

**FILED**

JUN 27 2018

JEAN BURKETT-CIRCUIT CLERK  
WOODRUFF COUNTY, AR  
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**IN THE CIRCUIT COURT OF WOODRUFF COUNTY, ARKANSAS  
CIVIL DIVISION**

**ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

**PLAINTIFF**

**VS.**

**NO. CV- 2018-75**

**MUHAMMAD ZAMEER, Individually;  
TRISTATE CONTRACTING OF BRINKLEY, LLC**

**DEFENDANTS**

**VERIFIED COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF**

Comes now the Arkansas Department of Environmental Quality (ADEQ or "Department"), by and through its attorneys, Lisa M. Thompson and Daniel W. Pilkington, and for its Complaint against separate Defendants Muhammad Zameer and Tristate Contracting of Brinkley, LLC, (collectively, "Defendants") jointly and severally, state the following:

**I. INTRODUCTION**

1. This matter is a civil action brought under the authority of the Arkansas Water and Air Pollution Control Act (AWAPCA), Ark. Code Ann. § 8-4-301 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, the Arkansas Solid Waste Management Act (ASWMA), Ark. Code Ann. § 8-6-201 *et seq.*, the Illegal Dump Eradication and Corrective Action Program Act (IDCAPA), Ark. Code Ann. § 8-6-501 *et seq.*, and the Arkansas Pollution Control and Ecology Commission (APC&EC or "Commission") Regulations 14, 18, 22 and 36. This matter also seeks to enforce an Order issued against Defendant Muhammad Zameer by the Commission assessing penalties and costs for violations of AWAPCA, Ark. Code Ann. § 8-9-401 *et seq.*, ASWMA, and APC&EC Regulations 14, 18, and 22.

2. This matter seeks the clean-up of an unpermitted tire site and an unpermitted waste tire processing facility located at 705 Industrial Park Road, Cotton Plant, Arkansas ("the Site").

3. This action seeks relief for violations of ASWMA, Ark. Code Ann. § 8-6-201 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, AWAPCA, Ark. Code Ann. § 8-4-301 *et seq.*, IDCAPA, Ark. Code Ann. § 8-6-501 *et seq.*, and violations of APC&EC Regulations 14, 18, 22, and 36 that occurred at the Site.

4. The Department is seeking civil penalties, injunctive relief for remediation and corrective action, attorneys' fees, costs, and expenses associated with enforcement of this matter.

## **II. PARTIES**

5. ADEQ is an agency of the State of Arkansas, which is charged with administering and enforcing all laws, rules, and regulations relating to the AWAPCA, Ark. Code Ann. § 8-4-301 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, IDCAPA, Ark. Code Ann. § 8-6-501 *et seq.*, and the ASWMA, Ark. Code Ann. § 8-6-201 *et seq.*, and APC&EC Regulations 14, 18, 22, and 36.

6. ADEQ's principal place of business is located at 5301 Northshore Drive, North Little Rock, Arkansas 72118.

7. ADEQ has authority under Ark. Code Ann. §§ 8-4-103(b), 8-6-204(b), and 8-9-105(a) to institute a civil action under the AWAPCA, ASWMA, and Ark. Code Ann. § 8-9-401 *et seq.* in any court of competent jurisdiction to assess civil penalties for violations of these statutes and the regulations promulgated thereunder; to affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of the statutes; to restrain violation of or compel compliance with the provisions of these statutes and the regulations promulgated thereunder; and to recover all costs and expenses in enforcing or effectuating the provisions of these statutes.

8. ADEQ has authority under Ark. Code Ann. § 8-6-501 *et seq.* to institute a civil action in any court of competent jurisdiction to assess civil penalties for violations of these statutes; to

seek an order for remedial measures be taken as may be necessary, and to recover all costs and expenses in enforcing or effectuating the provisions of these statutes.

9. Defendant, Muhammad Zameer (Zameer), is an individual residing at 23 Duquesne Drive, Little Rock, in Pulaski County, Arkansas and was operating his business, Tristate Contracting of Brinkley LLC (Tristate), at 705 Industrial Park Road, Cotton Plant, in Woodruff County, Arkansas. Zameer's last known business address is 1507 North Main Street, Brinkley, Monroe County, Arkansas.

10. Defendant Tristate is a company registered with the Arkansas Secretary of State and in good standing, with a principal address at 1507 North Main Street, Brinkley, Monroe County, Arkansas. Defendant Zameer is the manager/incorporator of Tristate.

11. The events giving rise to this action occurred at 705 Industrial Park Road in Cotton Plant, Woodruff County, Arkansas ("the Site").

