



Brook Creek Neighborhood Association

Rena Figures, President

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April 2, 2015

re: SUP-000-19 and related Site Plan Review

Dear Mayor & City Commissioners:

Brook Creek Neighborhood Association urges you to not accept as written the request for a Special Use Permit (SUP) to expand the recycle and salvage operation at 11th & Haskell (Consent Agenda Item 10 on the 4/7/15 City Commission agenda posted online on 4/2/15). We ask that the City hold the operator to regular standards of water quality protection in the site design due to the applicant's demonstrated, over the years, failure to properly prevent environmental contamination. We ask the Commission to require the applicant to comply with the following neighborhood findings:

- The existing gravel surface in all exterior processing areas will simply let pollution drain through it into the soil as was the case at 12th & Haskell. All exterior processing area pavement should be concrete. Past events lead us to expect pollution will be a problem.
- Advantage Metals Recycling at 1545 North 3rd St. was required to pave their entire processing area (not the entire site) with concrete. Standards should be consistently applied.
- The Site Plan attached to this SUP says in the General Notes (#5) proposed concrete pavement is to be 6" reinforced concrete on a 4" granular base. This note applies only to eleven parking stalls. The applicant should be required to pave all exterior processing areas with concrete. Until complete, his occupancy permit should be placed on hold.
- The majority of the property is in the Regulatory Flood Plain according to the soon to be released FEMA DFIRM flood maps. The applicant should be required to comply with a National Pollutant Discharge Elimination System (NPDES) document-plan, as part of a federal program to reduce chemical runoff from impermeable surfaces.
- Advantage Metals Recycling was required to conduct all recycling operations (not salvage) in an entirely enclosed building. The applicant should be required to conduct all recycling operation in entirely enclosed buildings, not in "as is" pole barns at stated in the Staff Report.
- The Site Plan attached to the SUP says in the General Notes (#17) that the owner is responsible for maintaining the site, especially the perimeter fencing, in a litter-free manner. This was in the original 2012 SUP, but he has not complied.
- A one year time limit for review and renewal should be placed on this SUP, given the tendency for the applicant to skirt around requirements.

From 2005 to 2013, the 12th & Haskell Bargain Center (later 'Recycle Center') operated an non-permitted salvage operation at 1146 Haskell. When the applicant acquired the site in 2003, the use quickly escalated from the permitted retail establishment to a metal salvage business. The salvage operation was a dramatic increase in

the intensity of use of the previous tow yards, auto graveyards, and auto repair that operated as nonconforming uses on residentially zoned land.

Residents in the neighborhood were denied the peaceful enjoyment of their homes for years due to heavy truck traffic, trash and mud on the streets, and excessive noise from skid loaders moving materials around on site throughout operating hours among huge piles of scrap metal, and from metal scrap, including entire cars, being dropped into shipping containers. The noise and impact would shake neighbors' houses. Scrap heaps were piled higher than the property's privacy fence. Meetings between the applicant and the neighbors only led to insignificant changes and continued nuisances.

The applicant's failure to drain automotive fluids from cars before crushing them contributed to 6 auto fires that sometimes filled nearby homes with noxious smoke. During a 2010 inspection, the Kansas Department of Health & Environment (KDHE) found that "All of the twenty-five vehicles KDHE inspected still had intact fuel tanks. Sixty-five of the seventy-five vehicles with raised hoods contained automotive fluids, such as oil or gasoline. . . By failing to remove the gasoline and other automotive fluids prior to crushing, Respondents have created an immediate danger and hazard to the surrounding properties and property owners from fires started at the Facility. . . which hazards or dangers require immediate and ongoing corrective actions to prevent or avoid further threats to the public health and safety."

The Recycle Center moved to its current location at 1010 East 11th St., and gained permission to operate a recycling collection & processing center and salvage operation. The operation on the current site deserves careful scrutiny and monitoring due to the failure of the operator to follow basic safety and environmental laws and procedures, repeatedly, at the former location. The applicant had years to demonstrate his ability and willingness to operate a safe, legal facility. He repeatedly failed to do so.

To assure that he does not revert to illegal and environmentally damaging methods, the applicant should be required to operate by more stringent protocols than currently written in the proposed SUP-000-19.

Sincerely,

Rena Figures
President,
Brook Creek Neighborhood Association

Attachment: Emergency Order to Eliminate Hazard and to Cease and Desist Unlawful Activity, KDHE, Feb. 3, 2010

STATE OF KANSAS
BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

The violations of K.S.A. 65-3401, *et seq.*
by,
12th and Haskell Bargain Center, LLC
and Robert Bowen Killough
1146 Haskell Avenue
Lawrence, Kansas 66044
Respondents
Pursuant to K.S.A. 77-536

Case No. 10-E-14 BWM

EMERGENCY ORDER TO ELIMINATE HAZARD
AND TO CEASE AND DESIST UNLAWFUL ACTIVITY

Now on this 3rd day of February, 2010, the Kansas Department of Health and Environment ("KDHE"), through its Secretary and Agency Head, Roderick L. Bremby ("Secretary"), hereby Orders 12th and Haskell Bargain Center, LLC, and Robert Bowen Killough ("Respondents") to cease and desist activities that create a hazard and immediate danger to surrounding property and to public health and safety, and to take corrective measures to prevent such danger and hazards pursuant to Kansas laws governing Solid and Hazardous Waste (K.S.A. 65-3401, *et seq.*), based on the Findings of Fact and Conclusions of Law set forth in this Order.

Findings of Fact

1. Respondent Robert Bowen Killough owns and/or operates Respondent 12th and Haskell Bargain Center, LLC, a salvage yard and recycling center located at 1146 Haskell Avenue, Lawrence, Douglas County, Kansas ("Facility"). To date, the Secretary has not issued Respondents or the Facility a solid waste permit or a hazardous waste permit.

Respondent 12th and Haskell Bargain Center, LLC is designated as "Forfeited" on the Kansas Secretary of State's website.

2. In February, 2006, KDHE received and investigated a complaint that Respondents had been unlawfully managing waste and conducting burning operations. In response to KDHE's directives, Respondent Killough stated to KDHE by electronic mail, dated March 9, 2006, that automotive fluids would be removed from salvage vehicles.

3. KDHE received a subsequent complaint that on April 26, 2007 a salvage vehicle caught fire at the Facility. During the April 30, 2007, investigation Facility staff told the KDHE inspector that the fire was caused by an arch in a battery.

4. On August 31, 2009, KDHE received and investigated a complaint that a strong solvent odor was emanating from the Facility. The KDHE inspector did not detect the solvent odor during the August, 2009, investigation. Personnel at the Facility stated to the KDHE inspector that used oil and antifreeze were drained from salvage vehicles before the vehicles are crushed.

5. On January 27, 2010, approximately six salvage vehicles caught on fire and burned at the Facility. The Lawrence Fire Department was dispatched to the Facility to extinguish the fires. A worker at the Facility advised the Fire Department that a battery he was disconnecting had sparked and ignited a flammable liquid, causing the fire.

6. On January 27, 2010, KDHE received a complaint that solvent odors emanated from the Facility and that a fire had burned at the Facility. On January 28, 2010, and January 29, 2010, a KDHE inspector conducted a complaint inspection at the Facility, pursuant to K.A.R. 28-31-12 and K.A.R. 28-29-16 ("Inspection"), and observed, noted and/or photographed the following:

- a. In excess of two hundred salvage vehicles were located at the Facility. Forty of the vehicles had been crushed. All of the twenty-five vehicles KDHE inspected still had intact fuel tanks. Sixty-five of the seventy-five vehicles with raised hoods contained automotive fluids, such as oil or gasoline. Gasoline is a flammable liquid, and motor oil will burn at elevated temperatures.
- b. Respondent Killough stated to the KDHE inspector that he was not aware that fluids must be removed from salvage vehicles prior to crushing.
- c. Respondents' office manager advised KDHE that Respondents require customers to sign a form stating incoming vehicles did not contain fluids.
- d. Facility staff also advised KDHE that all vehicles are crushed on the ground, then loaded for transportation to a metal recycler.
- e. Approximately 180 cubic yards of construction and demolition waste was dumped at the Facility.
- f. A pile of waste air conditioning units was also dumped at the Facility. Some of the units had intact coils and lines, and therefore contained refrigerants. Refrigerants can create toxic gasses when exposed to fire.

