

FILED

**STATE OF VERMONT
ENVIRONMENTAL COURT**

SEP 12 2013

**SECRETARY, VERMONT AGENCY
OF NATURAL RESOURCES,
Plaintiff,**

v.

**FRED BUDZYN, d/b/a BUDZYN
REMOVAL & RECYCLING,
Respondents.**

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

**Docket No. 141-10-12 Vtec
(Berlin site)**

JUDGMENT ORDER

This matter came on for a hearing on the merits on September 10, 2013, before the undersigned judge. The Secretary of the Vermont Agency of Natural Resources ("ANR") was represented by her attorneys, Kathryn E. Taylor, Esq. and John Zaikowski, Esq. Respondents Fred Budzyn, d/b/a Budzyn Removal & Recycling, ("Respondents"), joined by Mrs. Budzyn, appeared at trial and were assisted by their attorney, Gregory W. McNaughton, Esq.

The Court afforded the parties a full opportunity to present all relevant evidence, including witness testimony, as well as an opportunity to fully cross-examine the other witnesses. Once all parties completed their presentations, the Court took a brief recess to complete its deliberations and legal research.

Once the Court completed its deliberations, the undersigned returned to the bench, reopened the hearing, and announced that he had concluded that Findings of Fact and Conclusions of Law could be announced on the record of the reconvened hearing. The Court then announced its Findings of Fact and Conclusions of Law on the record of the hearing. Any individual wishing to review the Court's Findings and Conclusions in detail is referred to the merits hearing record.

The Court specifically concluded that the tires stored on Respondents' Berlin property constituted "solid waste," as that term is defined in 10 V.S.A. § 6602(2) and the Vermont Solid Waste Management Rules. The Court reached this conclusion based upon several factual findings, including that the original owners of the tires "discarded" the tires and Respondents received a fee from the business entities for taking the discarded tires in order that the tires may

be recycled, reused, or otherwise safely and legally disposed. Respondents grouped and stored the discarded tires with some tires that Respondents may have purchased, since the tires Respondents actually purchased (sometimes for as little as one to five dollars per tire) may have had some useable tread remaining. Nonetheless, substantially all tires received by Respondents and stored on the Berlin property, unprotected from the elements and left in large piles, had been discarded by their prior owners and should therefore be regarded as solid waste. The fact that Respondents were able to subsequently sell some of the discarded tires (some of which had been stored on the Berlin property for three years or more) does not negate our conclusion that a substantial majority of the tires Respondents received and stored on the Berlin property constitute solid waste.

The Court then reviewed all criteria listed in 10 V.S.A. §§ 8010(b)(1) through (b)(8) and (c)(2) that must be considered by ANR in the first instance, and this Court in the second instance (when a hearing is requested), for the purposes of establishing whether an administrative penalty should be imposed. Specifically, the Court considered the mitigating factor of ANR's delay in seeking enforcement under subsection (b)(2) and whether a deterrence penalty should be imposed under subsection (b)(6). The Court concluded that a penalty should be imposed, including a deterrence penalty of \$10,000.00. It imposed a total penalty in favor of ANR and against Respondent, both individually and in his business name, in the amount of \$17,301.00.¹

Pursuant to the authority vested in this Court by 10 V.S.A. § 8012(b), we hereby modify paragraph A of ANR's August 21, 2012 Administrative Order issued against Respondent in both his individual and business name and impose a revised total penalty of \$17,301.00, which penalty must be paid no later than thirty (30) consecutive calendar days following the date of this Judgment Order. Payment shall be to the State of Vermont, to be deposited in the general fund pursuant to 10 V.S.A. § 8010(e), and shall be forwarded to the address specified in paragraph A of the Administrative Order.


Pursuant to the authority vested in this Court by 10 V.S.A. § 8012(b), we hereby **AFFIRM** the Secretary's August 21, 2012 Administrative Order against Respondents in all other respects.

¹ As noted on the record, the Court imposed a portion of the penalty totaling \$3,301.00 as reimbursement of the expenses that ANR incurred in its enforcement against Respondents. See 10 V.S.A. § 8010(b)(7).

