



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
Pursuant to 7 *Del. C.* §§6005(b)(2)
Order No. 2022-WH-0009

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 DE Admin. Code §1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW"). Accordingly, the Department is issuing this Secretary's Order, pursuant to 7 *Del. C.* §6005.

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 ("Hay Road property").
3. On December 10, 2021, the Department conducted a site visit to assess the operation at the Hay Road property and to determine if Respondents were in compliance with 7 *Del. C.* Chapter 60 and DRGSW.
4. Having determined Respondents were in violation of 7 *Del. C.* Chapter 60 and DRGSW, on December 20, 2021, the Department issued Secretary's Order to Cease and Desist No. 2021-WH-0033. The Order directed Respondents in part, to cease receiving, consolidating, or aggregating scrap tires in the State of Delaware because a permit to operate a solid waste management facility was required.
5. On January 5, 2022, Department representatives met via videoconference with Mr. Reyes to explain the permitting requirements applicable to operating a solid waste management facility in the state of Delaware. Following the videoconference, on January 5, 2022, a Department representative emailed Mr. Reyes a Solid Waste Management Facility Application.
6. On January 14, 2022, Mr. Reyes indicated to Department representatives he would obtain the assistance of an environmental consultant to complete the Solid Waste Management Facility Application.

7. Despite having received Secretary's Order to Cease and Desist No. 2021-WH-0033, meeting with Department representatives on January 5, 2022, and receiving correspondence from the Department of the need to obtain an appropriate permit prior to commencing the operation of a solid waste management facility at the Hay Road property, on March 4, 2022, the Department learned that a semi-trailer load of tires had recently appeared on the Hay Road property and activities related to tires were being conducted.
8. On March 4, 2022, the Department performed a site visit at the Hay Road property to assess the semi-trailer load of tires that had recently appeared and to determine if Respondents were in compliance with 7 *Del. C.* Chapter 60 and DRGSW. Department representatives determined that a mixed load of used tires and scrap tires was delivered to Respondents' property by a vehicle marked with the name J&J Motor Service. In addition, multiple scrap tire piles continued to be stored at the Hay Road property.
9. On March 8, 2022, a Department representative emailed Mr. Reyes requesting a plan to remove the unpermitted scrap piles from the Hay Road property. The requested plan, due to the Department by March 23, 2022, was to include the name(s) of the permitted transporter(s) that would haul the scrap tires from the property, the name(s) of the approved facility(ies) that would receive the scrap tires, and a timeline for completing the scrap tire removal. Attached to the email was a list of Delaware permitted solid waste transporters. In his response that same day, Mr. Reyes stated the scrap tires would be hauled to Emanuel Tire of Conshohocken, Pennsylvania; however, scrap tire removal would only begin upon his receipt of a Delaware Solid Waste Transporter Permit as hiring a third-party permitted transporter would create a financial burden to S&A Marketing. To date, S&A Marketing has not submitted a complete application for a permit to transport solid waste.

10. On March 22, 2022, Department representatives emailed Mr. Reyes advising his March 8, 2022 plan to remove the unpermitted scrap tire piles from the Hay Road property was not approved.
11. On April 14, 2022, Mr. Reyes spoke with a Department representative regarding his desire to transport used tires, but not scrap tires from the Hay Road property to New York State for resale. During the telephone call, Mr. Reyes was cautioned that while used tires can be transported without first obtaining a Delaware Solid Waste Transporter Permit, scrap tires, including mixed loads of used tires and scrap tires must be transported by a permitted Delaware solid waste transporter. Subsequent to the telephone call, a Department representative emailed Mr. Reyes reiterating the need to use a permitted Delaware solid waste transporter when hauling scrap tires and mixed loads of used tires and scrap tires. Attached to the email was a fact sheet prepared by the Department explaining the difference between a used tire and a scrap tire pursuant to DRGSW.
12. On April 21, 2022, Department representatives became aware that vehicle traffic at the Hay Road property had increased. On that day, the Department conducted a site visit to determine the nature of the increased vehicle traffic and to evaluate if the activities being conducted were regulated pursuant to 7 *Del. C.* Chapter 60 and DRGSW. Upon arrival at the property, Department representatives saw an incoming vehicle carrying a load of tire-derived fuel. Tire-derived fuel is staged at the Hay Road property prior to export by ship, an activity not subject to DRGSW.
13. At the time of the April 21, 2022 site visit, Department representatives also observed Mr. Reyes loading tires into a white semi-trailer. Mr. Reyes stated to Department representatives that the tires being loaded into the semi-trailer were used tires to be transported to New York State for resale. Upon examination, Department representatives determined the white semi-trailer held a mixed load of used tires and scrap tires.

14. On April 24, 2022, Mr. Reyes submitted via email a revised plan to remove the unpermitted scrap tire piles from the Hay Road property. Mr. Reyes' removal plan was contingent upon S&A Marketing relocating the company's scrap tire operation to another state. The time required for the relocation was estimated to be four to six months. The removal plan was also contingent on the Department issuing to a business associated with Mr. Reyes, a Delaware Solid Waste Transporter Permit.

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:

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 site visit, Department representatives observed thousands of scrap tires at Respondents' Hay Road property. Mr. Reyes stated the scrap tires were delivered for the purpose of staging, sorting, and subsequent transfer off-site for recycling.

