



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

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

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

Order No. 2024-WH-0039

Issued To:

Via Personal Service:

Facility Location:

F&F Auto Sales, LLC d/b/a
F&F Econo Tires
1861 South DuPont Highway
Dover, Delaware 19901
Attn: Mr. Frantzdy Gauthier

*Via Certified Mail, Return
Receipt:*

Registered Agent:

F&F Auto Sales, LLC
Parkway Law, LLC
3171 DuPont Pkwy, Ste. B
Townsend, Delaware 19734

Via Personal Service:

Facility Owner/Operator/Legal

Representative:

Ms. Fern Joseph
Mr. Frantzdy Gauthier
1861 South DuPont Highway
Dover, Delaware 19901

Via Personal Service

Property Owner

Ms. Fern Joseph
Mr. Frantzdy Gauthier
101 Wrens Way
Harrington, Delaware 19952

Via Electronic Mail:

Ms. Fern Joseph
Hillsclassicauto@gmail.com

This is to notify F&F Econo Tires ("F&F"), Facility operator and/or owner, and Frantzdy Gauthier and Fern Joseph, owners of Kent County, Delaware parcel number 2-00-08516-04-7400-000, located at 1861 South DuPont Highway, Dover, Delaware 19901 ("Facility"), 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 DE Admin. Code § 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order ("Secretary's Order"), pursuant to 7 *Del. C.* § 6005.

BACKGROUND

F&F is owned and/or operated by Frantzdy Gauthier and Fern Joseph. The Facility performs vehicle maintenance and sells new and used tires. During regular operations, F&F generates used oil and scrap tires.

In June of 2023, the Department's Emergency Response Branch ("ERB") received a complaint about a large number of mosquitoes and an open and overflowing container of used oil at F&F.

In August of 2023, the Department received a second complaint from the Department's Environmental Crimes Unit ("ECU") about a significant number of mosquitoes and how potentially hazardous waste fluids at F&F were being managed.

As a result of these complaints, on October 11, 2023, the Department conducted a compliance inspection ("Compliance Inspection") at F&F to determine if Respondents were complying with 7 *Del. C.* Chapter 60 and DRGHW.

During the Compliance Inspection, a large area of oil-stained soil was observed. As a result, on November 6, 2023, the Department issued a field work order requiring the oil-stained soil to be cleaned up by November 27, 2023, with documentation submitted to the Department by December 27, 2023, demonstrating the cleanup. On March 18, 2024, an ERB representative conducted a follow-up site visit to verify cleanup. At that time, it was confirmed that the stained soils had been removed to the Department's satisfaction.

Based on information gathered during the inspection at F&F, the Department found Respondents violated applicable state statutes and regulations governing the generation and management of used oil.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. DRGHW Section 279.22(d) states:

*(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the **Delaware Regulations Governing Underground Storage Tanks (UST)** and which has occurred after the effective date of Delaware's recycled used oil management program, a generator must perform the following cleanup steps:*

- (1) Stop the release;*
- (2) Contain the released used oil;*
- (3) Clean up and manage properly the released used oil and other materials; and*
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.*

During the Compliance Inspection, Department representatives observed a large area of stained soil on the south side of the Facility's central building. Department representatives traced the source of this staining to a 35-gallon steel drum located against the south side of the central building behind several barreled¹ stacks of tires. The stained soils indicate at least one previous release of used oil was not stopped, contained, or properly remediated.

¹ A storage method where tires are placed on their sidewalls one on top of another giving the appearance of a barrel.

Failure to properly respond to releases of used oil by not stopping the release, containing the release or cleaning up the release, violates DRGHW Section 279.22(d).

2. 7 Del. C. § 6003(a)(4) states:

(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...

During the Compliance Inspection, Department representatives observed a large area of stained soil on the south side of the Facility's central building, indicating the release and disposal of used oil which is a solid waste.

Disposing of a solid waste without having first obtained a permit from the Department for solid waste disposal violates 7 Del. C. § 6003(a)(4).

