



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

October 9, 2020

**Re: Nelson Ledges Road Course
Director's Authorization
Approval
Beneficial Use
Portage County
ST021282**

Brian Ross
NRLC, LLC
Brian Ross Racing, LLC
1990 Niles-Cortland Road
Cortland, Ohio 44410

Subject: Nelson Ledges Road Course – Scrap Tire Beneficial Use Approval

Dear Mr. Ross:

On June 22, 2020, the Ohio Environmental Protection Agency (Ohio EPA), Division of Materials and Waste Management (DMWM), Northeast District Office (NEDO) received a letter from Brian Ross requesting an extension of the previously-issued beneficial use authorization issued to NRLC, LLC ("NRLC") on September 19, 2017 ("the 2017 Approval"). The 2017 Approval authorized the beneficial use of scrap tires at the Nelson Ledges Race Course, 10342 State Route 305, Garrettsville, Portage County, parcel no. 25-047-01-00-008-000 (the Property).

The 2017 Approval included Condition No. 4, which stated "This authorization shall terminate if NLRC fails to take title ownership of the Property by December 31, 2019." Per the June 2020 letter, NLRC has yet to take title ownership of the Property and the current purchase agreement between NLRC and the seller involves a payment arrangement that extends through December 31, 2022. NLRC will not take title ownership until that date.

The original 2017 request was submitted pursuant to Ohio Administrative Code (OAC) Rule 3745-27-78(F), which requires that the Director of Ohio EPA (Director) approve scrap tire beneficial use projects that are not specifically authorized in OAC Rules 3745-27-78(D) and (E). In the request, NLRC proposed to use approximately 165,000 scrap tires as crash barriers for the race track at the Property. The scrap tires are already in place. Due to the fact that the 2017 Approval has already expired, the beneficial use must be re-authorized through this approval rather than an extension of the 2017 Approval.

After reviewing the June 2020 request, I have determined that the project plan continues to meet the applicable Ohio EPA requirements. Therefore, pursuant to OAC Rule 3745-27-78(F) and ORC 3745.01, I hereby re-authorize your project plan for the beneficial use of scrap tires at the Property.

As part of this re-authorization, NLRC is subject to the following conditions:

CONDITIONS

1. This authorization shall apply to and be binding upon NLRC, LLC and all agents, lessees, managers, assigns, and successors in interest liable under Ohio law, including Brian Ross Racing LLC ("Brian Ross Racing") which is the current manager of the Property.
2. This beneficial use authorization authorizes NLRC to beneficially use scrap tires solely for the purpose of the crash barrier on the Property, in accordance with the conditions contained herein.
3. Prior to NLRC's purchase of the Property, Brian Ross Racing is also authorized, as current manager of the Property, to beneficially use scrap tires solely for the purpose of the crash barrier on the Property, in accordance with the conditions contained herein.
4. This authorization shall terminate if NLRC fails to take title ownership of the Property by December 31, 2022.
5. This authorization shall terminate prior to December 31, 2022 if NLRC or Brian Ross Racing provides written notice to Ohio EPA that NLRC has decided not to purchase the Property. Such notice shall be provided to Ohio EPA not later than 14 days after the decision not to purchase is communicated to the current owner of the Property.
6. Brian Ross Racing and NLRC shall comply with the attached Nelson Ledges Scrap Tire Beneficial Use Project Plan (Project Plan), fully incorporated by reference into this authorization, and marked as attachment A.
7. Brian Ross Racing and NLRC shall not accept or place new scrap tires generated from off Property on to the Property. Any scrap tires removed from vehicles on the Property and stored at the Property shall be stored in accordance with the storage provisions specified in attachment A until being incorporated into the crash barrier.
8. Brian Ross Racing and NLRC shall implement the mosquito control activities in accordance with the mosquito control plan identified in the Project Plan, attachment A. During the months of April through October, mosquito season in Portage County, NLRC shall implement the mosquito control plan and submit monthly reports to Ohio EPA and the Portage County Health Department regarding implementation of the mosquito control plan. If daytime temperatures during November through March are consistently above 50 degrees, Brian Ross Racing and NLRC shall place Gravid Traps in accordance with attachment A and will treat the scrap tires in accordance with the mosquito control plan if the traps have a count of fifty mosquitos or more.
9. Upon proper identification, the Director or his authorized representative, or the employees of the Portage County Health Department, may enter the Property at reasonable hours to monitor compliance with this approval.
10. If Brian Ross Racing or NLRC removes scrap tires from the Property, then either Brian Ross Racing or NLRC shall transport scrap tires in excess of 10 by a registered scrap tire transporter, and shall send them to a scrap tire facility licensed under ORC Section

3734.81 in Ohio, or to a facility in another state operating in compliance with the laws of the state in which it is located.

11. Following the purchase of the Property, NLRC shall provide written notice to Ohio EPA not later than 14 days after NLRC ceases the beneficial use of the scrap tires as a crash barrier at the Property in accordance with this authorization.
12. Not later than 60 days after providing notice in accordance with Condition Number 11, NLRC shall complete removal, transportation and disposal of all scrap tires located on the Property to an authorized scrap tire facility in accordance with Ohio EPA's scrap tire regulations.
13. On or before July 1, 2021, NLRC shall establish a trust, in accordance with the wording requirements of OAC Rule 3745-27-17(A), except that the language:

In Section 2 shall be replaced with "the agreement shall pertain to NLRC;" and

In Section 4 shall provide that payment shall be for the costs of "the removal, transportation, recovery, processing, and disposal of the scrap tires from the Property," in lieu of the language set forth in rule which refers to "solid waste facility closure, post-closure, and corrective measures" or "scrap tire transporter final closure."

14. NLRC shall establish and maintain financial assurance in the form of a Trust or a Surety Bond with a standby trust in an amount not less than \$400,000 to fully fund financial assurance to remove and properly dispose of the approximately 165,000 scrap tires from the Property ("Minimum Financial Assurance") in accordance with one of the following schedules:
 - a. On or before July 1, 2021, NLRC shall fund the trust specified in Condition Number 13 initially in the amount of \$100,000. Thereafter, NLRC shall fund the trust in the amount of \$100,000 annually on July 1, 2022, 2023, and 2024 until a minimum of \$400,000 is deposited into the trust fund; or
 - b. Alternatively, on or before July 1, 2021, NLRC shall establish financial assurance in the form of a surety bond in the amount of \$400,000, worded in accordance with OAC Rule 3745-27-17(B), except that the following language shall be used in lieu of "solid waste facility" and "scrap tire transporter": "NLRC's Beneficial Use of Scrap Tires."

The terms of the surety bond shall provide that all payments made thereunder will be deposited by the Surety directly into the standby trust fund specified in Condition Number 13 in accordance with instructions from the director.

15. If NLRC provides financial assurance in accordance with Condition Number 14.a. on or by July 21, 2021, then NLRC may thereafter request approval from the Director to substitute a surety bond for all or a portion of the amount funded in the trust, as long as a minimum of \$400,000 in financial assurance is maintained. Upon providing a Surety Bond as alternative financial assurance, NLRC may request that the Director release from the Trust, any amount of funds in excess of the Minimum Financial Assurance. If NLRC

reduces the total number of scrap tires used as a crash barrier below 165,000 scrap tires, NLRC may request the Director approve a reduction of the Minimum Financial Assurance in amount that is adequate to cover the costs of the proper removal and disposal of scrap tires located on the Property.

16. As specified above in Condition Number 14, in addition to the liability terms of the Bond in OAC Rule 3745-27-17, NLRC shall ensure that under the terms of the Bond, the Surety becomes liable on the Bond, and that under the Terms of the Trust the Director may withdraw from the Trust, upon any of the following occurrences:
 - a. NLRC fails to remove all scrap tires from the Property in accordance with Condition Number 12;
 - b. NLRC transfers the Property to a new owner who does not receive approval of a beneficial use authorization, accompanied by proof of adequate financial assurance to fund the costs of the proper removal and disposal of the scrap tires located on the Property, within 60 days of the transfer of ownership; or
 - c. The Director revokes this authorization in accordance with Condition Number 20;
17. Under the terms of the Bond, a Bond established in accordance with Condition 14.b. shall remain in force unless the Surety sends written notice of cancellation by certified mail or any other form of mail accompanied by a receipt to NLRC and to the director. Cancellation cannot occur, however, during the one hundred twenty day period beginning on the first day that both NLRC and the Director have received the notice of cancellation, as evidenced by the return receipts. The terms of the Bond shall guarantee that the Surety shall become liable on the bond obligation unless NLRC provides alternate financial assurance, and obtains the director's written approval of the alternate financial assurance provided, not later than ninety days after both NLRC and the Director receive notice of cancellation of the bond from the Surety.
18. NLRC may request a release of the financial assurance, and termination of this Beneficial Use authorization, after the Director's issuance of an authorization to a new Owner, and after the Director's determination that the financial assurance is adequately funded to cover the costs of the proper removal and disposal of the scrap tires located on the Property.
19. This scrap tire beneficial use authorization may be modified by agreement of the parties hereto. Modifications to this scrap tire beneficial use authorization shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.
20. This authorization may be revoked as a final action of the Director which may be appealed to ERAC upon the occurrence of any of the following events:
 - a. **Failure to Adhere to the Mosquito Control Plan.** If Brian Ross Racing or NLRC fails to comply with the mosquito control plan in Attachment A, Ohio EPA shall provide written notice to Brian Ross Racing or NLRC at minimum, by certified mail of the non-compliance. Brian Ross Racing or NLRC shall correct any issue identified in the written notice within seven (7) days. If not corrected, Ohio EPA may revoke the scrap tire beneficial reuse authorization;