On January 5, 2022, Department representatives met via videoconference with Mr. Reyes to explain the permitting requirements applicable to solid waste management facilities in the State of Delaware. Following the videoconference, on January 5, 2022, a Department representative emailed to Mr. Reyes a Solid Waste Management Facility Application to obtain a solid waste transfer station permit to conduct operations at the Hay Road property. In that same email, it was reiterated to Mr. Reyes that no solid waste management operations could commence until all required permits were obtained. To date, neither a letter of intent nor an application to operate a solid waste management facility has been received by the Department.

At the time of the March 4, 2022 site visit, Mr. Reyes stated to Department representatives that the load of tires observed were received that day for the purpose of staging, sorting, and subsequent transfer off-site for recycling. Department representatives determined the load to be a mix of both used tires and scrap tires.

At the time of the April 21, 2022 site visit, Mr. Reyes explained to Department representatives that the white semi-trailer was being loaded with used tires for shipment from the Hay Road property to New York State for resale. Upon examination, Department representatives determined that both used tires and scrap tires were loaded into the white semi-trailer.

Receiving scrap tires, a solid waste, for the purpose of consolidating or aggregating the scrap tires for subsequent processing, recycling, or disposal elsewhere, meets the definition of a solid waste transfer station.

On the basis of information gathered during the December 10, 2021, March 4, 2022, and April 21, 2022 site visits, the Department has determined Respondents created and continue to operate a solid waste management facility for the storage and transfer of scrap tires.

Failing to submit a letter to the Department notifying of the intent to operate a solid waste transfer station and having failed to submit a Solid Waste Management Facility Application to obtain a permit are violations of DRGSW Sections 4.5.1 and 4.5.1.1, respectively. Commencing operation of a transfer station without first obtaining the required solid waste management facility permit is a violation of 7 *Del. C.* §6003(a)(4) and DRGSW Sections 4.1.1.1 and 4.5.2.1.

SECRETARY'S ORDER

In consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* §6005(b)(2), that S & A Marketing Company, Inc., facility operator and/or owner, and GT USA Wilmington, LLC., property operator, 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 description of the restrictions that will be immediately implemented to prohibit delivery or placement of any additional scrap tires, including mixed loads of used tires and scrap tires, at the location of 104 Hay Road, Wilmington, Delaware; and

2. A plan to lawfully remove all scrap tires from the Hay Road property. Should it be claimed that a tire is a used tire and therefore not subject to regulation as a solid waste, a demonstration as to why each tire so claimed does not meet the definition of a scrap tire as defined in DRGSW Section 3.0 must be included; and
3. A sediment and storm water management plan if required under, and in accordance with the sediment and storm water regulations promulgated pursuant to 7 *Del. C.* Chapter 40; and
4. The name(s) of the permitted Delaware solid waste transporter(s) that will haul the scrap tires off of the Hay Road property; and
5. The name(s) of the authorized treatment, storage, disposal, or recycling facility(ies) (TSDRF) that will receive the scrap tires removed from the Hay Road property; and
6. Written affirmation that documentation of scrap tire delivery (e.g., tolling agreement, letter of acceptance, manifest, or other documentation deemed acceptable by the Department) to the authorized TSDRF will be submitted to the Department weekly once removal of the scrap tires begins and continue until all scrap tires are removed; and
7. Written affirmation that the scrap tire removal will begin within fifteen (15) days and be completed within sixty (60) days of receipt of the Department's written approval of the submitted removal plan unless a written extension is provided by the Department.

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

If full compliance with the requirements identified in this Order are not achieved within thirty (30) days, S & A Marketing Company, Inc. and GT USA Wilmington, LLC., jointly and severally, shall pay a stipulated penalty of \$400.00 for each day of continued non-compliance.

ASSESSMENT OF COSTS

Pursuant to 7 *Del. C.* §6005(c)(1), S & A Marketing Company, Inc. and GT USA Wilmington, LLC., jointly and severally, are hereby assessed costs in the amount of \$2,289.07 which were incurred by the Department in the investigation of the noted violations.

S & A Marketing Company, Inc. or GT USA Wilmington, LLC., shall submit one check to the Department in the amount of \$2,289.07 to pay the Department's costs within 30 days from the receipt of this Order. The check 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 Order is effective and final upon receipt by S & A Marketing Company, Inc. or GT USA Wilmington, 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 Order. In the alternative, within **30 days** of receipt of the Order, S & A Marketing Company, Inc. or GT USA Wilmington, LLC. may request a public hearing, pursuant to 7 *Del.C.* §6005(b)(3), on the 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 S & A Marketing Company, Inc. or GT USA Wilmington, LLC. regarding these and other violations at the solid waste transfer station, located at 104 Hay Road, Wilmington, Delaware, 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) 739-4636.

Date: _____

6/23/22


Shawn M. Garvin, Secretary

cc: Devera B. Scott, Deputy Attorney General

WAIVER OF STATUTORY RIGHT TO A HEARING

S & A Marketing Company, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Order and agrees to the following:

1. **S & A Marketing Company, Inc.** will reimburse the Department in the amount of \$2,289.07 which represents the Department's estimated costs. The reimbursement shall be paid within thirty (30) days of receipt of this 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.

S & A Marketing Company, Inc

Date: _____

By: _____

Title: _____

WAIVER OF STATUTORY RIGHT TO A HEARING

GT USA Wilmington, LLC. hereby waives its right to a hearing and its opportunity to appeal or contest this Order and agrees to the following:

1. **GT USA Wilmington, LLC.** will reimburse the Department in the amount of \$2,289.07 which represents the Department's estimated costs. The reimbursement shall be paid within thirty (30) days of receipt of this 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.

GT USA Wilmington, LLC.

Date: _____

By: _____

Title: _____