7. Residential neighborhoods are located approximately one-hundred feet immediately across the street from the Facility, and other businesses are located nearby in the area surrounding the Facility.

8. During the crushing process, sparks from the metal will ignite gasoline in the

vehicles at the Facility and cause the vehicles to catch on fire. Other automotive fluids, such as motor oil, will also burn during the fire. By failing to remove the gasoline and other automotive fluids prior to crushing, Respondents have created an immediate danger and hazard to the surrounding properties and property owners from fires started at the Facility.

9. On January 29, 2010, KDHE issued Respondent 12th and Haskell Bargain Center, LLC a Notice of Non-Compliance (“NONC”) for violations of Kansas solid and hazardous waste laws.

10. Based on the foregoing facts, the Secretary concludes that Respondents are engaging in activities that create a hazard and an immediate danger to property surrounding the Facility and to public health and safety, which hazards or dangers require immediate and ongoing corrective actions to prevent or avoid further threats to the public health and safety.

Conclusions of Law and Orders

11. KDHE has general jurisdiction over matters involving the safe and legal management and disposal of solid and hazardous waste pursuant to 65-3401, *et seq.*, and regulations promulgated thereunder at K.A.R. 28-29-2 through 28-29-2201 and K.A.R. 28-31-1 through 28-31-16, respectively. KDHE also has general authority and responsibility to protect the waters and soils of the state under authority of K.S.A. 65-161, *et seq.*

12. If the Secretary finds that the generation, accumulation, management or discharge of hazardous waste or solid waste by any person is, or threatens to cause pollution of the land, air or waters of the state, or is a hazard to property in the area or to public health and safety, the Secretary may order the person to alter the generation, accumulation or management of the hazardous or solid waste or to provide and implement such

hazardous or solid waste management system as will prevent or remove pollution or hazards. K.S.A. 65-3411 and K.S.A. 65-5443.

13. The Secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any solid waste or hazardous waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of K.S.A. 65-3401, *et seq.* or rules and regulations adopted pursuant thereto, may take such action as the Secretary determines to be necessary to protect the health of persons or the environment. The actions the Secretary may take shall include, but not be limited to: issuing an order directing the owner or operator of the site, or the custodian of the waste which constitutes such hazard or threatened or actual violation, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operations. K.S.A. 65-3419(e) and K.S.A. 65-3445.

14. Under the Kansas Administrative Procedure Act (K.S.A. 77-501, *et seq.*) (“KAPA”) KDHE may use emergency proceedings if a situation poses an immediate danger to public health, safety or welfare and requiring immediate state action. K.S.A. 77-536.

15. “Solid waste” means garbage, refuse, waste tires as defined by K.S.A. 65-3424, and amendments thereto, and other discarded materials. K.S.A. 65-3402(a). Respondents dumped solid waste at the Facility.

16. “Hazardous waste” means any waste or combination of wastes which because of its quantity, concentration or physical, chemical, biological or infectious characteristics or as otherwise determined by the secretary: (A) Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible

illness; or (B) poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. K.S.A. 65-3430(e)(1). Waste gasoline is a characteristic hazardous waste due to its ignitability.

17. Management and disposal of used oil in Kansas is subject to hazardous waste regulations. K.A.R. 28-31-14 and 40 CFR Part 279.

18. Based on the foregoing Findings of Fact and Conclusions of Law, Respondents have engaged in activities that create an immediate danger to public health or safety and the environment, to wit:

Respondents' failure to remove waste gasoline and other automotive fluids from salvage vehicles located at the Facility prior to crushing the vehicles creates an immediate danger of vehicle fires at the Facility and an immediate danger that fire will spread throughout the Facility and to the surrounding neighborhoods and community. Respondents' failure to implement measures to prevent fires at the Facility has resulted in at multiple fires at the Facility.

