



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 SECRETARY'S ORDER

Pursuant to 7 *Del. C.* § 6005(b)(2)

Order No. 2024-WH-0016

Via Certified Mail, Return Receipt:

Property Operator

Irvin C. Walker, Jr.
102 Christiana Road
New Castle, Delaware 19720

Via Certified Mail, Return Receipt:

Property Owner

Catherine M. Walker
102 Christiana Road
New Castle, Delaware 19720

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Irvin C. Walker, Jr. and Catherine M. Walker, property owners (collectively referred to as "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.

BACKGROUND

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 sewage, solid wastes, and hazardous wastes, by establishing programs of regulation over the treatment, storage, transportation, handling, and disposal of sewage, solid wastes, and hazardous wastes, and to assure the safe and adequate management of sewage, solid wastes, and hazardous wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapter 60 and DRGSW.

Respondents own New Castle County tax parcels 10-023.00-010, 10-023.00-007, and 10-024.00-081 (collectively referred to as "Farm Properties"), totaling approximately 135.04 acres of zoned farmland. On May 11, 2023, Department representatives from various divisions, including the Divisions of Water and Waste and Hazardous Substances, inspected the Farm Properties to assess regulatory compliance. At the time of the May 11, 2023 inspection, Department representatives observed a large amount of abandoned personal property littering the site. Respondent Irvin Walker stated that he had previously permitted various businesses to conduct business on his property, but that said businesses had left the site and abandoned their personal property, leaving it dumped on the Farm Properties. The abandoned property includes numerous passenger, truck and off-the-road equipment scrap tires which are stored in piles on the properties or abandoned haphazardly on the Farm Properties. Additionally, at the time of the May 11, 2023 inspection, many areas of the Farm Properties were overgrown or heavily vegetated, making it difficult for Department representatives to fully assess the amount of waste present.

A significant number of violations were observed, and, as the date of this Order, have not been corrected.

**FINDINGS OF FACT AND VIOLATIONS INCLUDING
REGULATORY REQUIREMENTS**

1. Section 3 of DRGSW, specifically the definition of "Facility:"

...means all contiguous land, structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations thereof).

2. Section 3 of DRGSW, specifically the definition of "Person:"

...means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, any interstate body, company, society, or any organization of any form.

3. Section 3 of DRGSW, specifically the definition of "Operator:"

...means the person responsible for the overall operation of a solid waste facility.

4. Section 3 of DRGSW, specifically the definition of "Owner:"

...means the person who owns a facility or any part of a facility.

5. 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.

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

...means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, scrap tire(s), offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

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

...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,...

8. 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.

9. 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.

10. 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...

11. 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.

Based on Respondent Irwin Walker's own admission made at the time of the May 11, 2023 inspection that the personal property observed on the Farm Properties was abandoned by prior businesses operating on the site, the abandoned personal property has therefore been discarded and constitutes solid waste pursuant to the DRGSW's above-listed definition of solid waste.

The abandoned property includes numerous passenger, truck and off-the-road equipment scrap tires which are stored in piles on the properties or abandoned haphazardly on the Respondents' properties. On the basis of information gathered during the May 11, 2023, site visit, the Department has determined Respondents created and continue to operate a solid waste scrap tire management facility for the storage and disposal of scrap tires. Storing and disposing of solid waste and scrap tires without a permit is a violation of 7 *Del. C.* § 6003(a)(4) and DRGSW § 4.1.1.1.

CONCLUSIONS

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

SECRETARY'S ORDER

In consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* § 6005(b)(2), that Respondents are 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 Farm Properties; and
2. A plan to lawfully remove all scrap tires from the Farm Properties; 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 Farm Properties; 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 Farm Properties; 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:

Jason W. Sunde
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Compliance and Permitting Section
89 Kings Highway
Dover, Delaware 19901
Jason.Sunde@delaware.gov

If full compliance with the requirements identified in this Order are not achieved within thirty (30) days, Respondents shall pay a stipulated penalty of \$400.00 for each day of continued non-compliance.

SECRETARY'S ORDER FOR COST RECOVERY

Pursuant to 7 *Del. C.* §6005(c)(1), 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). Respondents will be assessed costs incurred by the Department for reimbursement at a later date.

PUBLIC HEARING AND APPEAL RIGHTS

This Order is effective and final upon receipt by Respondents. 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, Respondents 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 Respondents regarding these and other violations at the solid waste facility, located at Former Walker Farm properties, 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:

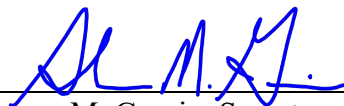
Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

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 Sawyer Traver, Esq., Deputy Attorney General
at 302-395-2500.

Date: 4/30/24


Shawn M. Garvin, Secretary

cc: Timothy Ratsep, Division Director
Sawyer Traver, Esq., Deputy Attorney General

WAIVER OF STATUTORY RIGHT TO A HEARING

Irvin C. Walker, Jr. hereby waives his right to a hearing and his opportunity to appeal or contest this Order and agrees to the following:

- 1. To fully comply with the terms and conditions of this Secretary's Order.**

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)

WAIVER OF STATUTORY RIGHT TO A HEARING

Catherine M. Walker hereby waives her right to a hearing and her opportunity to appeal or contest this Order and agrees to the following:

- 1. To fully comply with the terms and conditions of this Secretary's Order.**

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)