

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

| | | |
|----------------------------|---|---------------|
| IN THE MATTER OF |) | Case No. 3542 |
| |) | |
| B-Rose Tire Recycling, LLC |) | |
| FID #411280 |) | |
| |) | |
| and |) | CONSENT ORDER |
| |) | |
| LAL Enterprises, LLC |) | |
| FID #61859 |) | |
| |) | |
| RESPONDENTS. |) | |

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (NDEE or Department) and B-Rose Tire Recycling, LLC, and LAL Enterprises, LLC, (Respondents) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondents to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2020); the Integrated Solid Waste Management Act (ISWMA), Neb. Rev. Stat. §§ 13-2001 to 13-2043 (Reissue 2012; Cum. Supp. 2018); 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, Respondents agree to undertake all actions required by this Consent Order. Respondents agree not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondents waive their 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 B-Rose Tire Recycling, LLC, is an active domestic limited liability company and a "person" as defined in Neb. Rev. Stat. §81-1502(10).

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

6. The parties to this Consent Order are NDEE and Respondents B-Rose Tire Recycling, LLC, and LAL Enterprises, LLC. This Consent Order is binding on the Respondents, and all successors and assigns.

IV. FINDINGS OF FACT

7. Respondents jointly own and operate a waste tire hauling, collection, and processing business located at 310 Harrison St. in Alvo, Nebraska.

8. Respondents' waste tire hauling, collection, and processing business is located on real property owned by Beth Anne Rose, who is also a member, manager, or officer of B-Rose Tire Recycling, LLC. The legal description for the parcels owned by Ms. Rose that are the site of Respondents' waste tire hauling, collection, and processing activities is: Alvo Outlots TL31, TL38, and TL39; W 1/2, SW 1/4, Section 35, Township 11N, Range 9E, Cass County, Nebraska.

9. Pursuant to its authority in Neb. Rev. Stat. § 13-2033(3), the EQC adopted a rule in Title 132, Chapter 14, 007 stating that: "Any person, business, or other entity engaged in the business of picking up, hauling, and transporting waste tires for accumulation, processing, or recycling shall obtain a permit from the department before engaging in such activity."

10. 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."

11. Under the above regulations, Respondents' waste tire hauling and processing activities require Respondents to, among other requirements: obtain waste tire hauler permits, pursuant to Title 132, 007; establish financial assurance, pursuant to Title 132, 017 and 018; and accumulate no more passenger tire equivalents (PTEs), 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 Respondents.

12. On April 1, 2020, NDEE issued Respondent B-Rose Tire Recycling, LLC, Waste Tire Hauler Permit #15-189-HOOO with financial assurance established by Respondent in the amount of \$60,000. During 2020, Respondent B-Rose Tire Recycling, LLC, increased its amount of financial assurance on two occasions to its current amount of \$100,000.

13. On April 1, 2020, NDEE issued Respondent LAL Enterprises, LLC, Waste Tire Hauler Permit #15-055-HOOO with financial assurance established by Respondent in the amount of \$60,000. During 2020, Respondent LAL Enterprises, LLC, increased its amount of financial assurance on two occasions to its current amount of \$100,000.

14. Pursuant Title to 132, Chapter 14, 017.02, the current combined financial assurance amount of \$200,000 established by Respondents allows Respondents to lawfully store a

maximum of 160,000 passenger tire equivalents (PTEs) at Respondents' waste tire hauling and processing facility located at 310 Harrison St. in Alvo, Nebraska.

15. On July 2, 2020, NDEE inspected Respondents' waste tire hauling and processing facility located at 310 Harrison St. in Alvo, Nebraska and determined through inspection and review of information provided by Respondents subsequent to inspection that the quantity of waste tires on site, as of October 7, 2020, was 323,228 PTEs.

16. On November 19, 2020, NDEE sent Respondents a Letter of Noncompliance (LNC) citing Respondents for storing waste tires in excess of the 160,000 PTEs allowed by their combined financial assurance, in violation of Title 132, Chapter 14, 017.02. The LNC also cited Respondents for violating State Fire Marshal regulations and required Respondents to complete three (3) actions to correct the violations.

17. To date, Respondents have not fully completed the corrective actions required in the November 19, 2020 LNC and continue to unlawfully store waste tires above their combined amount of financial assurance, in violation of Title 132, Chapter 14, 017.02.

V. COMPLIANCE ORDER

18. **By May 1, 2021 and by the 1st of the month for each month thereafter** in accordance with paragraphs 20 and 21 and until Respondents have reduced the number of PTEs stored onsite at Respondents' waste tire hauling, collection, and processing facility to 160,000 PTE, Respondents agree to submit records to NDEE which document:

- a. quantities of processed waste tires (in PTE) hauled offsite for reuse or recycling for the month prior to reporting;
- b. quantities of incoming waste tires (in PTE) collected and hauled to the site for the month prior to reporting;
- c. total inventory of waste tires and processed waste tires (in PTE) stored onsite at the time of monthly reporting.

19. **By July 1, 2021**, Respondents agree to reduce the number of PTE stored at their waste tire hauling, collection, and processing facility to **240,000 PTE**.

20. **By September 1, 2021**, Respondents agree to further reduce the number of PTE stored at their waste tire hauling, collection, and processing facility to **160,000 PTE** in full compliance with the maximum allowable PTE storage amount under Waste Tire Hauler Permits #15-189-HOOO, #15-055-HOOO, and the permits' associated financial assurance amounts.

21. Submissions to the Department under this Order shall refer to FID #411280 and #61859 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

22. Respondents 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

23. 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.

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

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENT

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

X. EFFECTIVE DATE

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

XI. SEVERABILITY

28. 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

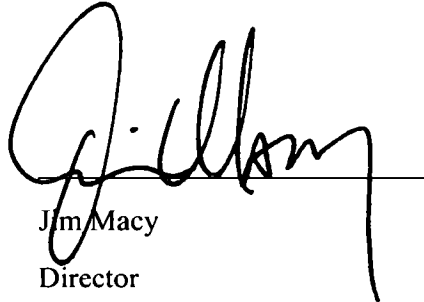
29. For Respondents:

By: Beth Rose
Title: Owner
Date: 4-9-2021

By: Jerry Jager
Title: Owner
Date: 4-9-21

30. For NDEE:

IT IS SO ORDERED and agreed this 13th day of April, 2021.

A handwritten signature in black ink, appearing to read "Jim Macy", is written over a horizontal line. The signature is stylized with a large initial "J" and a long, sweeping tail.

Jim Macy
Director

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY