are violations of 7 Del. C. §6003(a)(4) and DRGSW Section 7.1.1.

2. Section 6003(a)(4) of Title 7:

(a) 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...

DRGSW Section 4.1.1.1

No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under subsection 2.3, without first having obtained a permit from the Department.

DRGSW Section 4.5.1

Any person desiring to construct or operate a transfer station must submit a letter of intent to the Department. For proposed facilities, the letter shall narrate the projected design and usage of the facility; provide a tentative schedule for construction and startup, and summarize the applicant's experience and training with transfer station operations. For existing facilities, the letter shall state the reason for the application submittal and include a narration about design, usage, and schedule only if new construction is proposed. After submitting the Letter of Intent, the applicant shall submit the following:

4.5.1.1 A Solid Waste Management Facility Application, provided by the Department...

During the December 10, 2021 compliance inspection, Department representatives observed thousands of scrap tires at Respondent's 104 Hay Road, Wilmington, Delaware facility. Mr. Reyes stated the scrap tires were delivered for the purpose of staging and subsequent transfer off-site for recycling. Receiving a solid waste for the purpose of consolidating or aggregating the waste for subsequent recycling elsewhere, meets the definition of a solid waste transfer station. Failing to submit a letter of intent to operate a transfer station is a violation of DRGSW Section 4.5.1. Failing to submit the required permit application to construct a solid waste transfer station is a violation of DRGSW Section 4.5.1.1. Commencing operation of a transfer station without first having obtained the required permit are violations of 7 Del. C. §6003(a)(4) and DRGSW Section 4.1.1.1.

ORDER

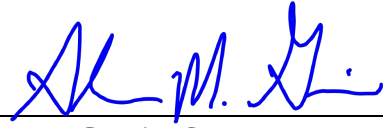
IT IS HEREBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 Del. C. §6018, that Respondents:

1. Cease and desist the act of transporting scrap tires in the State of Delaware without first having obtained a Delaware solid waste transporter permit; and
2. Cease and desist receiving, consolidating, or aggregating scrap tires in the State of Delaware until compliance is achieved at the location of 104 Hay Road, Wilmington, Delaware.

The Department reserves the right to take additional enforcement actions regarding these or other violations at the site, 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) and (c)(1).

If you have any questions, please contact Devera B. Scott, Deputy Attorney General, at (302) 739-4636.

Date: 12/20/21


Shawn M. Garvin, Secretary

cc: Devera B. Scott, Deputy Attorney General