Rights of Appeal (10 V.S.A. §§ 8012(c)(4) and (5)):

WARNING: This Decision will become final if no appeal is filed within ten (10) days of the date this Decision is received. All parties to this proceeding have a right to appeal this Decision. The procedures for filing an appeal are found in the Vermont Rules of Appellate Procedure (V.R.A.P.), subject to superseding provisions in Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.) 4(d)(6). Within ten (10) days of receipt of this Order, any party seeking to file an appeal must file the notice of appeal with the Clerk of the Environmental Court, together with the applicable filing fee. Questions may be addressed to the Clerk of the Vermont Supreme Court, 111 State Street, Montpelier, VT 05609-0801; (802) 828-3276. An appeal to the Supreme Court operates as a stay of payment of a penalty, but it does not stay any other aspect of this Judgment Order or the Administrative Order affirmed and revised by this Court. 10 V.S.A. § 8013(d). A party may petition the Supreme Court for any additional stay under the provisions of V.R.C.P. 62 and V.R.A.P. 8.

Done at Newfane, Vermont this 12th day of September, 2013.



Thomas S. Durkin, Environmental Judge

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket no.

SECRETARY, VERMONT
AGENCY OF NATRAL RESOURCES,
Plaintiff

v.

FRED BUDZYN D/B/A
BUDZYN REMOVAL AND RECYCLING,
Respondent

ADMINISTRATIVE ORDER

Having found that Fred Budzyn, dba Budzyn Removal & Recycling or Budzyn Tire (Respondent) has committed violations as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS

1. Vermont Solid Waste Management Rule (VSWMR) §6-302(d): Storage of solid waste outside of a certified facility
2. VSWMR §6-301(7)(C): Collection of solid waste for a mobile collection operation without delivery to a certified waste management facility within 48 hours of collection
3. 10 V.S.A. §6605: Operation of solid waste management facility without certification
4. 10 V.S.A. §6607a(d): Operation of motor vehicle for waste transportation without a permit
5. Solid Waste Transporter Permit dated October 16, 2009, Condition #8: Delivery of waste to uncertified storage facility
6. Solid Waste Transporter Permit dated October 16, 2009, Condition #4: Failure to submit annual vehicle report and disclosure statement and annual fee.

STATEMENT OF FACTS

1. Respondent owns and operates a tire collection, storage and transfer business on property located on Barre-Montpelier Road (Rte. 302) in Berlin (the property), as well as a shop in Berlin where used tires are sold and mounted.
2. On July 12, 2000, the Agency issued Respondent Categorical Recycling Facility Certification #WA930 (the Certification) with an expiration date of July 11, 2005, authorizing operation of a recycling facility on the property for the collection and handling of no more than 400 tons of recyclable materials per year.
3. On February 14, 2002, the Agency issued Respondent a Notice of Alleged Violation for failure to comply with reporting requirements of the Certification.
4. On February 14, 2005, Respondent submitted a renewal application that the Agency determined was administratively incomplete on March 3, 2005.
5. On July 11, 2005, the Certification expired.
6. On July 20, 2006, personnel from the Agency's Solid Waste Program inspected the property.

During the inspection, the following violations were observed:

- a. Tires were piled and stored on open ground both inside and outside the fenced area of a former domestic wastewater treatment plant and adjacent to a forest boundary without any certification, in violation of VSWMR §6-302(d) and 10 V.S.A. §6605.
- b. Transfer trailers were remaining on the property until full for shipment, sometimes up to two weeks, which exceeds the 48-hour window allowed for transit waste in violation of VSWMR §6-301(b)(7) and Condition 8 of the Solid Waste Transporter Permit.
- c. The tire piles have no fire lanes in between piles or fire breaks to the adjacent woods, in violation of VSWMR §6-1203(a), which prohibits the creation of a nuisance or undue threat to safety or the environment.

