



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. 2022-WH-0019

Via Personal Service¹:

Facility Location:

Total Tire Service, Inc.
600 Terminal Avenue
New Castle, DE 19720
Attn: Mr. S. Scott Fulginiti

Via Certified Mail:

Property Owner

Brandywine Chemical Company
600 Terminal Avenue
New Castle, DE 19720

Via Certified Mail:

**Facility Owner/Operator/Registered
Agent:**

S. Scott Fulginiti
600 Terminal Avenue
New Castle, DE 19720

Via Personal Service:

Property Owner Registered Agent:

Robert G. Shockley, Jr.
14 Glenbarry Drive Highland Woods
Wilmington, DE 19808

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. S. Scott Fulginiti, d/b/a Total Tire Service, Inc., facility operator and/or owner, and Brandywine Chemical Company, 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 Secretary's Order, pursuant to 7 *Del. C.* § 6005.

BACKGROUND

Mr. S. Scott Fulginiti, d/b/a Total Tire Service, Inc., (hereinafter referred to as "Mr. Fulginiti" or "Total Tire") facility operator and/or owner, and Brandywine Chemical Company, property owner, sells new passenger vehicle, commercial truck and off-the-road tires at a site located at 600 Terminal Avenue in New Castle, Delaware 19720. The Department assigned reference number is: DE-ST-000238. During the operation of its site, Total Tire generates scrap tires. As such, pursuant to DRGSW, Total Tire is classified as a qualifying business and is subject to scrap tire facility compliance inspections conducted by the Department. The Total Tire scrap tires are located on the property owned by Brandywine Chemical Company and shall hereinafter be referred to as the "scrap tire facility" or "scrap tire pile."

On March 17, 2021, Department representatives conducted a scrap tire compliance inspection at Total Tire's facility. During the inspection, Department representatives observed scrap tires approximating 6,700 passenger tire equivalents (PTEs) stored on the ground in open scrap tire piles and in one (1) semi-trailer. At the time of the inspection, Total Tire had not submitted a permit application to the Department for open scrap tire pile storage. Additionally, on March 17, 2021, Total Tire was non-compliant with the applicable regulatory requirements in DRGSW Section 12.0 for the management of scrap tires and was counseled that it needed to remove the scrap tire filled semi-trailer and unpermitted scrap tire piles and become compliant.

On May 20, 2021, the Department conducted a follow-up compliance inspection to determine if Total Tire had made progress removing the unpermitted scrap tire piles from the property. During the inspection, Department representatives learned Total Tire had authorized the removal of scrap tires from the property on March 18, March 23, March 29, April 14, and May 4, 2021.

On June 15, 2021, the Department issued Notice of Violation ("NOV") No. 21-SW-39 for the permit violations observed during the March 17, 2021, scrap tire compliance inspection. Said NOV, which was received by Total Tire on June 21, 2021, requested that Total Tire, pursuant to 7 *Del. C.* § 6019, submit to the Department by July 22, 2021, a scrap tire removal plan explaining how Total Tire planned to eradicate the unpermitted scrap tire piles from the property thereby eliminating the need for Total Tire to pursue a facility permit.

On August 17, 2021, Total Tire submitted the requested scrap tire removal plan for the 600 Terminal Avenue, Wilmington, Delaware 19720 property. The plan, approved by the Department on August 26, 2021, required that the removal of the unpermitted scrap tire piles begin no later than October 1, 2021, and be completed no later than December 1, 2021. On November 16, 2021, the Department conducted a follow-up compliance inspection. At that time, representatives observed the presence of fewer scrap tires at the Total Tire property. On November 29, 2021, Total Tire requested an extension of its December 1, 2021, deadline. Since Total Tire appeared to be making progress eliminating the unpermitted scrap tire piles from the property, its request to extend the completion deadline from December 1, 2021, to March 1, 2022, was approved by the Department.

On July 7, 2022, Department representatives conducted another follow-up compliance inspection, and observed that scrap tire piles remained on the property. Despite being given until March 1, 2022, to remove all scrap tire piles, Total Tire has failed to timely comply with the approved scrap tire removal plan. To date, the unpermitted scrap tire facility remains on the Terminal Avenue property and Respondents continue to violate the applicable state statutes and regulations governing the generation and management of scrap tires.

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 or 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 "Scrap Tire Facility:"

...means an accumulation of 100 or more scrap tires wherein each scrap tire weighs 25 pounds or less; or 100 or more scrap passenger tire equivalents; or any combination thereof that, upon conversion, results in 100 or more passenger tire equivalents, in the same general vicinity that is not enclosed by a building, including, but not limited to, open fields, woodlots, pavement, dumpsters or rolloffs, trailers, and fenced areas. For scrap tires weighing more than 200 pounds each, the first 10 scrap tires are exempt from the accumulation amount.

4. Section 3 of DRGSW, specifically the definition of "Passenger Tire Equivalent" or "PTE":

...means a conversion measurement using the assumption that one passenger car tire is equal to 25 pounds. A tire weighing more than 25 pounds shall be evaluated by dividing its total weight by 25 pounds to equal the number of PTEs.

5. Section 12.1.1 of DRGSW, Scrap Tire Facility Applicability:

This section applies to new and existing areas established for scrap tires that are associated with a qualifying business. A qualifying business is a business that generates and accumulates scrap tires but whose primary purpose is not to accumulate scrap tires. Examples of qualifying businesses may include but are not limited to: tire retreading businesses; automobile graveyards or junkyards; local and state governmental agencies and/or facilities such as county maintenance, police, and fire; military institutions and/or facilities; farmers; and other automotive businesses. This section does not apply to owner/operators who have a current and valid resource recovery facility permit (or other

approval issued pursuant to these regulations) that addresses scrap tire management. This section also does not apply to persons who are registered with, and actively participating in, the Scrap Tire Management Program, administered by the Department. All transporters of solid waste, including scrap tires, must comply with any applicable provisions in Section 7.0. All scrap tire facilities whose primary purpose is to accumulate scrap tires must comply with any applicable provisions in Sections 9.0 and 10.0, as applicable.

FINDINGS OF FACT AND VIOLATIONS INCLUDING REGULATORY REQUIREMENTS

1. *"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.*

According to Section 6040(a)(1) of Title 7 of the Delaware Code, Mr. S. Scott Fulginiti, d/b/a Total Tire Service, Inc., 600 Terminal Avenue, New Castle, Delaware 19720 is the operator of a scrap tire facility or scrap tire pile.

2. *"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.*

According to Section 6040(a)(2) of Title 7 of the Delaware Code, Brandywine Chemical Company, is the owner of real property located at 600 Terminal Avenue, New Castle, Delaware, on which a scrap tire facility is located.

3. DRGSW Section 12.3.1, states:

"12.3.1 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.

At the time of a March 17, 2021, scrap tire compliance inspection, Total Tire was found to be storing 100 or more scrap tires or scrap tire passenger tire equivalents (PTEs) in open piles outdoors. As a qualifying business operating on October 1, 2016, Total Tire is subject to the permitting requirements of DRGSW Section 12.3.1. Applications for a Scrap Tire Group 1 Facility were due to the Department by January 19, 2017. This date was later extended to March 19, 2017. Scrap Tire Group 2 Facility applications were due to the Department by April 19, 2017. Failure to submit a permit application is a violation of DRGSW Section 12.3.1.

4. DRGSW Section 4.1.1.1, which reads:

"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."

And 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; ..."

At the time of the March 17, 2021, scrap tire compliance inspection, Department representatives observed scrap tires approximating 6,700 PTE's stored in a semi-trailer and in open scrap tire piles on the ground. These are activities which require a permit. Failure to obtain a permit is a violation of 7 Del. C. § 6003(a)(4) and DRGSW Section 4.1.1.1.

5. DRGSW Section 12.11.1., states 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. 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..."

During the March 17, 2021, scrap tire compliance inspection, the Department concluded that Respondents did not comply with the scrap facility management standards, as identified above. Additionally, Respondents were 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 had violated the closure requirements in DRGSW Section 12.11.1.