3. 7 Del. C. § 6028(a) states:

Any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air, or a pollutant, including petroleum substances, into surface water, groundwater or on land, or disposal of solid waste in excess of any reportable quantity specified under either regulations implementing § 102 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [42 U.S.C. § 9602], § 311 of the Clean Water Act of 1980, as amended [33 U.S.C. § 1321], or Department regulations, whichever restriction is most stringent, shall report such an incident to the Department as soon as the person has knowledge of said environmental release or discharge and activating their emergency site plan if appropriate unless circumstances exist which make such notification impossible.

During the Compliance Inspection, Department representatives observed a large area of stained soil on the south side of F&F's central building, indicating the release of used oil. Said release was never reported to the Department.

Failure to report the environmental release of a petroleum substance to the Department violates 7 Del. C. § 6028(a).

CONCLUSIONS

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

SECRETARY'S ORDER

As Respondents had failed to comply with the cited requirements of DRGHW and 7 *Del. C.* Chapter 60, the Department requires that Respondents shall demonstrate compliance with the applicable law to resolve the outstanding violations. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* § 6005(b)(2), that Respondents shall demonstrate compliance by undertaking the following actions.

In a manner in full compliance with all applicable laws and regulatory requirements, Respondents shall within 30 days of receipt of this Order:

1. Submit documentation in the form of a procedure detailing the steps to be implemented to remediate releases of used oil as required in DRGHW Section 279.22(d). At a minimum, the procedure shall include steps to immediately stop, contain, and clean up releases of used oil. The procedure is to also include instructions for managing used oil contaminated soils and waste and for repairing or replacing leaking or damaged used oil storage containers. Documentation shall also include a written statement affirming Respondents' understanding of the requirement to implement the procedure to appropriately address releases of used oil.
2. Submit documentation in the form of a written statement affirming Respondents' understanding that the onsite disposal of used oil, a solid waste, without first having obtained a permit from the Department as set forth in 7 *Del. C.* § 6003(a)(4) is prohibited.

3. Submit documentation in the form of a procedure for reporting the discharge of used oil and other hazardous pollutants to the Department as set forth in 7 Del. C. § 6028 and the regulations of 7 DE. Admin. Code § 1203 *Reporting of a Discharge of a Pollutant or Air Contaminant*, promulgated thereunder. Documentation shall include a written statement affirming Respondents' understanding of the requirement to report discharges of used oil and other hazardous pollutants to the Department.

Submit all documentation and correspondence to:

John M. Murdaugh
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Compliance and Permitting Section
89 Kings Highway
Dover, Delaware 19901
John.Murdaugh@Delaware.gov

ASSESSMENT OF PENALTY

Pursuant to 7 Del. C. § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$10,000.00 for each day of violation detailed in this Order. This Order is written notice to Respondents, that, based upon its findings, the Department is assessing Respondents an administrative penalty for the violations identified in this Assessment and Order. In assessing the administrative penalty, 7 Del. C. § 6005(b)(3) instructs the Secretary to consider the following factors: (1) the nature, circumstances, extent and gravity of the violation, or violations; (2) the ability of the violator to pay; (3) any prior history of such violations; (4) the degree of culpability; (5) the economic benefit or savings (if any) resulting from the violation; and (6) such other matters as justice may require. A brief discussion of these factors is set forth below.

1) The Nature, Circumstances, Extent and Gravity of the Violation, or Violations:

The nature, circumstances, extent, and gravity of the violations are significant. This Order identifies and describes one (1) regulatory violation and two (2) statutory violations.

Failing to ensure compliance with the regulatory requirements, including labeling of containers, properly managing universal waste, properly managing solid waste, properly managing used oil, and operating a solid waste disposal facility without a permit resulted in significant deviations from the statutory and regulatory requirements cited herein.

2) Respondent's Ability to Pay:

The record contains no information that Respondents lack the ability to pay the administrative penalty assessed.

3) Prior History of Violations:

Respondents have not previously incurred the same or similar statutory and regulatory violations at the identified properties. The administrative penalty assessed for the violations cited herein is to deter Respondents from future violations.

4) Degree of Culpability:

The degree of culpability is significant. Had Respondents employed reasonable oversight measures as 7 Del. C. Chapter 60 and DRGHW require, these violations would not have occurred.

