



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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

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

Order No. 2019-WH-0020

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:

Mr. Kasher Gulab
Owner/Registered Agent
Gulab's Tire Center, LLC
28505 DuPont Boulevard
Millsboro, DE 19966

The Department of Natural Resources and Environmental Control ("Department") has found Gulab's Tire Center, LLC ("Respondent" or "Gulab's") 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

Respondent sells used passenger vehicle tires at its site located at 28505 DuPont Boulevard in Millsboro. During the operation of its site, Respondent generates scrap tires. As such, Respondent is subject to compliance inspections conducted by the Solid and Hazardous Waste Management Section ("SHWMS"), pursuant to 7 DE Admin. Code §1301, Delaware's *Regulations Governing Solid Waste* ("DRGSW").

On February 9, 2017, the Department undertook a mass mailing to businesses that could possibly generate scrap tires. The purpose of the mailing was to notify those parties that qualified scrap tire businesses were required to apply to the Department as a scrap tire facility by April 17, 2017. Likewise, non-qualifying businesses must either apply for a solid waste facility permit, and non-permitted scrap tire facilities must close their scrap tire operations as required by DRGSW §12.11. The letter mailed to Respondent was not returned to the Department as being non-deliverable.

Due to a complaint received on March 11, 2017, Department representatives conducted a scrap tire compliance inspection at Respondent's property. On the day of the April 28, 2017, compliance inspection, Department representatives classified Respondent as a scrap tire qualifying business. Respondent had not submitted a permit application or notification to the Department for the on-site storage of scrap tires. In addition, none of the regulatory requirements in DRGSW §12.0, for the management of scrap tires were being met.

On May 17, 2017, Notice of Violation ("NOV") No. 17-SW-04 was mailed to Respondent. On May 23, 2017, Respondent received and signed for the NOV, notifying Respondent of the violations observed on the day of the April 28, 2017, compliance inspection and to inform Respondent of the need to immediately comply with the cited requirements of DRGSW and submit documentation demonstrating compliance within thirty (30) days of NOV receipt. Respondent responded to the NOV on June 22, 2017, by submitting a Group 3 Scrap Tire Facility Notification Form, meaning all scrap tires are stored in a maximum of two (2) fully enclosed trailers, each not to exceed fifty-three (53) feet in length.

Additionally, while Respondent submitted photos demonstrating its compliance with the violations cited in the NOV, the photos did not clearly demonstrate compliance was achieved. Therefore, on July 12, 2017, Department representatives conducted a follow-up compliance inspection to verify if the violations cited in NOV No.17-SW-04 were corrected. Department representatives concluded Respondent satisfied the requirements of the NOV.

On August 9, 2017, the Department mailed Respondent a return to compliance letter for satisfying the requirements of the issued NOV. In addition, on September 1, 2017, Respondent received Scrap Tire Site Number, DE-ST-000009, having been deemed a Group 3 Scrap Tire Facility utilizing two (2) fully enclosed trailers, each not to exceed fifty-three (53) feet in length.

On July 17, 2018, Department representatives conducted a scrap tire compliance inspection due to a complaint received by the Department relating to a large number of tires stored directly behind Respondent's building. Observations made during the compliance inspection concluded Respondent had failed to maintain compliance with the regulatory requirements of DRGSW §12.0, as applicable to Group 3 Scrap Tire Facilities, for in addition to the notified trailer storage, multiple scrap tire piles were observed outdoors, as well as storage of scrap tires in the bed of a pick-up truck.

FINDINGS OF FACT AND VIOLATIONS INCLUDING REGULATORY REQUIREMENTS

1. At the time of the July 17, 2018, compliance inspection, in addition to fully enclosed trailer storage, Respondent was found to be storing 100 or more scrap tires or passenger tire equivalents (PTE's) in outdoor piles and in the bed of a pick-up truck. Storing scrap tires in multiple scrap tire facilities is a violation of DRGSW §12.2.1, which reads in part:

"...A property may have only one scrap tire facility. All other scrap tire facilities are prohibited."

2. At the time of the July 17, 2018, compliance inspection, Respondent had failed to maintain a minimum of a 50-foot fire break for its two (2) trailer Group 3 Scrap Tire Facility. Failing to maintain the required fire break is a violation of DRGSW §12.5.1.4.5, which reads in part:

“For Group 3, [o]wners/operators of two (2) trailers must maintain a 50 foot fire break around the perimeter of the trailers. The fire break shall consist of either a mineral strip free of combustible materials or well maintained, regularly mowed grass.”

3. At the time of the July 17, 2018, compliance inspection, grasses, weeds, brush, debris, and combustible materials were present in the multiple observed scrap tire facilities. Failure to maintain a scrap tire facility free of grasses, debris, and other combustible materials is a violation under DRGSW Section 12.5.1.4.1, which reads:

“All grasses, weeds, brush, debris, and other combustible material must not be present in or on the scrap tire facility.”