IT IS THEREFORE ORDERED that Respondents *immediately and at all times hereafter* take the following actions at the Facility:

1. Inspect all vehicles for fluids prior to crushing;
2. Remove all automotive fluids from all salvage vehicles prior to crushing the vehicles; and
3. Store the removed fluids in containers properly marked with the contents pursuant to 40 CFR Parts 262 and 279.

IT IS FURTHER ORDERED that Respondents maintain a complete log: (1)

identifying each vehicle crushed at the Facility by its Vehicle Identification Number (VIN) number, (2) describing all inspection and removal activities that Respondents took to ensure all automotive fluids were removed from each crushed vehicle and were properly stored and disposed (3) listing the date the inspection took place, (4) listing the name of the person conducting the inspection, and (5) listing the date the battery was removed from the vehicle, and, (6) Respondents must maintain disposal receipts for such fluids.

IT IS FURTHER ORDERED that Respondents immediately begin complying with the requirements set forth in 40 C.F.R. Part 82, Subpart F, regarding the proper removal of refrigerants from appliances and vehicles.

IT IS FURTHER ORDERED that Respondents Cease and Desist from crushing any salvage vehicles at the Facility *until* all automotive fluids, batteries, and any other hazardous materials have been removed from such vehicles, and that Respondent adequately containerize and/or managed such hazardous materials so as to prevent releases to the environment.

IT IS THEREFORE ORDERED that Respondents take the foregoing actions immediately upon receipt of this EMERGENCY ORDER. This EMERGENCY ORDER remains in effect until and unless an order rescinds this EMERGENCY ORDER.

RIGHT TO A HEARING

Respondents have the right to request a hearing on the foregoing EMERGENCY ORDER. Any request for a hearing must be made in writing and must be submitted within 15 days from the date of service of this EMERGENCY ORDER, as designated in the Certificate of Service, below. Failure to file a timely request will result in a waiver of Respondent's right to a hearing, and this EMERGENCY ORDER will become a

Final Order of the Secretary.

All written requests must be directed to:

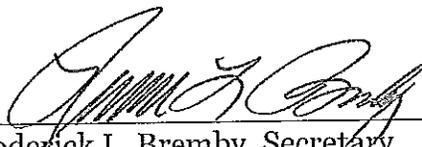
Tracy Diel, Director
Office of Administrative Hearings
Kansas Dept. of Administration
1020 S. Kansas Ave.,
Topeka, Kansas 66612-1327

and, a copy sent to Nancy L. Ulrich, KDHE Office of Legal Services, Suite 560,
1000 SW Jackson, Topeka, Kansas 66612. **Please indicate a telephone number
where you can be contacted during business hours if you request a hearing.**

This EMERGENCY ORDER is issued as an Emergency Adjudicative Proceeding
under K.S.A. 77-536 of the Kansas Administrative Procedure Act ("KAPA") and notice of
its issuance and is in compliance with K.S.A. 77-536(d) of the KAPA.

IT IS SO ORDERED.

Dated this 3rd day of January, 2010.



Roderick L. Bremby, Secretary
Kansas Department of Health and Environment

Final Order of the Secretary.

All written requests must be directed to:

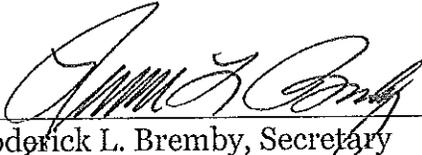
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under K.S.A. 77-536 of the Kansas Administrative Procedure Act ("KAPA") and notice of
its issuance and is in compliance with K.S.A. 77-536(d) of the KAPA.

IT IS SO ORDERED.

Dated this 3rd day of January, 2010.



Roderick L. Bremby, Secretary
Kansas Department of Health and Environment

CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of January, 2010, a true and correct copy of the foregoing EMERGENCY ORDER was served by hand-delivery on:

12th and Haskell Bargain Center, LLC
1146 Haskell Avenue
Lawrence, Kansas 66604

and the EMERGENCY ORDER was sent by fed ex, and addressed to:

Robert Bowen Killough
1146 Haskell Avenue
Lawrence, Kansas 66604

and

Robert Bowen Killough
1517 County Road 1300 N.
Lawrence, Kansas 66046



KDHE Staff