- b. **Failure to Adhere to Fire Prevention Measures in Project Plan.** If Brian Ross Racing or NLRC fails to comply with the fire prevention measures in the Project Plan set forth in Attachment A, Ohio EPA shall provide written notice to Brian Ross Racing or NLRC at minimum, by certified mail of the non-compliance. Brian Ross Racing or NLRC shall correct any issue identified in the written notice within seven (7) days. If not corrected, Ohio EPA may revoke the scrap tire beneficial reuse authorization;
 - c. **Failure to Adhere to the Financial Assurance Payment Schedule.** If NLRC fails to make timely payments according to the schedule in Condition 14 above, Ohio EPA shall provide written notice to NLRC at minimum, by certified mail of the non-compliance. NLRC shall have thirty (30) days from receipt of the written notice to make payment. If proper payment is not made, Ohio EPA may revoke the scrap tire beneficial reuse authorization.
- 21. In the event that Brian Ross Racing or NLRC fails to comply with this authorization, Brian Ross Racing and NLRC agree to grant access to the Property to Ohio EPA, its authorized representatives and contractors for such actions as are necessary or appropriate for the purpose of removing and disposing of scrap tires located on the Property, and spraying for mosquitoes. NLRC hereby agrees to relinquish any claim of ownership interest in any scrap tires that are removed by Ohio EPA, its authorized representatives or contractors from the Property. Brian Ross Racing and NLRC also hereby agree to grant access to Ohio EPA, its authorized representatives or contractors to improve existing, or build necessary roads on, over, and across the Property for the purpose of removal of scrap tires disposed at the Property. At the conclusion of any cleanup of any scrap tires from the Property by Ohio EPA, its authorized representatives or contractors, NLRC agrees that all improvements shall attach to the Property.

The consent for Ohio EPA access shall remain in full force and effect until all necessary and appropriate preventive and/or corrective action has been completed at the Site by Ohio EPA, its contractors, and its authorized representatives. Ohio EPA may utilize the established financial assurance to perform such necessary and appropriate preventative or corrective actions
- 22. Nothing in this authorization shall be construed to authorize any waiver from the requirements of any applicable federal or state laws or regulations. This letter shall not be interpreted to release Brian Ross Racing or NLRC from responsibility under Ohio Revised Code (ORC) Chapters 3704, 3714, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment. Nothing in this authorization shall be construed to prevent the Director from seeking legal or equitable relief to abate nuisance conditions or prevent adverse effects on public safety, health or the environment. Nothing in this letter shall be construed to limit the authority of the Director to seek relief for violations which may occur at the Property. Nothing herein shall restrict the right of Brian Ross Racing or NLRC to raise any administrative, legal, or equitable claim or defense with respect to such further actions that the Director may seek to require of NLRC.

23. Brian Ross Racing and NLRC consent to the issuance of this Scrap Tire Beneficial Use Authorization and agrees to comply with this Scrap Tire Beneficial Use Authorization. Brian Ross Racing and NLRC hereby waives the right to appeal the issuance, terms and conditions, and service of this Scrap Tire Beneficial Use Authorization, and hereby waives any and all rights Brian Ross Racing and/or NLRC may have to seek administrative or judicial review of this Scrap Tire Beneficial Use Authorization either in law or equity. Notwithstanding the preceding, Ohio EPA and Brian Ross Racing and NLRC agree that if this Scrap Tire Beneficial Use Authorization is appealed by any other party to the Environmental Review Appeals Commission, or any court, Brian Ross Racing and NLRC retain the right to intervene and participate in such appeal. In such an event, Brian Ross Racing and NLRC shall continue to comply with this Scrap Tire Beneficial Use Authorization notwithstanding such appeal and intervention unless this Scrap Tire Beneficial Use Authorization is stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of this Scrap Tire Beneficial Use Authorization is the date this Scrap Tire Beneficial Use Authorization is entered into the Ohio EPA Director's Journal.