4. At the time of the July 17, 2018, compliance inspection, Respondent had failed to notify the local 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 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.”

5. At the time of the July 17, 2018, compliance inspection, scrap tires were found to be holding water. Respondent 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."

6. At the time of the July 17, 2018, compliance inspection, Respondent had not provided training to employees regarding the operation of the scrap tire facility. As such, Respondent 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."

7. At the time of the July 17, 2018, compliance inspection, Department representatives observed used tires stored in an outdoor scrap tire pile facility. Failure to maintain only scrap tires in a 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."

8. At the time of the July 17, 2018, compliance inspection, the setbacks for a two (2) trailer Group 3 Scrap Tire Facility had not been achieved, for the Group 3 Scrap Tire Facility was located less than 100 feet away from an adjacent property and from US Route 113. Failing to meet the setbacks is a violation of §12.5.1.1.2.1, which reads:

"A minimum 100 foot setback between the scrap tire facility and all public roads and property boundaries."

9. At the time of the July 17, 2018, compliance inspection, Department representatives observed that Respondent failed to secure its Group 3 Scrap Tire Facility during non-business hours for it was unable to lock its storage trailers. Further, scrap tires stored in outdoor piles were not secured behind a locked fence. Failure 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 July 17, 2018, compliance inspection, Respondent could not produce records documenting monthly inspections. 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."

11. At the time of the July 17, 2018, compliance inspection, Respondent failed to develop and implement the required operations manual. Failure to do so is a violation of DRGSW §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 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 firefighting purposes;"

12. At the time of the July 17, 2018, compliance inspection, receipts were not available documenting delivery of scrap tires to an authorized scrap tire treatment, storage, disposal, or recycling facility (TSDRF). Failure to maintain documentation demonstrating delivery is a violation of DRGSW §12.7.3.1.3, which reads:

"Documentation demonstrating delivery (e.g. tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF as required by subsection 12.7.1.7."

13. By having violated the regulations cited in paragraphs 1 through 12 above, Respondent is also in violation of DRGSW §12.3.1.3, which reads in part:

"Scrap tire facilities meeting the requirements of Group 3 may operate without a permit if ... the facility achieves compliance with the requirements of subsection 12.3.2.2."

DRGSW §12.3.2.2, which reads in part:

"For Group 3, ... the scrap tire facility must: ...

12.3.2.2.2 Maintain scrap tires in a facility enclosed by a trailer(s).

12.3.2.2.3 Maintain compliance with subsections 12.5, 12.6, 12.7, and 12.10.

12.3.2.2.4 Maintain compliance with the requirements of subsection 12.3.2.2 or within 30 days either:

12.3.2.2.4.1 Comply with subsection 4.1.1.3 of these regulations; or

12.3.2.2.4.2 Comply with subsection 12.11.1.1 of these regulations."

14. Respondent, having failed to achieve the requirements of DRGSW §12.3.2.2, is subject to the requirements of DRGSW §12.3.2.2.4.2, requiring Respondent to comply with DRGSW §12.11.1, which reads 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..."

CONCLUSIONS

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

SECRETARY'S ORDER

Respondent has failed to comply with the requirements of DRGSW §12.0 as cited above. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* §6005(b)(2), that Respondent shall achieve compliance with all applicable laws and regulatory requirements by submitting the following within thirty (30) days:

1. A site closure plan, as set forth in DRGSW §12.11.1.1. The submitted closure plan shall at a minimum include, but is not limited to:
 - a. An inventory of all tires on-site, to include new tires, used tires, and scrap tires. For those tires that are used tires, include a justification as to why the tires do not meet the definition of a scrap tire as defined in DRGSW §3.0; and
 - b. A description of the methods, procedures, and processes that will be used to close the non-permitted scrap tire facility; and
 - c. The name(s) of the Delaware permitted scrap tire transporter(s) that will haul the scrap tires off of the premises; and
 - d. The name(s) of the authorized treatment, storage, disposal, or recycling facility(ies) (TSDRF) to which the scrap tires will be hauled; and
 - e. Written affirmation that closure must begin within thirty (30) days of receipt of the Department's written approval of the plan and be completed within ninety (90) days unless a written extension is provided by the Department; and
 - f. Written affirmation that Respondent will notify the Department within ten (10) days following the completion of removal activities; and

- g. A sediment and stormwater management plan, if required, under and in accordance with the sediment and stormwater regulations promulgated pursuant to 7 *Del. C.* Ch. 40; and
- h. A procedure to be implemented immediately detailing how Respondent will document the scrap tire delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to an authorized TSDRF by a Delaware permitted scrap tire transporter. Such documentation must be maintained for a period of at least three years and made available for inspection upon request by the Department; and
- i. A description of restrictions that Respondent will implement immediately to prohibit delivery or placement of any additional scrap tires into an unpermitted scrap tire pile; and
- j. A statement as to whether Respondent will continue to generate, accumulate and store scrap tires on-site; and
- k. If applicable, a description as to how newly generated scrap tires will be managed pursuant to the requirements of DRGSW §12.0.

