

IN THE SUPREME COURT
OF, IN, AND FOR THE
STATE OF NORTH DAKOTA

CASE NO.: 20070129

Cory CHRISTOFFERSON,)	On appeal from the District Court of Burleigh
Appellant,)	County, district court cause no.: 08-060C-007
)	
v.)	
)	From administrative proceedings held under the
North Dakota DEPT. OF HEALTH,)	Solid Waste Mgmt Rules, Article 33-20, et seq,
Appellee.)	of the North Dakota Administrative Code 2004
)	

Appellant's Petition for Rehearing

Appellant *pro se*
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Table of Citations

North Dakota Administrative Code

Section 33-20-17-01

Issues Warranting Reconsideration

- I. The Court’s interpretation of “recycle”, “beneficial use”, and etc., adverse in its regard to Mr. Christofferson’s implementation of used tires, is in direct conflict with the express interpretation and use approval of the United States Government, which pays the bills for the administrative process in question, trumping the State of North Dakota, and it’s Dept. of Health, in all respects to such interpretations.
- II. Mr. Christofferson’s personal recycling of used tires, even many, for his own farming and ranching needs, on his own private property, and all done without any processing treatments, is certainly not the kind of operations that the Solid

Waste Management Rules are intended to manage, control, or interfere with, and these issues take on Constitutional magnitudes in regards to his real and personal property interests, both in the land, and in the improvements made with used tires.

III. Moreover, Mr. Christofferson's implementation of used tires is *directly* in line with the mandates of statutory North Dakota District Solid Waste Management Plans, while the positions of the Dept. of Health, and of the Court's recent ruling, in this matter, are directly *against* the same binding North Dakota statutory laws.

IV. By failing its own legally-mandated duties to clean up the unsafe environments at several existing *government-managed* used tire reclamation centers in different heavily-populated areas, yet waste big taxdollars going after Mr. Christofferson's recycling operation, and which has *always* been safe and clean during its decade of existence in a township of only fifteen (15) persons, the State is unlawfully engaging in Selective Enforcement, and in willful mismanagement of taxdollars.

V. The State of North Dakota receives federal funding already earmarked for doing various things in respect to reclamation of Mr. Christofferson's tires into State managed recycling systems, yet, *even notwithstanding* overcoming the other legal impediments described herein that protect Mr. Christofferson's real and personal property from takings or other infringements, without full Due Process on their own bases, neither the State, nor the Dept. of Health, nor the Court, has ever once begun to discuss how much monies are to be made available to Mr. Christofferson to complete the proposed disposition of his tires, and that amount must be enough.

Argument

Argument I: *The Court's interpretation of "recycle", "beneficial use", and etc., adverse in its regard to Mr. Christofferson's implementation of used tires, is in direct conflict with the express interpretation and use approval of the United States Government, which pays the bills for the administrative process in question, trumping the State of North Dakota, and it's Dept. of Health, in all respects to such interpretations.*

The Federal Government's agency over these matters is the Environmental Protection Agency, commonly referred to as simply "the EPA". With tons of federal funding via the EPA out to all the States, such as North Dakota's Solid Waste Management agency, also comes various regulations, rules, and policies that the States must go along with, as part of that federal funding block grant schemes.

The EPA's official position, in regards to the type of operations that Mr. Christofferson has been engaging in, with respect to the used tires, is that it is at least both of the "Reuse" and "Recycle" forms in nature, if not also the "Reduce" form as well.

<http://www.epa.gov/epaoswer/non-hw/muncpl/reduce.htm> is an EPA website page that has "The Three R's" listed and linked there, with outline descriptions of each term.

Of particular note, is the breakdown for "Recycling", including the Benefits listed:

- Conserves resources for our children's future.
- Prevents emissions of many greenhouse gases and water pollutants.
- Saves energy.
- Supplies valuable raw materials to industry.
- Creates jobs.
- Stimulates the development of greener technologies.
- Reduces the need for new landfills and incinerators.

Since Mr. Christofferson's operations fit the "Recycling" description, as well as also complying with aspects of "Reduce" and "Reuse", the Federal Government approves of his usage of the scrap tires as beneficial, and worthy of supporting, not in inferring with.

Argument II: *Mr. Christofferson's personal recycling of used tires, even many, for his own farming and ranching needs, on his own private property, and all done without any processing treatments, is certainly not the kind of operations that the Solid Waste Management Rules are intended to manage, control, or interfere with, and these issues take on Constitutional magnitudes in regards to his real and personal property interests, both in the land, and in the improvements made with used tires.*

Again, the EPA funds the North Dakota Solid Waste Management agency to supervise and control system processors of bulk scrap tires into other forms of that product, and/or to chemically or thermally breakdown bulk scrap tires into various other components.