ORDERED AND AGREED:



Environmental Protection Agency
Laurie A. Stevenson, Director

AGREED:



NLRC, LLC

Brian Ross Racing, LLC

Date

Date

Attachment A



SEE SHEET 2 OF 4

SEE SHEET 3 OF 4

NATIONAL WETLAND INVENTORY LEGEND

FRESHWATER FORESTED/SHRUB WETLAND Description for code PFT1C:

- P System PALUSTRINE: The Palustrine System includes all non-tidal wetlands dominated by trees, shrubs, persistent emergents, emergent meadows or swards, and all such wetlands that occur in tidal areas where salinity due to ocean-derived water is below 0.5 ppt. It also includes wetlands having such vegetation, but with all of the following four characteristics: (1) over less than 8 ft (2.5 m); (2) active wave-formed or backed shoreward features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water and (4) salinity due to ocean-derived water less than 0.5 ppt.
- FO Class FORESTED: Characterized by woody vegetation that is 6 m tall or taller.
- 1 Subclass Broad-Leaved Deciduous: Broadly symmetrical trees or shrubs with relatively wide, flat leaves that are shed during the cold or dry season; e.g., black oak (*Quercus nigra*).
- C Water Regime Seasonally Flooded: Surface water is present for extended periods especially early in the growing season but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

FRESHWATER FORESTED/SHRUB WETLAND Description for code PFT1C/EM1C:

- P System PALUSTRINE: The Palustrine System includes all non-tidal wetlands dominated by trees, shrubs, persistent emergents, emergent meadows or swards, and all such wetlands that occur in tidal areas where salinity due to ocean-derived water is below 0.5 ppt. It also includes wetlands having such vegetation, but with all of the following four characteristics: (1) over less than 8 ft (2.5 m); (2) active wave-formed or backed shoreward features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water and (4) salinity due to ocean-derived water less than 0.5 ppt.
- EM1C Class SCIRP-GRASS: Includes areas dominated by woody vegetation less than 6 m (20 feet) tall. The species include true shrubs, young trees (saplings), and trees or shrubs that are small or stunted because of environmental conditions.
- 1 Subclass Broad-Leaved Deciduous: Broadly symmetrical trees or shrubs with relatively wide, flat leaves that are shed during the cold or dry season; e.g., black oak (*Quercus nigra*).
- EM1C Class EMERGENT: Characterized by erect, rooted, herbaceous hydrophytes, including meadows and swards. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants.
- 1 Subclass Perennial: Dominated by species that normally remain standing at least until the beginning of the next growing season. This subcategory is found only in the *Estuarine* and *Palustrine* systems.
- C Water Regime Seasonally Flooded: Surface water is present for extended periods especially early in the growing season but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

FRESHWATER FORESTED/SHRUB WETLAND Description for code PFT1C:

- P System PALUSTRINE: The Palustrine System includes all non-tidal wetlands dominated by trees, shrubs, persistent emergents, emergent meadows or swards, and all such wetlands that occur in tidal areas where salinity due to ocean-derived water is below 0.5 ppt. It also includes wetlands having such vegetation, but with all of the following four characteristics: (1) over less than 8 ft (2.5 m); (2) active wave-formed or backed shoreward features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water and (4) salinity due to ocean-derived water less than 0.5 ppt.
- FO Class FORESTED: Characterized by woody vegetation that is 6 m tall or taller.
- 1 Subclass Broad-Leaved Deciduous: Broadly symmetrical trees or shrubs with relatively wide, flat leaves that are shed during the cold or dry season; e.g., black oak (*Quercus nigra*).
- C Water Regime Seasonally Flooded: Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

FRESHWATER EMERGENT WETLAND Description for code PFT1C/EM1C:

- P System PALUSTRINE: The Palustrine System includes all non-tidal wetlands dominated by trees, shrubs, persistent emergents, emergent meadows or swards, and all such wetlands that occur in tidal areas where salinity due to ocean-derived water is below 0.5 ppt. It also includes wetlands having such vegetation, but with all of the following four characteristics: (1) over less than 8 ft (2.5 m); (2) active wave-formed or backed shoreward features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water and (4) salinity due to ocean-derived water less than 0.5 ppt.
- EM1C Class EMERGENT: Characterized by erect, rooted, herbaceous hydrophytes, including meadows and swards. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants.
- 1 Subclass Perennial: Dominated by species that normally remain standing at least until the beginning of the next growing season. This subcategory is found only in the *Estuarine* and *Palustrine* systems.
- C Water Regime Seasonally Flooded: Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

