

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3**

IN THE MATTER OF:

West Virginia Tire Disposal, Inc. Site

West Virginia Tire Disposal, Inc.
Robert L. Thompson, and

Respondents

Proceeding under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980,
as amended, 42 U.S.C. § 9604(e)

U.S. EPA Region 3

Docket No. CERCLA-03-2022-0066AC

**ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE WITH
REQUEST FOR ACCESS**

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I. JURISDICTION

1. This Administrative Order (“Order”) is issued under the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) of 1980, as amended, and Section 300.400(d)(4) of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrator of EPA Region 3 on January 18, 2017, by EPA Delegation No. 14-6, and further redelegated to the Chief, Western Response Section, Preparedness and Response Branch, Superfund & Emergency Management Division, on April 15, 2019.

2. This Order applies to and is binding on Respondents and their successors, heirs, and assigns.

II. DEFINITIONS

3. Terms not otherwise defined in this Order have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Order, the following definitions shall apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“Day” or “day” means a calendar day. In computing any period under this Order, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“Effective Date” means the date this Order becomes effective as provided in Paragraph 18.

“EPA” means the U.S. Environmental Protection Agency.

“Paragraph” means a portion of this Order identified by an Arabic numeral or an upper- or lower-case letter.

“Property” means the property located at and around 26 Bryant Branch Road, Summersville, Nicholas County, West Virginia, 26651; being approximately 328.5 acres of real property identified as Nicholas County Tax Map/Parcel 18/0065 0000 0000, and as WV Parcel ID Number 34-07-0018-0065-0000.

“Respondents” mean Robert L. Thompson and West Virginia Tire Disposal, Inc.

“Site” means the West Virginia Tire Disposal Superfund Site, encompassing approximately 328.5 acres, located at and around 26 Bryant Branch Road, Summersville, Nicholas County, West Virginia.

III. FINDINGS OF FACT

4. Respondents operate a tire disposal facility at the Site. On or around December 25, 2021, the West Virginia Department of Environmental Protection (“WV DEP”) responded to a tire fire at the Site and conducted emergency response activities until February 20, 2022, when EPA assumed responsibility for the emergency response activities under a Special Bulletin issued on February 17, 2022. Under the Special Bulletin, EPA will respond to the release of hazardous substances to and from an on-Site stormwater pond (“Pond”) that discharges to a local stream, Bryant Branch, which is a tributary of Peters Creek. The U.S. Fish and Wildlife Service has informed EPA that Bryant Branch is home to environmentally sensitive populations, including several species of mussels and the candy darter fish, which is a threatened species under the Endangered Species Act.

5. An oily waste byproduct of the tire fire was released to the Pond. Surface-water sampling conducted by WV DEP showed the presence of several hazardous substances including, but not limited to, benzene, phenol, styrene, and 4-methy-2-pentanone, all of which are listed hazardous substances in 40 C.F.R. § 302.4.

6. [Reserved.]

7. Respondents control the Property and operate the West Virginia Tire Disposal facility thereon.

8. To address the release or threatened release of a hazardous substance or pollutant or contaminant at the Property, EPA is planning to conduct certain response actions. These actions include:

(1) Mitigation of potential discharge of an oil-like substance containing hazardous substances, pollutants, or contaminants from areas of the Site including, but not limited to the Pond, outfalls, surface drainage areas, retention areas, or any other areas where the oil-like substance, as described above, is being released to the environment;

(2) Removal and containment of the oil-like substance containing hazardous substances, pollutants, or contaminants from the Pond, shoreline, retention areas or other areas contaminated with such substances;

(3) Off-site disposal of oil-like substance and debris containing hazardous substances, pollutants, or contaminants;

(4) Pumping of Pond liquids into containment for the purpose of reducing volume to prevent overflow from the pond;

(5) Excavation of waste tire debris from the Pond followed by staging, containment, and off-site disposal;

(6) Control of runoff from burned tire pile area;

(7) Provision of logistical support items on the Property including, but not limited to, command post trailer(s), portable toilets, rehab areas; and

(8) Provision of Site security, as needed, to prevent unauthorized access to work areas.

9. EPA estimates that the duration of the required entry and access under this Order will be approximately 90 days from the Effective Date of this Order, as provided in Paragraph 18, or until the threat of release of hazardous substances has been eliminated; provided that, subject to the reservation of rights in Paragraph 23 of this Order, the duration of the required entry and access for the performance of the response activities described in Paragraph 8 shall not exceed 12 months from the Effective Date.

10. Despite requests from EPA, Respondents have refused to sign a Consent to Enter or otherwise to provide access to the Property for purposes of performing the response activities described above. These requests include multiple emails, phone messages, and phone conversations from February 17, 2022, through February 21, 2022. Property owner West Virginia Land Management, Ltd. has consented to EPA's entry.

11. EPA plans to mobilize to the Property immediately because WV DEP, who had previously been controlling or preventing releases from the Pond, vacated the Site on February 20, 2022.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the foregoing Findings of Fact, and the administrative record supporting issuance of this Order, EPA has determined that:

a. "Hazardous substances," as defined by Section 101(14) CERCLA, 42 U.S.C. § 9601(14), or "pollutants or contaminants," as defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), may be or have been released to or from the Property, or a release of hazardous substances or pollutants or contaminants is or may be threatened at the Property.

b. [Reserved.]

c. The Property is, or is adjacent to, a Facility, Vessel, Establishment, or other place or property (i) from or to which a hazardous substance or pollutant or contaminant has been or may have been released; (ii) where such release is or may be threatened; (iii) where entry is needed to determine the need for response, to identify the appropriate response, and to

effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

d. EPA has a reasonable basis to believe that there may be or has been a release or threat of release of a hazardous substance or pollutant or contaminant at the Property.

e. Respondents control the Property and operate the West Virginia Tire Disposal facility thereon.

f. Respondents are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

g. Entry to the Property by EPA and its officers, employees, agents, contractors, and other authorized representatives is needed for the purposes of inspecting and obtaining samples, determining the need for response, choosing or taking a response action, and enforcing the provisions of CERCLA at the Property.

h. Respondents have not granted EPA’s request for access to the Property for the purpose of conducting the response actions described in Paragraph 8.

V. ORDER

13. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record supporting the issuance of this Order, EPA hereby orders Respondents to provide EPA and its officers, employees, agents, contractors, and other authorized representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including, but not limited to, those described in Paragraph 8.

14. Respondents shall not prevent, limit, or otherwise interfere with EPA’s access to the Property as described in Paragraph 13 or any activity described in Paragraphs 8 and 13 by EPA, its officers, employees, agents, contractors, and other authorized representatives. Any interference with any activity described in Paragraphs 8 and 13 shall be deemed a violation of this Order.

15. [Reserved.]

VI. OPPORTUNITY TO CONFER

16. Respondents may request a conference with EPA to discuss the Order, including its applicability, the factual findings, and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions which Respondents may have regarding this Order, provided they submit a request to EPA for such a conference within one (1) working day after receipt of the Order. Respondents are entitled to submit written comments or a statement of position, provided

Respondents submit, within one (1) working day after receipt of the Order, a notice to EPA of its intent to submit such written materials.

17. If Respondents timely request a conference, the conference must be held within two (2) working days after Respondents' request. Respondents or Respondents' representative may appear at the conference. If Respondents timely notify EPA of their intent to submit written materials, Respondents must submit those written materials within two (2) working days after receipt of the Order, or, if a conference is scheduled, within one (1) working day after the conference. EPA may specify in writing later deadlines for the conference or for submission of written materials. The conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of the Order. EPA will deem Respondents to have waived their rights to the conference or to submit written comments if they fail to request or schedule the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted **via email** to:

Robert S. Hasson
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 3
(215) 814-2672
hasson.robert@epa.gov

VII. EFFECTIVE DATE

18. This Order is effective as of the later of: (i) one (1) working day after Respondents or their designated representative receive the Order; (ii) one (1) working day after the conference scheduled by EPA under Paragraph 17, provided that Respondents timely requested a conference in accordance with Paragraph 16; or (iii) one (1) working day after the deadline for submission of written materials if a conference is not scheduled in accordance with Paragraph 17, provided that Respondents timely notified EPA of Respondents' intent to submit written materials in accordance with Paragraphs 16. If EPA determines that the Order should be modified based on the conference or written materials, EPA shall notify Respondents, within the applicable one-day period, that EPA intends to modify the Order. The modified Order shall be effective one (1) working day after it is received by Respondents.

VIII. NOTICE OF INTENT TO COMPLY

19. Respondents shall notify EPA, using the form provided at the end of this Order and in accordance with Paragraph 26, on or before the Effective Date, whether or not it intends to fully and unconditionally comply with the Order. Respondents' failure to notify EPA of their intent to fully and unconditionally comply with this Order by the time the Order becomes effective shall be (i) construed as a denial of EPA's request for access, and (ii) as of the effective date under Paragraph 18 of this Order, treated as a violation of the Order.

IX. ENFORCEMENT

20. Any non-compliance with this Order is enforceable under Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Section 104(e)(5)(B) of CERCLA provides that a court may assess civil penalties for each day of noncompliance against any person who unreasonably fails to comply with an access order issued under Section 104(e)(5)(A) of CERCLA. As of the date of issuance of this Order, the statutory maximum amount is \$62,689.00 per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount to be applied to this violation will be set as the most recent maximum amount set forth in 40 C.F.R. § 19.4, as of the date that the U.S. District Court assesses any such penalty. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

21. Nothing in this Order precludes EPA from taking any additional enforcement actions or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof.

X. RESERVATIONS OF RIGHTS BY EPA

22. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action that EPA has now or may have in the future against Respondents or against any person or entity who is not a Respondent to this Order.

23. Nothing in this Order limits or otherwise affects the right of EPA to issue any other orders to, or take any other administrative or civil action against, Respondents or any other person(s) under CERCLA that relate to the Site or any other site.

24. Nothing in this Order limits or otherwise affects any right of entry held by the United States under applicable laws, regulations, or permits.

25. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XI. NOTICES AND SUBMISSIONS

26. All notices and requests specified in this Order (collectively, “Notices”) must be in writing and must be sent **via email** to EPA as specified below:

Robert S. Hasson
Office of Regional Counsel
U.S. Environmental Protection Agency
(215) 814-2672
hasson.robert@epa.gov

XII. ADMINISTRATIVE RECORD

27. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It will be available for review no later than seven (7) working days after Respondents' receipt of this Order or any modified Order under Paragraph 18. To review the administrative record, please contact Robert S. Hasson, Senior Assistant Regional Counsel, at (215) 814-2672 or at hasson.robert@epa.gov.

XIII. TERMINATION

28. This Order is in effect, and Respondents shall provide access to the Property, from the Effective Date until EPA notifies Respondents that the activities for which access is needed are complete and access to the Property is no longer needed.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 3

CERCLA Docket No. CERCLA-03-2022-0066AC

IN THE MATTER OF:

West Virginia Tire Disposal, Inc. Superfund Site, Summersville, Nicholas County, West Virginia

It is so ORDERED.

BY: _____
Electronic Signature and Date
DOMINIC VENTURA, Chief
Western Response Section
Preparedness and Response Branch
Superfund & Emergency Management Division
U.S. Environmental Protection Agency - Region 3

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 3

CERCLA Docket No. CERCLA-03-2022-0066AC

IN THE MATTER OF:

West Virginia Tire Disposal, Inc. Superfund Site, Summersville, Nicholas County, West Virginia

NOTICE OF INTENT TO GRANT ACCESS

I hereby notify the United States Environmental Protection Agency, in accordance with Paragraph 19 of EPA’s Administrative Order Directing Compliance With Request For Access, CERCLA Docket No. CERCLA-03-2022-0066AC (“Order”), that I will fully and unconditionally comply with the Order with regard to the Property identified in Paragraph 3 of this Order.

Respondent Robert L. Thompson

Date

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 3

CERCLA Docket No. CERCLA-03-2022-0066AC

IN THE MATTER OF:

West Virginia Tire Disposal, Inc. Superfund Site, Summersville, Nicholas County, West Virginia

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Respondent West Virginia Tire Disposal, Inc.

Date

Print:

Name

Title

Telephone Number

Email Address