Mr. Christofferson's personal recycling of used tires is not only directly serving the public's express intentions and goals in reducing of solid waste going into our landfills, he does not do any form of processing upon his used tires, and does not resale any portion or whole tires to any third parties. He simply does not fall under the Solid Waste Rules, as they were and are intended to govern. Their intent is only for supervision and hazard monitoring of large bulk processing for post-consumer repackaging of tire components.

In other words, the Solid Waste Management Rules do not apply to this situation.

Argument III: *Moreover, Mr. Christofferson's implementation of used tires is directly in line with the mandates of statutory North Dakota District Solid Waste*

Management Plans, while the positions of the Dept. of Health, and of the Court's recent ruling, in this matter, are directly against the same binding North Dakota statutory laws.

North Dakota Administrative Code, § 33-20-17-01(1), clearly states:

1. The comprehensive solid waste management plan required by North Dakota Century Code chapter 23-29 for each solid waste management district **must be developed and implemented for the following purposes:**

- a. ***Reduce the amount of solid waste generated.***
- b. ***Reuse materials.***
- c. ...
- d. ***Recycle everything possible.***
- e. ...

(emphasis added)

Even the Dept. of Health, itself, published its “GUIDELINE 37 — ENVIRONMENTALLY FRIENDLY AUTO AND METAL SALVAGE FACILITIES (Rev: 092006)”, in which it proudly proclaimed: “*Unusable tires continue to be a problem waste for North Dakota.*” and, “***The easiest management option is to properly recycle or dispose tires as they are generated.***” (emphasis added).

Repeating, the Department of Health, *itself*, has formally instructed Mr. Christofferson to do *exactly* what he did, and continues to instruct others to do *exactly* the same thing.

Accordingly, Mr. Christofferson's reuse and recycling of used tires is also reducing the amount of solid waste generated within the State of North Dakota, and by a fairly significant amount. Every tire that he has reused is another scrap tire that did not go into bulging one of the preciously-spaced landfills blighting the landscape of our Great State.

Further, Mr. Christofferson's operation is in *direct* progress towards the statutorily-mandated goals contained in NDAC § 33-20-17-01(2)(h), whereas the opposition against Mr. Christofferson has been clearly in violation of those mandated policies and goals.

More to the point, his recycling operation is in full compliance with the law as it is clearly stated to be. The Dept. of Health's position in this matter has always been directly contrary to the written law, and the Court's ruling in favor of the Dept. cannot stand, in light of this revealed statutory authority. The ruling against Mr. Christofferson must be vacated, annulled, or otherwise ameliorated in his favor, as the law supports his actions.

Argument IV: *By failing its own legally-mandated duties to clean up the unsafe environments at several existing government-managed used tire reclamation centers in different heavily-populated areas, yet waste big taxdollars going after Mr. Christofferson's recycling operation, and which has always been safe and clean during its decade of existence in a township of only fifteen (15) persons, the State is unlawfully engaging in Selective Enforcement, and in willful mismanagement of taxdollars.*

There are large, unsanitary piles of tires already existing in landfills, in and around Bismarck, Grand Forks, Fargo, Minot, and other population centers in the State of North Dakota, that possess much larger and more critical issues of environmental concern to the public, than sets of clean and safe tires neatly arranged in functional rows, fences, and animal building structures in a rural township containing just a mere fifteen (15) people.

The storing of scrap tires in large dumpsters, while waiting for the state approved disposal, is being carried out in large cities throughout the state. While the state has no problem with dumpsters full of tires (which absolutely *do* collect and hold water for many weeks, if not longer, potentially endangering thousands) in cities like Grand Forks (40,000 - 60,000 people), they are gravely concerned about a potential mosquito threat to the 15 people in Minco township (6 square miles). This is ridiculous, to even begin with, and it also encroaches and violates the protection against use of Selective Enforcement.

Further, the very idea of mismanaging taxpayer-funded agency budgets to willfully continue attacking a private farmer, with only *suggestions* that his tires may *someday* become a problem, while the State's own multiple tire reclamation processes are already in violation of environmental laws, and already creating public safety hazards, is nothing short of willfully gross mismanagement of taxdollars, and creates a cause of action.