### **III. JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this matter under Ark. Code Ann. § 16-13-201, which states that circuit courts shall have original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Arkansas Constitution.

13. Venue is proper in Woodruff County, Arkansas, pursuant to Ark. Code Ann. § 16-60-101 (a)(1), in that the events giving rise to this action occurred at 705 Industrial Park Road, in Woodruff County, Arkansas where Zameer was operating his business, Tristate.

#### IV. FACTUAL ALLEGATIONS

14. Defendants are responsible for the placement or causing the placement of thousands of tires at the Site.

15. On June 9, 2016, ADEQ issued a Notice of Violation, LIS 16-049 (NOV) to Defendants reciting multiple violations of the AWAPCA, Ark. Code Ann. § 8-4-301 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, the ASWMA, Ark. Code Ann. § 8-6-201 *et seq.*, and APC&EC Regulations 14, 18, and 22 that occurred at the Site. Pursuant to APC&EC Regulation 8, Defendants filed a Request for Hearing with the Commission seeking administrative review of ADEQ's enforcement action. This administrative review was docketed in APC&EC Docket No. 16-002-NOV. A copy of the NOV is attached to this complaint and labeled Exhibit A.

15. On September 15, 2017, the Commission's Administrative Law Judge (ALJ) issued Order No. 6. Order No. 6 granted summary judgment in favor of ADEQ on the issue of Defendants maintaining a waste tire site as defined in Ark. Code Ann. § 8-9-402(13), and granted summary judgment in favor of ADEQ on the issue of whether Defendants operated an unpermitted waste tire processing facility as defined in Ark. Code Ann. § 8-9-402(12) and APC&EC Reg.14.201. A copy of Order No. 6 is attached to this complaint and labeled Exhibit B.

16. On October 10, 2017, the ALJ held an evidentiary hearing on the Department's remaining claims.

17. The ALJ for APC&EC issued a recommended decision on December 21, 2017, finding Zameer additionally liable for the illegal burning of refuse, liable for violating Ark. Code Ann. § 8-6-205(a)(5) and APC&EC Reg.14.702 as it relates to tires being collected as solid waste contrary to law or regulation and creating a public nuisance, and liable for improperly storing

waste tires in violation of APC&EC Reg.14.1401. The recommended decision assessed a civil penalty of \$20,950.00 against Defendant Zameer, and the ALJ made a finding that the issue of the Defendants' remediation of the Site is reserved for any future circuit court action filed by ADEQ against the Defendants in this matter. A copy of the recommended decision is attached to this complaint and labeled Exhibit C.

18. The APC&EC adopted the ALJ's recommended decision on March 2, 2018 by Minute Order Number 18-08. The minute order listed the following findings of law:

- a. That the Site constitutes a waste tire site as defined by Ark. Code Ann. §§ 8-9-402(9), 8-9-402(10), and 8-9-402(13); and APC&EC Reg.14.201;
- b. That Zameer operated a waste tire processing facility without a permit in violation of Ark. Code Ann. §§ 8-6-205(a)(2), 8-9-403(c)(2), and APC&EC Reg.14.1201;
- c. That Zameer maintained an unpermitted waste tire site in violation of Ark. Code Ann. § 8-9-403(c)(1);
- d. That Zameer collected solid waste contrary to law and regulation and created a public nuisance in violation of Ark. Code Ann. § 8-6-205(a)(5) and APC&EC Reg.14.70[2];
- e. That Zameer allowed the open burning of solid waste without a permit in violation of Ark. Code Ann. §§ 8-4-310(a)(1), (a)(2), (a)(3), and APC&EC Reg.18.602;
- f. That Zameer processed waste tires without a permit in violation of APC&EC Reg.14.1201; and,
- g. That Zameer improperly stored waste tires indoors in violation of

APC&EC Reg.14.1401.

The minute order assessed a total civil penalty against Zameer in the amount of \$20,950.00, and adopted the ALJ's recommended decision in its entirety. A copy of the minute order is attached to this complaint and labeled Exhibit D.

19. No appeal was taken from the APC&EC minute order. Ark. Code Ann. § 8-4-213(a) provides that if no appeal is taken from an APC&EC order, then the action of the APC&EC in the matter shall be deemed conclusive and the validity and reasonableness thereof shall not be questioned in any other action or proceeding.

20. As of the date this complaint was filed, Zameer has not paid the civil penalties issued in the APC&EC minute order.

21. On April 9, 2018, ADEQ received a complaint regarding the tires at the Site.

22. On May 2, 2018, ADEQ personnel investigated the Site and observed approximately four hundred thousand (400,000) tires. Mosquitos were predominant throughout the property. ADEQ personnel also observed wood pallet material and at least two gas containers within the tire pile. It appeared that the Defendants have vacated the premises and left the tires remaining onsite. No tire processing equipment was observed.