5) Economic Benefit or Savings Resulting from the Violation(s):

With respect to the economic benefit, the record contains no information that Respondents incurred any meaningful economic benefit from these violations, and thus this was not a factor in the administrative penalty assessment.

6) Such Other Matters as Justice May Require:

Lastly, considering such other matters as justice may require, the Secretary has determined that the penalty assessed is proportional to the violations cited herein and calculated to deter Respondents, and those similarly situated, from engaging in future violations.

Pursuant to *7 Del. C. § 6005(b)(3)*, this is written notice to Respondents that on the basis of its findings, the Department is assessing Respondents an administrative penalty of \$10,000.00 for the violations identified in this Secretary's Order.

Respondents shall submit one check to the Department in the amount of \$10,000.00 to pay the administrative penalty within 30 days from the receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and shall be directed to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

PUBLIC HEARING AND APPEAL RIGHTS

This Secretary's Order affects Respondents' legal rights and is effective and final on receipt by Respondents. Pursuant to Section 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 Secretary's Order. In the alternative, Respondents may, pursuant to *7 Del. C. § 6005(b)(3)*, request a public hearing on the Secretary's Order within **30 days** of receipt of the Order. A public hearing pursuant to *7 Del. C. § 6005(b)(3)* 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.

Respondents are further advised that the above assessed administrative penalty shall be due and owing within 30 days of Respondents' receipt of this Assessment and Order. In the event of nonpayment of the administrative penalty assessed above, and after Respondents have exhausted all legal appeals, if any, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty and/or costs shall **not** be subject to review pursuant to *7 Del. C. §§ 6005(b)(3)* and (c).

To request a public hearing pursuant to *7 Del. C. § 6005(b)(3)*, 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 pursuant to *7 Del. C. § 6008*, you must file your written statement of appeal and submit a check, made payable to: "Environmental Appeals Board," for the \$50.00 filing fee, 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

For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at *7 Del. Admin. C. § 105*.

The Department, to the extent necessary, reserves the right to take additional enforcement actions regarding these and other violations by Respondents, 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.

SECRETARY'S ORDER FOR COST RECOVERY

Pursuant to 7 *Del. C.* § 6005(c), Respondents are liable for all expenses incurred by the Department in abating the violations detailed in this Secretary's Order. "Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary." (7 *Del. C.* § 6005(c)(1)).

The Department is not seeking costs from Respondents in this Secretary's Order. Please be advised, however, this is not a waiver of the Department's right to cost recover for past costs. Further, additional costs, which you may be liable, may accrue through the exhaustion of Respondents appeal rights. The Department reserves the right to issue a detailed billing statement of all costs incurred and seek recovery of that amount.

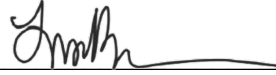
PAYMENT

If Respondents do not wish to exercise their legal rights to a hearing or appeal, Respondents may pay the administrative penalty of \$10,000.00 prior to the end of the appeal period, in the manner described in the attached "**Waiver of Statutory Right to A Hearing.**" **By doing so, Respondents waive the right to a hearing and the opportunity to appeal or contest this Secretary's Order.**

If you have any questions, please contact, or have your attorney contact Kayli Spialter, Esq., Deputy Attorney General, at (302) 395-2600.

September 30, 2024

Date



For Shawn M. Garvin, Secretary

cc: Kayli Spilater, Deputy Attorney General
Timothy Ratsep, Division Director

WAIVER OF STATUTORY RIGHT TO A HEARING

F&F Econo Tires, Fern Joseph, and Frantzdy Gauthier hereby waive their right to a public hearing and its opportunity to appeal or contest this Assessment and Secretary's Order, and agree to the following:

1. F&F Econo Tires, Fern Joseph, and Frantzdy Gauthier will pay the administrative penalty in the amount of \$10,000.00 by sending a check payable to the State of Delaware within 30 days of receipt of this Assessment and Secretary's Order. The check shall be directed to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901

F&F Econo Tires

Date: _____
Title: _____

By: _____
(Signature)
Name: _____
(Print)

Fern Joseph

Date: _____
Title: _____

By: _____
(Signature)
Name: _____
(Print)

Frantzdy Gauthier

Date: _____
Title: _____

By: _____
(Signature)
Name: _____
(Print)