

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF

RNS METALS, LLC

FID# 411745

RESPONDENT.

)  
)  
)  
)  
)  
)  
)

Case No. 3577

CONSENT ORDER

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (NDEE or Department) and RNS Metals, LLC (Respondent) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532; the Integrated Solid Waste Management Act (ISWMA), Neb. Rev. Stat. §§ 13-2001 to 13-2043; and Neb. Admin. Code, Title 132, *Integrated Solid Waste Management Regulations* (Title 132).

**II. JURISDICTION**

2. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of NEPA, ISWMA, and all rules and regulations promulgated by the Nebraska Environmental Quality Council (EQC) under such acts, including Title 132.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its right to further hearing as provided in Neb. Rev. Stat. §81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §84-901 *et seq.* for the violations alleged herein.



### **III. PARTIES**

4. Respondent RNS Metals, LLC, is an active domestic limited liability company and a "person" as defined in Neb. Rev. Stat. §81-1502(10).

5. The parties to this Consent Order are NDEE and Respondent RNS Metals, LLC. This Consent Order is binding on the Respondent, and all successors and assigns.

### **IV. FINDINGS OF FACT**

6. Respondent owns and operates a metal salvage business that also engages in waste tire hauling, collection, storage, and processing activities as part of its metal salvage operations.

7. Respondent's metal salvage and waste tire business is located at 51543 Hwy 275, Clearwater, NE 68726. The legal description for the property where Respondent hauls, collects, stores, and processes waste tires is parcel # 000659502, NE 1/4, NW 1/4, Section 1, Township 25N, Range 8W, Antelope County, Nebraska.

8. Neb. Rev. Stat. § 13-2033(3) requires that "[a]ny person, business, or other entity engaged in the business of picking up, hauling, and transporting scrap tires for storage, processing, or recycling shall obtain a permit from the department before engaging in such activity." The EQC has codified this statutory permit requirement applicable to waste tire hauling, storage, processing, and recycling in Title 132, Chapter 14, 007.

9. Pursuant to its authority in Neb. Rev. Stat. § 13-2033(3), the EQC adopted a rule in Title 132, Chapter 14, 017.02 stating that: "A permitted waste tire hauler that hauls waste tires and collects, accumulates, recycles or processes waste tires shall establish financial assurance in an amount equal to one dollar and twenty-five cents (\$1.25) per passenger tire equivalent for the maximum amount of passenger tire equivalents of waste tire material, except crumb rubber, accumulated on the site of collection, recycling or processing at any one time."

10. Under the above statutes and regulations, Respondent's waste tire hauling, storage, and processing activities require Respondent to, among other requirements: (a) obtain waste tire hauler permits, pursuant to Title 132, Chapter 14, 007; (b) establish financial assurance, pursuant to Title 132, Chapter 14, 017 and 018; and (c) accumulate no more passenger tire equivalents (PTE), as defined by Neb. Rev. Stat. § 13-2013.01, on the site of collection, recycling, or processing than are allowed by the amount of financial assurance established by Respondent.

11. In early August 2017, Respondent contacted NDEE to request information on obtaining a waste tire hauler permit as required by Neb. Rev. Stat. § 13-2033(3) and Title 132, Chapter 14, 007 to engage in the business of picking up, hauling, and transporting scrap tires for storage, processing, or recycling.

12. On August 10, 2017, NDEE mailed Respondent a letter containing information to assist Respondent in understanding waste tire hauler permit application requirements.

13. Between August 2017 and October 2021 – a period of over four (4) years – Respondent submitted no waste tire hauler application to NDEE, but continued to haul, store, and process waste tires at its facility in Clearwater, NE.

14. On May 24, 2021, NDEE received Notice of Environmental Concern (NEC) #052421-MB-1400 "with concerns that a large number of tires have accumulated on the site."

15. On June 15, 2021, NDEE conducted a site inspection that confirmed Respondent had accumulated between 190,000 and 280,000 PTE at the site, based on measurements made by NDEE. The approximate size of the rectangular waste tire pile was measured to be 185' feet on its west side, 290' on its north side, 230' on its east side, and 317' on its south side with average tire pile height of 8'.

16. On July 19, 2021, NDEE sent Respondent a Letter of Non-Compliance (LNC) alleging violations of Title 132, Chapter 14 and requesting voluntary compliance with the regulations cited in the LNC, including a reduction in the amount of waste tires located at the site.

17. Between July 19, 2021 and the present, Respondent did not document, report, or notify NDEE of any reduction in the amount of tires stored at the site.

18. On October 29, 2021, Respondent applied for and on December 21, 2021, NDEE issued Respondent Waste Tire Hauler Permit #21-202-HOOO with financial assurance established by Respondent in the amount of \$50,000.

19. Pursuant Title to 132, Chapter 14, 017.02, the financial assurance amount of \$50,000 established by Respondent allows Respondent to lawfully store a maximum of 40,000 passenger tire equivalents (PTEs) at Respondent's waste tire hauling, storage, and processing facility.

20. Among the terms and conditions of Waste Tire Hauler Permit #21-202-HOOO is Special Permit Condition #1: "The Permittee will submit monthly reports of waste tires hauled offsite to either Butler County Landfill or other locations in tons. The first report required will be for December 2021 and each monthly report is due no later than 10 days after the 1<sup>st</sup> day of each month."

