



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

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Piedmont Regional Director

## WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ISSUED TO TIRE RECYCLERS, INC. CHARLES CITY, VIRGINIA

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Tire Recyclers, Inc. for the purpose of resolving certain violations of environmental law and regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "Tire Recyclers" means Tire Recyclers, Inc. located in Charles City County, Virginia.
7. "Facility" means the Tire Recyclers, Inc. facility located at 2640 Roxbury Road in Charles City County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VSWMR" means the Virginia Solid Waste Management Regulations 9 VAC 20-80-10 *et seq.*

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Tire Recyclers owns and operates a tire processing facility in Charles City County, Virginia. This facility is the subject of Permit By Rule No. 142 (Permit) which allows it to chip and bale waste tires for reuse.
2. On December 31, 2002, the Department conducted an inspection of the Facility. The inspection noted a number of violations of the VSWMR and the Permit. These violations include the following:
  - Failure to follow the operating plan as required by the Permit, specifically storage of tires outside the building.
  - Exceedence of the maximum height and width of piles stored outside and failure to maintain the required minimum separation between piles, as required by 9 VAC 29-80-670.
  - Failure to include in the operating plan: a rated capacity of the facility, the capacity of any waste storage areas, the expected daily quantity of waste residue generation, and the ultimate disposal location for all facility generated waste residue.
  - The operating plan's disclosure statement was not revised to reflect a change in key personnel.
  - The facility was operating without a Class I operator during the time of the inspection.
  - The facility failed to update the closure cost estimate and the financial assurance mechanism.
  - The facility failed to establish a standby trust for the surety bond as required by 9 VAC 20-70-160. H.
3. On March 12, 2003, a Notice of Violation (NOV) was issued for the above violations.

4. On March 28, 2003, and August 6, 2003, meetings were held to discuss the violations cited in the NOV, the progress made and actions to be taken to bring the facility back into compliance.
5. On October 17, 2003, a Consent Order was issued to resolve the above violations.
6. Due to damage suffered from hurricane Isabel, the Facility requested an extension to the completion dates required by the Order. Section E. Paragraph 8. of the Order provides for relief due to "Acts of God" which are outside of the control of the Facility. In a letter dated October 17, 2003, the following deadlines were extended:
  - Paragraph 2 was extended to require the complete waste tire removal date by November 30, 2003, to December 20, 2003.
  - Paragraph 3 was extended to require the interim requirement to remove 100,000 tires by October 31, 2003, to November 20, 2003.
7. On October 30, 2003, the Department was provided a revised Operating Plan and an updated Contingency Plan.
8. The Facility notified the Department in a letter dated November 21, 2003, that they had processed 105,048 tires by November 20, 2003 as required by the Order. However, Tire Recyclers failed to complete any of the other requirements set forth in the October 17, 2003, Consent Order and the extension, including removing all of the tires by December 20, 2003.
9. On December 22, 2003, the Department issued a Notice of Violation for failure to complete the remaining requirements of the October 17, 2003, Consent Order.
10. The remaining waste tires stored outside at the TRI facility represent a potential public fire and safety hazard and threat to the environment.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455 orders Tire Recyclers, and Tire Recyclers agrees that:

1. The previous Consent Order issued on October 17, 2003 is terminated.
2. Tire Recyclers will comply with the terms listed in Appendix A of this Order. Failure to comply with any of the terms listed in Appendix A may result in termination of Tire Recyclers permit to process waste tires.

3. Tire Recyclers voluntarily agrees to pay a civil charge of \$11,550 within 50 days from the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Tire Recyclers, for good cause shown by Tire Recyclers, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Tire Recyclers by DEQ on December 22, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Tire Recyclers admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Tire Recyclers consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tire Recyclers declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2.-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Tire Recyclers to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tire Recyclers shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tire Recyclers shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tire Recyclers shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tire Recyclers. Notwithstanding the foregoing, Tire Recyclers agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Tire Recyclers. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tire Recyclers from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Tire Recyclers voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 24, 2004.

Gerald Fuley Jr. (for)  
Robert G. Burnley, Director  
Department of Environmental Quality

Tire Recyclers voluntarily agrees to the issuance of this Order.

By: M. Charles White Ex V.P.  
Date: 2-13-04

Commonwealth of Virginia

City/County of At Large

The foregoing document was signed and acknowledged before me this 13 day of February, 2004, by M. Charles White, who is the  
(name)

Vice President of Tire Recyclers, on behalf of the Corporation.  
(title)

Mitse M. Key  
Notary Public

My commission expires: November 30, 2004

## APPENDIX A

### TERMS OF COMPLIANCE

1. Tire Recyclers agrees to cooperate fully with the DEQ, and any contractor hired by DEQ, to process and remove the tires stored outside at Tire Recyclers facility. Cooperation will include allowing full access to the site, use of facility scales, moving trailers or equipment if necessary to facilitate cleanup, and providing information upon request.
2. The cost of cleaning up the site will ultimately be Tire Recyclers responsibility. The DEQ will invoice Tire Recyclers for the cleanup cost upon completion. If Tire Recyclers does not pay the invoice within 30 days, DEQ will proceed to have a lien placed upon Tire Recyclers property and facility in accordance with §10.1-1418.5 of the Code of Virginia.
3. Following cleanup of the property, Tire Recyclers agrees to comply fully with the provisions of their permit by rule and agrees to store no more waste tires outside on the ground unless it applies for and receive an individual permit that specifies the terms and conditions of such outside tire storage.
4. Tire Recyclers shall complete the operating plan within 90 days of the issuance of this Order. The operating plan shall be revised to meet the requirements of 9 VAC 20-80-360.D. Within 30 days after receiving the Department's comments relating to the operating plan, Tire Recyclers shall submit revisions and/or modifications to the Department in accordance with the Department's comments. When addressing capacity and storage as required by 9 VAC 20-80-360.D.3., Tire Recyclers shall describe in detail how the operating plan will meet the provisions of 9 VAC 20-80-670.
5. Within 90 days after the effective date of this Order, Tire Recyclers shall complete the revised contingency plan meeting the requirements of 9 VAC 20-80-360.D.4. Within 30 days after receiving the Department's comments relating to the operating plan, Tire Recyclers shall submit revisions and/or modifications to the Department in accordance with the Department's comments.
6. Tire Recyclers shall submit within 30 days from the date of execution of this Order an updated financial assurance mechanism which meets the requirements of 9 VAC 20-70-10 *et seq.* The amount of Financial Assurance must be based on the maximum amount of unprocessed tires stored at the Facility at any time.