7. On July 11, 2007, the Agency hand-delivered a letter to Respondent requesting a complete application for a full tire transfer station certification by July 31, 2007.
8. On August 1, 2007, the Agency issued Respondent a Notice of Alleged Violation (NOAV) for operation of an uncertified solid waste facility, with instructions to address the observed violations. After it was returned as unable to forward, the Agency re-issued the NOAV on August 17, 2007.
9. On August 27, 2007, Respondent contacted the Agency in response to the NOAV and stated that he would not remove the stockpiled tires.
10. On August 30, 2007, March 4, 2008, June 12, 2009, and May 18, 2011, personnel from the Agency's Solid Waste Program inspected the property and took photographs. During these inspections, the following violations were observed:
 - a. Tires, many no longer usable or accessible, continued to be stored on the ground both inside and outside a chain link fence without a permit in violation of VSWMR §6-302(d) and 10 V.S.A. §6605.
 - b. Seven tractor trailers were also used for waste tire storage at the site. Tires were stored less than 50 feet from a nearby brook, in violation of 6-1203(a) which prohibits the creation of a nuisance or an undue threat to safety or the environment.

At the time of the June 12, 2009 visit, the Agency estimated there were approximately 20,000 tires at the site.

11. On October 16, 2009, Respondent was issued a renewal of his Waste Transporter Permit.
12. In 2010, Respondent failed to submit the required annual statement and the \$35 per vehicle fee in violation of Condition 4 of the Waste Transporter Permit.

ORDER

Upon receipt of this Administrative Order, the Respondent shall:

- A. Pay a penalty of \$32,000 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Sarah Hosford, Administrative Assistant
Compliance and Enforcement Division
Agency of Natural Resources
103 South Main Street/Old Cannery
Waterbury, VT 05671-4910

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondent from the violation(s) and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. Respondent shall immediately cease accepting tires at the site or transporting any tires to the site unless and until the Agency approves of such storage.
- C. No later than thirty (30) consecutive calendar days after the effective date of this Order, Respondent shall remove all tires at the site to a certified facility, using a permitted solid waste hauler.

Submit copies of tipping receipts from the receiving facility to the Solid Waste Program (Attention: Barb Schwendtner) within forty-five (45) days of receipt of this Order.

RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT

The respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Compliance and Enforcement Division,
103 South Main Street/Old Cannery
Waterbury, Vermont 05671-4910

2. Clerk, Environmental Court
2418 Airport Road, Suite 1
Barre, Vermont 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent including

but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10
V.S.A. Chapters 201 and 211.

Dated at Waitsfield, Vermont this 21st day of August, 2012.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 

David Meeks, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket no.

SECRETARY, VERMONT
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v.

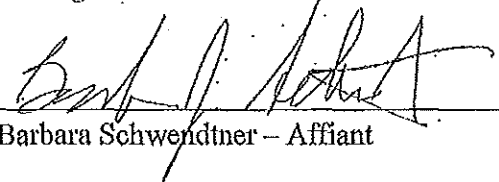
FRED BUDZYN D/B/A
BUDZYN REMOVAL AND RECYCLING,
Respondent

Affidavit of Barbara Schwendtner

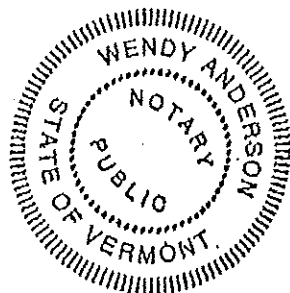
I, Barbara Schwendtner, being duly sworn do attest:


1. I am of legal age and a resident of the State of Vermont.
2. I am employed as an Environmental Analyst in the Waste Management and Prevention Division of the Agency of Natural Resources.
3. Based upon personal observations and conversations with witnesses, the Vermont Solid Waste Management Rule, and the Solid Waste Management Facility Certification violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Graniteville, Vermont this 15th day of August, 2012.


Barbara Schwendtner - Affiant

Subscribed and sworn to me on the 15th of AUGUST, 2012.




Notary Public

My Commission Expires: 2/10/2015