21. Waste Tire Hauler Permit #21-202-HOOO was reapplied for by Respondent on March 9, 2022, and was reissued by NDEE on April 1, 2022, in accordance with the annual permit renewal cycle for all waste tire hauler permits. The reissued Waste Tire Hauler Permit #21-202-HOOO also contained Special Permit Condition #1, with the same monthly reporting requirement as in the initial permit issued on October 29, 2021.

22. In the ten (10) months since receiving the LNC sent on July 19, 2021 and the six (6) months since being issued Waste Tire Hauler Permit #21-202-HOOO and subject to Special

Permit Condition #1, Respondent has submitted no monthly reports demonstrating a reduction in the amount of tires stored or accumulated at its waste tire hauling, storage, and processing facility.

23. On November 23, 2021, and March 24, 2022, NDEE conducted additional site inspections which documented that Respondent has made little to no observable progress in reducing the amount of tires stored or accumulated at its waste tire hauling, storage, and processing facility.

24. In early February 2022 after having received no monthly reports to date, NDEE contacted Respondent by phone for a progress update during which Respondent stated that 3,000 PTE had been removed in January 2022. As Respondent has not submitted reports of incoming tire amounts added to the existing tire pile, NDEE cannot determine whether the 3,000 PTE that may have been removed in January 2022 contributed to a net reduction in the total amount of tires stored or accumulated at its waste tire hauling, storage, and processing facility.

25. Respondent violated Neb. Rev. Stat. § 13-2033(3) and Title 132, Chapter 14, 007 between early August 2017 and October 29, 2021, by failing to obtain a waste tire hauler permit as required under state law to lawfully engage in the business of picking up, hauling, and transporting scrap tires for storage, processing, or recycling.

26. Respondent has been in violation of Title 132, Chapter 14, 017.02 since December 21, 2021 by failing to reduce the amount of waste tires stored at its facility to at or below the amount of tires allowed by its financial assurance – 40,000 PTE – in violation of Title 132, Chapter 14, 017.02.

27. Respondent has been in violation of Waste Tire Hauler Permit #21-202-H000 since December 10, 2021, by failing to submit monthly reports as required by Special Permit

Condition #1. Violation of an agency solid waste facility permit is also a violation of Neb. Rev. Stat. § 81-1506(3)(c).

28. Given the violations alleged herein and Respondent's ongoing failures to submit monthly waste tire hauling reports and to reduce the amount of waste tires stored or accumulated at its waste tire hauling, storage, and processing facility in Clearwater, NE, the NDEE Director is authorized under Neb. Rev. Stat. § §81-1504(25) and §81-1507(1) to require and enforce compliance schedules when a violation of NEPA, ISWMA, or Title 132 has occurred.

## **V. COMPLIANCE ORDER**

29. Effectively immediately, Respondent agrees to submit monthly waste tire hauling reports as required by Special Permit Condition #1 of Waste Tire Hauler Permit #21-202-HOOO.

30. **By December 31, 2022**, Respondent agrees to reduce the net number and volume of waste tires stored at its waste tire hauling, collection, and processing facility by **50,000 PTE** or **500 tons**.

31. **By June 30, 2023**, Respondent agrees to further reduce the net number and volume of waste tires stored at its waste tire hauling, collection, and processing facility by an additional **50,000 PTE** or **500 tons**, for a **total net reduction** in the number and volume of waste tires stored at the facility of **100,000 PTE** or **1,000 tons** for the period between entry of this Consent Order and June 30, 2023.

32. **By December 31, 2023**, Respondent agrees to further reduce the net number and volume of waste tires stored at its waste tire hauling, collection, and processing facility by an additional **50,000 PTE** or **500 tons**, for a **total net reduction** in the number and volume of waste tires stored at the facility of **150,000 PTE** or **1,500 tons** for the period between entry of this Consent Order and December 31, 2023.

33. Submissions to the Department under this Order shall refer to FID #411745 and shall be sent to:

Michael Behrens, P.E., CHMM  
Waste Permit Section  
Nebraska Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

#### **VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

34. Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

#### **VII. RESERVATION OF RIGHTS**

35. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA, ISWMA, and any rules, regulations, orders, or permits issued pursuant to NEPA or ISWMA.

36. NDEE reserves the right to make its own independent estimations of PTE or tonnage amounts in determining compliance and is not bound by those amounts reported, recorded, or estimated by Respondent.

#### **VIII. NEGATION OF AGENCY RELATIONSHIP**

37. Nothing in this Consent Order shall be construed to create, either expressly, or by implication, the relationship of agency between NDEE and Respondent.

#### **IX. AMENDMENT**

38. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondent.

## X. EFFECTIVE DATE


39. This Consent Order shall become effective on the date it is signed by the NDEE Director or his designee.

## XI. SEVERABILITY

40. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

## XII. SIGNATURES

41. For Respondent:

By:  \_\_\_\_\_

Title:  \_\_\_\_\_

Date:  \_\_\_\_\_

42. For NDEE:

IT IS SO ORDERED and agreed this 12<sup>th</sup> day of August, 2022.

  
Jim Macy  
Director

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY