



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

June 18, 2024

Mr. Jeff Frazier, Owner
Jeff Frazier dba Fortville Auto Salvage
9972 N CR 50 W
Fortville, IN 46040
ffrazier@aol.com

Mr. Dennis Dile, Operator
Jeff Frazier dba Fortville Auto Salvage
9972 N CR 50 W
Fortville, IN 46040
diledenniswayne@gmail.com

Dear Messrs. Frazier and Dile:

Re: Notice of Final Settlement Offer
Indiana Department of
Environmental Management
v.
Jeff Frazier dba Fortville Auto Salvage
Case No. 2023-29643-S
Non-notifier
Fortville, Hancock County

On January 26, 2024, the Indiana Department of Environmental Management (IDEM) issued to Jeff Frazier dba Fortville Auto Salvage a Notice of Violation. Subsequently, on January 26, 2024, IDEM issued a Proposed Agreed Order for the purpose of resolving the outstanding violations specified within the Notice of Violation.

The Notice of Violation was received by Dennis Dile on March 26, 2024 and again hand delivered to Mr. Dile on April 10, 2024. To date, IDEM has not received a response to the proposed Agreed Order to settle this enforcement action.

Please review the enclosed proposed Agreed Order, arrange signature in the appropriate block on the signature page, and return the entire document, within 10 business days of issuance of this letter, to:

Christina Halloran, Enforcement Case Manager
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

Because more than sixty (60) days have passed since issuance of the Notice of Violation, IDEM is entitled to, pursuant to IC 13-30-3-3, issue a Notice and Order of the Commissioner, as described in Ind. Code § 13-30-3-4, to Jeff Frazier dba Fortville Auto Salvage at any time. It should be understood that the civil penalty for purposes of a Notice and Order of the



Commissioner will be assessed pursuant to IDEM's Civil Penalty Policy adopted as a non-rule policy document on April 5, 1999.

If you have any questions regarding this notice, please contact Christina Halloran, Senior Environmental Manager, Land Enforcement Section, at (317) 233-5546 or via email at challora@idm.IN.gov.

Sincerely,



Jennifer Reno, Chief
Land Enforcement Section
Compliance Branch
Office of Land Quality

Enclosure

cc: Hancock County Health Department
Mary Ann EuDaly, IDEM, OLQ, Industrial Waste Compliance Section
IDEM Virtual File Cabinet



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STATE OF INDIANA) SS: BEFORE THE INDIANA DEPARTMENT OF
)
 COUNTY OF MARION) ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT)
 OF ENVIRONMENTAL MANAGEMENT,)
)
 Complainant,)
)
 v.) Case No. 2023-29643-S
)
 JEFF FRAZIER DBA FORTVILLE AUTO)
 SALVAGE,)
)
 Respondent.)

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (“IC”) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent’s entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (“Complainant”) of the Indiana Department of Environmental Management (“IDEM”), a department of the State of Indiana created by IC 13-13-1-1.
2. Respondent is Jeff Frazier dba Fortville Auto Salvage (“Respondent”), which owns/operates the facility located at 9972 N CR 50 W, in Fortville, Hancock County, Indiana (“Site”).
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (“NOV”) to:

Mr. Jeff Frazier, Owner
Fortville Auto Salvage

Mr. Dennis Dile, Operator
Fortville Auto Salvage



9972 N CR 50 W
Fortville, IN 46040
ffrazier@aol.com

9972 N CR 50 W
Fortville, IN 46040
diledenniswayne@gmail.com

5. Respondent owns and operates an auto salvage yard.
6. During an investigation including inspections on August 23, 2023, May 30, 2023, April 11, 2023, January 10, 2023, November 9, 2022, and October 3, 2022 conducted by a representative of IDEM, the following violations were found:
 - a. Pursuant to IC 13-30-2-1(1), no person shall discharge, emit, cause or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources, into the environment or any publicly owned treatment works in any form that causes or would cause pollution that violates or would violate 327 IAC 2-1-6(a)(1), a rule adopted by the board under the environmental management laws.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.
 - b. Pursuant to IC 13-30-2-1(4), no person shall deposit or cause or allow the deposit of any contaminants or solid waste upon the land, except through the use of sanitary landfills, incineration, composting, garbage grinding, or another method acceptable to the board.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.
 - c. Pursuant to 329 IAC 10-4-2, no person shall cause or allow the storage, containment, processing, or disposal of solid waste in a manner which creates a threat to human health or the environment, including the creating of a fire hazard, vector attraction, air or water pollution, or other contamination.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.
 - d. Pursuant to 329 IAC 10-4-3, open dumping and open dumps, as those terms are defined in IC 13-11-2-146 and IC 13-11-2-147, are prohibited.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.