FRESHWATER POND Description for code P1B6:

- P System PALUSTRINE: The Palustrine System includes all non-tidal wetlands dominated by trees, shrubs, persistent emergents, emergent meadows or swards, and all such wetlands that occur in tidal areas where salinity due to ocean-derived water is below 0.5 ppt. It also includes wetlands having such vegetation, but with all of the following four characteristics: (1) over less than 8 ft (2.5 m); (2) active wave-formed or backed shoreward features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water and (4) salinity due to ocean-derived water less than 0.5 ppt.
- U6 Class UNCLASSIFIED WETLAND: Includes all wetlands and deeper habitats with at least 25% cover of perennials wetland or more (less than 6-7 ft) and a vegetation cover less than 30%.
- C Water Regime Intermittently Flooded: Water covers the substrate throughout the year except in years of extreme drought.
- X SPECIAL MODIFIER EXCAVATED: THIS MODIFIER IS USED TO INDICATE WETLAND BIRDS OR CHANNELS THAT WERE EXCAVATED BY HUMANS.

NOTES

1. ORIGINAL MAPPING COMPLETED BY US CONSULTANTS OF YOUNGSTOWN, OHIO.
2. REVISIONS FOR BENEFICIAL USE APPLICATION WERE COMPLETED BY ENVI Environmental and BRAMHALL ENGINEERING FEBRUARY 2017.
- 2.1. NATIONAL WETLANDS INVENTORY DATA DOWNLOADED FROM US FISH AND WILDLIFE SERVICE DATA SET LAST UPDATED 06/27/2016.
- 2.2. NATIONAL WETLANDS INVENTORY ATTRIBUTE DATA FOR DESCRIPTIONS DECODED USING <https://fwsmapserviceweb.usfws.gov/decoders/NAWISAPL>.
- 2.3. EXISTING SCRAP TIRE CRASH WALL PILE NUMBERS TAKEN FROM "NELSON LEDGES TIRE WALL" PREPARED FOR ROSS DEVELOPMENT WITH PLOT DATE 12/23/2015.
- 2.4. IMAGE ON SHEET 1 IS 2016 PRELIMINARY AERIAL PHOTO FROM <http://www.co.portage.oh.us/ds1.html>.
3. SEE SHEETS 2 AND 3 FOR EXISTING SCRAP TIRE CRASH WALLS.
4. REVISIONS FOR BENEFICIAL USE APPLICATION WERE COMPLETED BY ENVI ENVIRONMENTAL AND BRAMHALL ENGINEERING APRIL 2017.
- 4.1. ADDED FIRE EXTINGUISHER LOCATIONS TO MAP SHEETS 1-3.
- 4.2. CONTOURS ON PAGE 4 ARE DOWNLOADED FROM OHIO GEOGRAPHICALLY REFERENCED INFORMATION PROGRAM OHIO SPATIAL DATA INFRASTRUCTURE - OSDI DOWNLOAD: OSGP 1, PORTAGE COUNTY LGAR LAS TLED.

SURVEY NOTE:

A BOUNDARY SURVEY PURSUANT TO CHAPTER 4733-33 OF THE OHIO COMBUSTION CODE HAS NOT BEEN PERFORMED BY BRAMHALL ENGINEERING & SURVEYING COMPANY, INC. THIS PLAN IS BASED UPON AVAILABLE COUNTY INFORMATION.



GRAPHIC SCALE
0 200 400
(IN FEET)
SCALE: 1" = 200'

BRAMHALL
ENGINEERING AND SURVEYING COMPANY
801 MOORE ROAD AVON, OHIO 44011
(440) 934-7878 (440) 934-7879 FAX

SHEET
1 of 4

NELSON LEDGES ROAD COURSE
10342 STATE ROUTE 305
GARRETTSVILLE, OHIO

REVISIONS FOR BENEFICIAL USE APPLICATION
OVERALL SITE PLAN
NELSON TOWNSHIP, COUNTY OF PORTAGE, STATE OF OHIO





Appendix B

Mosquito Control Plan
Nelson Ledges Road Course