On June 15, 2021, the Department issued to Total Tire, NOV No. 21-SW-39 requesting that Total Tire, pursuant to 7 *Del. C.* § 6019, submit to the Department by July 22, 2021, a plan to remove the unpermitted scrap tire piles on the property, thereby eliminating the unpermitted scrap tire facility. On August 17, 2021, Total Tire submitted the requested plan to remove scrap tires. The plan, approved by the Department on August 26, 2021, required the removal of all scrap tire piles be completed by December 1, 2021. At the request of Total Tire, the required removal date was later extended to March 1, 2022.

During a follow-up compliance inspection on July 7, 2022, Department representatives determined the removal of the scrap tire piles was incomplete and therefore the elimination of the scrap tire facility remained incomplete. An unpermitted scrap tire facility remains at the 600 Terminal Avenue, New Castle, Delaware 19720 property.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondents have violated and continues to violate the above-cited regulatory provisions.

SECRETARY'S ORDER

Respondents have failed to comply with the above cited requirements of DRGSW and 7 *Del. C.* §6003. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* § 6005(b)(2), that Total Tire and Brandywine Chemical Company, as facility operator and/or property owner, are jointly and severally liable for achieving compliance with all applicable laws and regulatory requirements as follows:

1. By December 31, 2022, complete the removal of all scrap tires from the scrap tire piles at the 600 Terminal Avenue, Wilmington, Delaware 19720 property. The removal must be completed in accordance with the August 17, 2021, removal plan submitted by Total Tire, pursuant to the conditions in the approval letter prepared by the Department on August 26, 2021 and received by Total Tire on September 1, 2021.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), if full compliance with the removal plan is not achieved by the deadline of December 31, 2022, Mr. S. Scott Fulginiti, d/b/a Total Tire Service, Inc, facility operator and/or owner, and Brandywine Chemical Company, property owner, jointly and severally, are assessed an administrative penalty of \$10,000.00 for the violations identified in this Assessment and Order.

In addition, if full compliance with the requirements identified in this Order are not achieved by the deadline of December 31, 2022, Mr. S. Scott Fulginiti, d/b/a Total Tire Service, Inc., facility operator and/or owner Brandywine Chemical Company, 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, Mr. S. Scott Fulginiti, d/b/a Total Tire Service, Inc., facility operator and/or owner, and Brandywine Chemical Company, property owner, jointly and severally, are hereby assessed, pursuant to 7 *Del. C.* § 6005(c), costs in the amount of \$2,526.00 which were incurred by the Department in the investigation of the noted violations.

Mr. S. Scott Fulginiti, d/b/a Total Tire Service, and Brandywine Chemical Company shall submit one check to the Department in the amount of \$2,526.00 to pay the Department's costs within 30 days from the receipt of this Order.

The checks shall be made payable to the "State of Delaware" and shall be directed to: Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Total Tire Service, Inc., or Brandywine Chemical Company. 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, Total Tire Service, Inc., or Brandywine Chemical Company 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 Total Tire Service, Inc. or Brandywine Chemical Company regarding these and other violations at the scrap tire facility, located at 600 Terminal Avenue, New Castle, Delaware 19720, 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 Travis Groski, Deputy Attorney General at (302) 395-2521.

October 11, 2022

Date



Shawn M. Garvin, Secretary

WAIVER OF STATUTORY RIGHT TO A HEARING

Mr. S. Scott Fulginiti, d/b/a Total Tire Service hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

Mr. S. Scott Fulginiti, d/b/a Total Tire Service will reimburse the Department in the amount of \$2,526.00 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 Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

Mr. S. Scott Fulginiti, d/b/a Total Tire Service

Date: _____

By: _____

Title: _____

WAIVER OF STATUTORY RIGHT TO A HEARING

Brandywine Chemical Company hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

Brandywine Chemical Company will reimburse the Department in the amount of \$2,526.00 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 Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

Brandywine Chemical Company

Date: _____

By: _____

Title: _____