- e. Pursuant to IC 13-30-2-1(5), no person shall dump or cause or allow the open dumping of garbage or any other solid waste in violation of 329 IAC 10-4-2 and 329 IAC 10-4-3.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.

- f. Pursuant to IC 13-30-2-1(3), no person shall deposit any contaminants upon the land in a place and manner that creates or would create a pollution hazard that violates or would violate 329 IAC 10-4-2 and 329 IAC 10-4-3.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.

- g. Pursuant to 329 IAC 10-4-4(a)(b), the owner of real estate upon which an open dump is located is responsible for the following:
- (1) Correcting and controlling any nuisance conditions that occur as a result of the open dump. Correction and control of nuisance conditions must include:
 - (A) removal of all solid waste from the area of the open dump and disposal of such wastes in a solid waste land disposal facility permitted to accept the waste;
 - or
 - (B) other methods as approved by the commissioner.
 - (2) Eliminating any threat to human health or the environment.
 - (b) If the commissioner determines that the open dump is or may be a threat to human health or the environment due to a release of contaminants from the open dump into the environment, the commissioner may proceed under IC 13-25-4 and rules adopted under IC 13-25-4-7 that require the owner of real estate upon which an open dump is located or any other responsible persons under IC 13-25-4-8, to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices.

As noted during the inspections, Respondent has approximately 800 waste tires onsite and multiple unaddressed automotive releases throughout the property. The waste tires were unaltered, holding rainwater, and mixed with solid waste.

- h. Pursuant to IC 13-20-13-1.5, a person that stores waste tires shall do so in a manner that:
- (1) does not pose a threat to human health or the environment;
 - (2) does not pose a fire hazard; and
 - (3) controls vectors that pose a threat to human health.

As noted during the inspections, Respondent stored waste tires on-site without proper cover allowing the tires to collect water. The tires were unaltered, uncovered, and holding rainwater.

- i. Pursuant to 329 IAC 13-4-3(e), upon detection of a release of used oil to the environment not subject to the requirements of 40 CFR 280 Subpart F, which has occurred after the effective date of this rule, a generator must perform the following clean-up steps:
 - (1) Stop the release.
 - (2) Contain the released used oil.
 - (3) Clean up and manage properly the released used oil and other materials.
 - (4) Communicate a spill report in accordance with 327 IAC 2-6.1.
 - (5) If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

As noted during the inspections, used oil releases were noted throughout the property.

7. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondents acknowledge notice of this right and waive any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective (“Effective Date”) when it is approved by Complainant or Complainant’s delegate and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with the statutes and rules listed in the findings of fact above.
3. Within seventy-five (75) days of the Effective Date, Respondent shall comply with 329 IAC 10-4-4(a)(b). Specifically, Respondent shall submit written documentation including disposal receipts showing all solid waste mixed with waste tires located throughout the Site has been properly disposed of at a permitted solid waste management facility.
4. Upon the Effective Date of the Agreed Order, Respondent shall comply with 329 IAC 13-4-3(e). Specifically, Respondent shall upon the detection of a release of used oil to the environment, stop the release, contain the release, clean up the release, and report the spill if necessary.
5. Within thirty (30) days of the Effective Date, Respondent shall comply with IC 13-30-2-1(1) and IC 13-30-2-1(3). Specifically, Respondent shall clean up the automotive fluid releases throughout the facility by excavating the soil at least six inches beyond visible contamination.
6. Within forty-five (45) days of the Effective Date, Respondent shall submit to IDEM photographic documentation showing the excavation of six inches of soil in the above areas and disposal documentation.
7. Within thirty (30) days of the Effective Date, Respondent shall comply with IC 13-30-2-1(4), IC 13-30-2-1(5), 329 IAC 10-4-2, 329 IAC 10-4-3, and 329 IAC 10-4-4(a)(1).