Moreover, if the State of North Dakota is so worried about a potential mosquito threat in the area of Mr. Christofferson's recycled tires, then the State of North Dakota should have been doing its legal duty to mitigate and maintain the environment of the various swamplands and standing water basins scattered all around, and directly adjacent to, Mr. Christofferson's property, in Nelson County and nearby Benson and Ramsey Counties.

Indeed, Mr. Christofferson has quite solid grounds for suing the State for its gross negligence in allowing any festering mosquito grounds, adjacent and/or nearby to his own property and family, to continue unchecked and not maintained for quite some time.

Argument V: *The State of North Dakota receives federal funding already earmarked for doing various things in respect to reclamation of Mr. Christofferson's tires into State managed recycling systems, yet, even notwithstanding overcoming the other legal impediments described herein that protect Mr. Christofferson's real and personal property from takings or other infringements, without full Due Process on their own bases, neither the State, nor the Dept. of Health, nor the Court, has ever once begun to discuss how much monies are to be made available to Mr. Christofferson to complete the proposed disposition of his tires, and that amount must be enough.*

Your Appellant apologizes for not having any information from the State in which to provide a reasonable framework of the monetary issue at stake here, but with discovery

by the State as to what forms and amounts of federal and self (state) funding are made as available for these concerns, then the parties can present proposed amounts to the Court.

In any event, further investigation is warranted for determining any proper amount(s).

Summary and Conclusion

The Federal Government's official position, by and through the Environmental Protection Agency's various promulgations, is that Mr. Christofferson recycles his tires, and that his implementation is, indeed, of benefit to the environment and resources.

The State of North Dakota's official position, by and through its own statutory laws, is also that Mr. Christofferson's implementation of used tires is environmentally beneficial, and he is in full compliance with the statutory District Solid Waste Management Plans.

Moreover, Mr. Christofferson has full Due Process rights, as well as certain real and personal property rights, that cannot simply be infringed upon by administrative actions, that are also exacerbated by unlawful use of Selective Enforcement and mismanagement.

Indeed, Mr. Christofferson has solid grounds for suing the State of North Dakota for *its* gross negligence in failing to mitigate, on several lands adjacent or in proximity to Mr. Christofferson's real property, the very thing (mosquito) – that it wants to blame him for.

Request for Relief

The most proper course of action for this Honorable Court to take would seem to be also the most natural course of action – remand this case back to the lower administrative proceedings, for that tribunal to consider the various issues presented above, and to make determinations as to each corresponding issue enumerated, including the Due Process rights, abatement monies, and the various other items of general concern to all parties.

Without that proper course of action, Mr. Christofferson would seem compelled into removing this entire matter into the United States District Court, and amend for damages, since he does have real and personal property rights and interests at stake that cannot simply be administered away in violation of Due Process, and because there have been some apparent issues concerning fraud, libel, slander, and general defamation, not to even mention the injuries to livelihood and business, the emotional stress, and other items.

In the alternative, your undersigned Appellant would be responsive to the Court's any direction for further exploration of these issues, in order to guide the Court's ultimate decision in this matter. One possibility is having the parties further brief the above items, in order to provide the Court with all further authorities relevant in this entire matter, with also providing direction for an appropriate word count or page count for any such briefs.

WHEREFORE, your undersigned Appellant, Cory Christofferson, now and hereby moves this Honorable Court to consider the above issues as detailed, find that the lower administrative proceedings have resulted in an unfair encumbrance upon his rights and property, both real and personal, also find the same proceedings as void or voidable as against the same rights and property, and further, to grant all relief just and proper herein.

Respectfully submitted,

/s/ Cory Christofferson

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Appellant's Certificate of Font and Word Count Compliance

I hereby certify that the lettering in this petition for rehearing, filed on December 31, 2007, has been prepared using Microsoft Word, with Times New Roman 12-point font, contains no more than 2500 total words as reported by the word processing system, not including certain parts as by Rule, and complies with all applicable Rules requirements.

/s/ Cory Christofferson

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_____)	_____

Appellant's Certificate of Service

I hereby certify: that on this __31st__ day of December, 2007, I have filed and served true and complete copies of the foregoing Appellant's Petition for Rehearing, via the Court's electronic filing system, to and with:

Penny L. Miller, Clerk of the Supreme Court, at:
supclerkofcourt@ndcourts.com

and via similar email transmission, to and upon:

Dean J. Hass, Assistant Attorney General, at:
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/s/ Cory Christofferson

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