In the event Respondent will continue to generate and store scrap tires on-site, in addition to the compliance documentation required of item 1, above, Respondent shall also submit the following within thirty (30) days:

- 2. A photograph demonstrating a fifty (50) foot fire break surrounds the two (2) trailer Group 3 Scrap Tire Facility. In the event state or municipal code allows for a less stringent requirement, a statement from the regulating entity documenting the less stringent requirement may be considered by the Department to satisfy the regulatory requirement pursuant to DRGSW §12.5.1.6.

3. A written procedure addressing how the scrap tire facility will be maintained to prevent the presence of grasses, weeds, brush, debris and other combustible material. The procedure must also address how the scrap tire facility will be inspected for grasses, weeds, brush, debris and other combustible materials and how each will be addressed immediately upon discovery. The written procedure may include affirmation that only Group 3 Scrap Tire Facility trailer storage will be used, therefore eliminating grasses, weeds, brush, debris and other combustible materials from accumulating in stored scrap tires.
4. Documentation, such as a Certified Mail Return Receipt Post Card, showing the local fire department has been notified in writing of the existence of Respondent's scrap tire facility. Respondent must maintain on-site, a copy of the notification and the Certified Mail Return Receipt Post Card or other document showing receipt by the fire department.
5. A written procedure documenting plans to prevent the accumulation of precipitation/water in scrap tires and implementation of mosquito control methods, including the type of larvicide that will be applied, if applicable. The written procedure may include affirmation that only Group 3 Scrap Tire Facility trailer storage will be used, thus eliminating precipitation from accumulating in stored scrap tires.
6. Documentation of the training that Respondent provided to each employee related to the on-site scrap tire facility and emergency procedures. Respondent must also submit the training record and a procedure to document how employee-training records will be maintained on-site for a period of at least three years.
7. A photograph demonstrating that all used tires have been removed from the designated scrap tire facility and are stored separately from the scrap tire facility.

8. A photograph demonstrating that the two (2) trailer Group 3 Scrap Tire Facility has achieved the 100-foot setback requirement. In the event the 100-foot setback requirement cannot be achieved, an explanation as to why it cannot be achieved and a statement from a regulating entity documenting a less stringent requirement may be considered by the Department in accordance with DRGSW §12.5.1.6.
9. A written procedure to be shared with Respondent's employees, as to how it will secure the scrap tire facility during non-working hours (e.g., storing the scrap tires in a locking trailer, storing scrap tires within a locked fence), and a photograph demonstrating that the plan has been implemented.
10. A written procedure that ensures Respondent will conduct inspections on at least a monthly basis and will maintain documentation of inspections on-site for a minimum of three years. Documentation will also need to be immediately available when requested by a Department representative.
11. A copy of a complete and accurate Site Operations Manual. Include a statement affirming a copy of the completed manual is maintained on-site.
12. A written procedure as to how documentation demonstrating delivery of Respondent's scrap tires to an authorized TSDRF will be maintained on-site.

Submit all documentation and correspondence to:

Tara Grazier
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, Delaware 19901

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$5,000.00 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, Respondent shall pay a stipulated penalty of \$1,000.00 for each day of continued non-compliance.

In addition to the penalty assessment, Respondent is hereby assessed, pursuant to 7 *Del.C.* §6005(c), costs in the amount of \$475.00 which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$5,000.00 to pay the penalty and one check to the Department in the amount of \$475.00 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: 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 Assessment and Order is effective and final upon receipt by Respondent. 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, Respondent 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 regarding these and other violations at Respondent's facility, 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 Ralph K. Durstein III, Deputy Attorney General at (302) 577-8510 or ralph.durstein@delaware.gov.

5/30/19

Date



Shawn M. Garvin, Secretary

cc: Ralph K. Durstein III, Deputy Attorney General
Timothy T. Ratsep, WHS Director

WAIVER OF STATUTORY RIGHT TO A HEARING

Gulab's Tire Center, LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Gulab's Tire Center, LLC** will pay the administrative penalty in the amount of \$5,000.00 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 Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904; and
2. **Gulab's Tire Center, LLC** will reimburse the Department in the amount of \$475.00 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 Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

Gulab's Tire Center, LLC

Date: _____

By: _____

Title: _____