Specifically, Respondent shall remove all waste tires and dispose of them at an approved solid waste management facility or recycling facility.

8. Within forty-five (45) days of disposal of all waste tires, Respondent shall submit to IDEM waste tire disposal documentation.
9. Effective Immediately, Respondent shall comply with IC 13-20-13-1.5. Specifically, Respondent shall store newly accumulated waste tires in an enclosed area or covered container and dispose of them within six (6) months.
10. All submittals required by this Agreed Order, unless IDEM notifies the Respondent otherwise in writing, shall be sent to:

Christina Halloran, Enforcement Case Manager
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

11. Pursuant to IC 13-30-4-1, Respondent is assessed and agrees to pay a civil penalty of Two Thousand and Seven Hundred and Fifty Dollars (\$2,750). After this Agreed Order is adopted (signed by the Assistant Commissioner of the Office of Land Quality), Respondent shall pay by the due date printed on the Invoice that will be attached to the adopted Agreed Order.

Civil and stipulated penalties are payable to the "Indiana Department of Environmental Management" by:

Mail:

Civil penalties are payable by check to the "Indiana Department of Environmental Management." Checks shall include the Case Number of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
P.O. Box 3295
Indianapolis, IN 46206

Online:

Accounts Receivable is accepting payments online by e-Check, Master Card, Visa or Discover. Please visit www.IN.gov/IDEM. Under Online Services, click Online Payment options and follow the prompts. A processing fee of \$0.40 plus 2.06% will be charged for credit card payments. A processing fee of \$0.15 will be charged for eCheck payments. The Case Number is required to complete the process.

Phone:

You may also call us at 317-234-3099 and follow the instructions for Master Card, Visa or Discover payments. A processing fee of \$0.40 plus 2.06% will be charged for credit card payments. A processing fee of \$0.15 will be charged for eCheck payments. The Case Number is required to complete the process.

12. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess, and Respondent shall pay a stipulated penalty in the following amount:

<u>Paragraph</u>	<u>Stipulated Penalty</u>
Order paragraph #3	\$100 per week
Order paragraph #5	\$100 per week
Order paragraph #6	\$100 per week
Order paragraph #7	\$100 per week
Order paragraph #8	\$100 per week

13. Stipulated penalties shall be due and payable no later than the thirtieth day after Respondent receives written notice that Complainant has determined a stipulated penalty is due; at which time, a separate invoice will be issued. Complainant may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive Complainant's right to collect such stipulated penalty or preclude Complainant from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude Complainant from seeking additional relief against Respondent for a violation of this Agreed Order; such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.
14. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay an additional penalty of 10 percent, payable to "Indiana Department of Environmental Management," and shall be payable to IDEM in the manner specified in Paragraph 11, above.
15. Signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent.
16. This Agreed Order shall apply to and be binding upon Respondent and all successors and assigns. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners, successors, or assigns before ownership rights are transferred.
17. No change in ownership, corporate, or partnership status of Respondent shall in any way alter the Respondent's status or responsibilities under this Agreed Order.
18. Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.

19. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
20. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of the obligation to comply with the requirements of any applicable permits or any applicable Federal or State laws or regulations.
21. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
22. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to seek additional civil penalties for the violations specified in the NOV.
23. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the U.S. Environmental Protection Agency (U.S. EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the U.S. EPA or any other agency or entity.
24. This Agreed Order shall remain in effect until IDEM issues a Resolution of Case letter to Respondent.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

TECHNICAL RECOMMENDATION:
Department of Environmental Management

RESPONDENT:

By: Jennifer Reno
Jennifer Reno, Chief
Land Enforcement Section
Compliance Branch
Office of Land Quality

By: _____
Printed: _____
Title: _____

Date: 6/14/2024

Date: _____

COUNSEL FOR RESPONDENT:

By: _____
Printed: _____
Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 20____

For the Commissioner:

Peggy Dorsey
Assistant Commissioner
Office of Land Quality