

**OURAY COUNTY
NOTICE OF VIOLATION, CEASE AND DESIST ORDER
AND NOTICE OF HEARING**

Mr. Laurence Gunn, Owner
Mrs. Bertha Gunn, Life Estate Interest Holder
17158 Chipeta Drive
Montrose, CO 81401

Mr. Keith Maynes, Owner
Maynes Tire
1134 North Cascade Ave.
Montrose, CO 81401

REGARDING VIOLATIONS OF THE COLORADO SOLID WASTE DISPOSAL ACT on land described as follows: The E ½ of Section 11, Township 46 North, Range 8 West; the NW ¼ and N ½ SW ¼ Section 12, Township 46 North, Range 8 West; and the N ½ NE ¼ of Section 14, Township 46 North, Range 8 West; N.M.P.M. (“the land”)

County Assessor Parcels: 425511400010 and 425512200009

DATE: JULY 25, 2012

This Notice of Violation, Cease and Desist Order and Notice of Hearing is issued by the Board of County Commissioners of Ouray County, Colorado pursuant to the County’s authority under C.R.S. 30-20-100.5, et seq., and more specifically C.R.S. 30-20-113.

Pursuant to its statutory authority Ouray County directs Mr. Gunn and Mr. Maynes to cease and desist from operating an unapproved solid waste disposal site and/or facility without a certificate of designation from Ouray County; to cease and desist from disposing of solid wastes, including waste tires, into an unlicensed solid waste disposal site and/or facility, and orders the parties to initiate an immediate shut down and clean-up of the site to include removal and lawful disposal of all tires buried on the premises and/or completion of a closure plan approved by Ouray County.

As grounds therefore, Ouray County states the following:

1. This Notice is issued as a follow-up to a Solid Waste Inspection Report by the Colorado Department of Public Health & Environment dated August 12, 2011, which is attached and incorporated herein by reference as though fully set forth.
2. **Colorado Revised Statutes, Title 30, Article 20, Part 113(1)(b)** prohibits any person from disposing of solid waste at a location other than a site designated for such use.
3. “Solid waste” is defined at **C.R.S. 30-20-101(6)(a) and (b):**
(6)(a). ‘Solid waste’ means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial or commercial operations or from community activities.
4. **C.R.S. 30-20-102** makes it unlawful for any person to operate a solid waste disposal site without a certificate of designation from the governing body having jurisdiction over the area in which the site is located. In this instance, the site is located in Ouray County, Colorado and the body having jurisdiction over the site is the Ouray County Board of County Commissioners.
5. **C.R.S. 30-20-102** further provides that solid waste disposal by any person is prohibited except on or at a solid waste disposal site and facility for which a certificate of designation has been obtained as provided in section 30-20-105.
5. **C.R.S. 30-20-113(3)** provides that “(a)ny solid wastes disposal site or facility found to be abandoned or inactive, or that is operated, maintained, or closed in a manner so as to violate any of the provisions of this part 1 and part 10 of this article or any rule adopted pursuant thereto shall be deemed a public nuisance, and such violation may be enjoined by the department, the board of county commissioners of the county wherein the violation occurred, or the governing body of the municipality wherein the violation occurred.”
6. **C.R.S. 30-20-113(4)** further provides that “(a)ny person who violates paragraphs (b) and (c) of subsection (1) of this section shall be subject to a clean-up and cease-and-desist order issued by the department or by the board of county commissioners if the violation occurred within the unincorporated area of the county...Any person who fails to comply with such orders shall be subject to an administrative or civil penalty of not more than ten thousand dollars for each day of such violation....”
7. **C.R.S. 30-20-1006** prohibits land disposal of residentially generated waste tires on or after July 1, 2007.
8. **C.R.S. 30-20-1006** requires a person to dispose of waste tires by delivery to a retailer or wholesaler engaging in waste tire collection or recycling, to a waste tire

- monofill, or to a collection or recycling facility operating under the laws of Colorado or under rules promulgated by the United States environmental protection agency.
9. **C.R.S. 30-20-1006** additionally requires a tire retailer to dispose of tires by delivery to the agent of a wholesaler, to a waste tire monofill, or to a collection or recycling facility operating under the laws of Colorado or under rules promulgated by the United States environmental protection agency. (7)(a) provides that “Waste haulers shall notify customers that the land disposal of tires is prohibited....”
 10. **C.R.S. 30-20-1006(6)** provides that each waste tire improperly disposed of shall constitute a separate violation.
 11. ‘Beneficial use’ is defined in the regulations implementing the statute and “means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute a beneficial use.” **6 CCR 1007-2, Part 1, Section 1.2.** The regulations further provide that a beneficial use of tires must have prior approval of the Department (CDPHE). **6 CCR 1007-2 Part 1, Section 10.3(A).**

Based upon the statements made to investigators and reported in the Colorado Department of Public Health and Environment Hazardous Materials and Waste Management Division Solid Waste Inspection Report dated August 12, 2011, and statements and representations made in correspondence and meetings, Ouray County alleges the following facts and violations of law:

11. On or about July 26, 2011 as a result of a rain storm in Ouray County, Colorado, approximately 1000 tires were released into the Uncompahgre River and its tributaries endangering the health and safety of the public including fishermen and recreational users of the river, causing a public nuisance by creating debris in the river, its tributaries and along banks of the waterways.
12. The tires were released from land owned by Mr. Laurence Gunn and his mother Mrs. Bertha Gunn, were waste tires from Mr. Maynes business, Maynes Tires, and been placed there by Mr. Gunn and Mr. Maynes.
13. They had been disposed on the land without a certificate of designation as a solid water disposal site.
14. Some or all of the tires were disposed of after July 1, 2007.

15. Mr. Gunn has no certificate of designation for his land as a solid wastes disposal site or facility, nor is he a certified solid waste disposal site operator.
16. Mr. Maynes, as a retailer of tires, did not dispose of waste tires in accordance with Colorado law and regulations. He delivered and participated in land disposal of tires at a site without a certificate of designation as a solid wastes disposal site, a waste tire monofill, or as a certified collection or recycling facility.
17. Mr. Maynes either did not dispose of tires by sending them to a certified waste tire hauler or ignored the notice provided that land disposal of tires was illegal.
18. In addition to waste tires, other debris was also disposed of on the land, described as "white goods" which includes used appliances and other metal waste, and cars or other vehicles. These additional waste materials constitute solid waste and were also disposed of on a site that is not certified as a solid waste disposal site or facility.
19. No prior approval of use of waste tire for any beneficial purposes had been obtained by either Mr. Gunn or Mr. Maynes from the Colorado Department of Public Health and Environment or from Ouray County.

By the authority vested in Ouray County, you are ordered to:

1. Immediately cease and desist from disposing of any solid wastes, including tires, on the land. No person shall dispose of any solid wastes on the land, including tires, without a certificate of designation of the site as a solid wastes disposal site issued by Ouray County. You are further ordered to clean-up and remove all tires buried on the land and dispose of them as required by Colorado law within twenty (20) days and to provide documentation of the final disposition of each and every tire removed.

OR

2. Appear before the Board of County Commissioner on August 14, 2012 at 1:30 p.m. to show cause why such order should not be enforced.

If you fail to comply by ceasing and desisting from disposal of solid wastes, including tires, on the land and/or fail to clean up and remove all tires and debris buried on the land, or fail to show cause for such lack of compliance, the Board will have the authority to remove such solid waste, tires and debris and assess fines and penalties as provided by law. You may be liable for all costs of clean up as well as for payment of any fines or penalties levied.

ISSUED this 25th day of July, 2012.

For the Board of County Commissioners and Ouray County

A handwritten signature in black ink that reads "Martha P. Whitmore". The signature is written in a cursive style with a large initial 'M' and a distinct 'P'.

Martha P. Whitmore
County Attorney