23. As of the present date, the Defendants have not completed the closure requirements at the Site mandated in APC&EC Regulation 14, Chapter 15, Ark. Code Ann. § 8-9-403, or Chapter 13 of APC&EC Regulation 36.

24. Arkansas Pollution Control and Ecology Commission Regulation 36<sup>1</sup> applies to all remediation under this Verified Complaint and Request for Injunctive Relief.

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<sup>1</sup> The current Reg.36 that is in effect is the Second Emergency Rulemaking that became effective on March 8, 2018, and is effective for one hundred eighty (180) days. The permanent rulemaking that is substantially similar to the current Reg. 36 is pending and will likely be finalized in August 2018.

25. As of the filing date of this complaint, the Site is a waste tire site that creates an environmental hazard that must be remediated.

#### **V. CAUSES OF ACTION**

##### **COUNT ONE: FAILURE TO COMPLY WITH AN ORDER ISSUED BY THE APC&EC**

26. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 25.

27. Pursuant to Ark. Code Ann. §§ 8-6-204(b)(1) and 8-9-105, ADEQ may initiate civil court actions to enforce orders issued pursuant to the ASWMA, and Ark. Code Ann. § 8-9-401 *et seq.* The minute order was issued pursuant to the ASWMA and Ark. Code Ann. § 8-9-401 *et seq.* Exhibit D.

28. Defendant Zameer failed to comply with the minute order issued by APC&EC adopting the ALJ's recommended decision. Accordingly, ADEQ is entitled to a judgment against Zameer for payment of the \$20,950.00 penalty amount.

##### **COUNT TWO: DEFENDANTS OPERATED AND MAINTAINED A WASTE TIRE SITE THAT MUST BE REMEDIATED PURSUANT TO ARKANSAS LAW**

29. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 28.

30. The ALJ made a legal finding in Order No. 6 and in the recommended decision that the Site is an unpermitted waste tire site as defined in Ark. Code Ann. §§ 8-9-402(9), 8-9-402(10), 8-9-402(13) and APC&EC Reg.14.201. Exhibit B, C. This legal finding was upheld by the APC&EC in the minute order. Exhibit D.

31. The ALJ made a legal finding that Zameer, at the Site, maintained a waste tire site in violation of Ark. Code Ann. §§ 8-9-403(c)(1) and operated a waste tire processing facility without a permit in violation of Ark. Code Ann. §§ 8-6-205(a)(2), 8-9-403(c)(2), and APC&EC

Regulation 14.1201. Exhibits B and C. This legal finding was upheld by the APC&EC in the minute order. Exhibit D.

32. Ark. Code Ann. § 8-9-403(a) states that an owner or operator of any waste tire site shall provide ADEQ with a written plan specifying a method and time schedule, subject to ADEQ's approval, for the removal, disposal, or recycling of the tires and that the operator shall implement the approved plan according to the approved schedule.

33. APC&EC Reg. 14 was promulgated under the authority of Ark. Code Ann. § 8-9-401 *et seq.*

34. Chapter 15 of APC&EC Reg. 14 provides the requirements for closure of a waste tire site.

35. Pursuant to APC&EC Reg. 14.1501, "The owner or operator of any waste tire site that does not meet the requirements of this regulation, or any facility permitted under this regulation that will no longer accept, collect, or process tires shall close such site in accordance with this Chapter within sixty (60) calendar days."

36. APC&EC Reg. 36 was promulgated under the authority of Used Tire Recycling and Accountability Act (UTRAA), Ark. Code Ann. § 8-9-401 *et seq.* (effective August 1, 2017). Chapter 13 of APC&EC Reg. 36 provides the requirements for closure of a waste tire site.

37. APC&EC Reg. 36 mirrors UTRAA and states that an owner or operator of a waste tire site shall provide ADEQ and the applicable regional solid waste management district with information on the waste tire site's location, size, and the approximate quantity of tires, and a written plan specifying a time schedule and method of removal, disposal, and recycling of tires, subject to ADEQ approval.



38. The ALJ made legal findings that the Defendant Zameer's collection, processing, and storage of waste tires at the Site were in violation of APC&EC Regulation 14. Exhibit C. These findings were upheld by the APC&EC in the minute order. Exhibit D.

39. Defendants have made no attempts since the entrance of the APC&EC minute order to close the site and remove the tires, and the Plaintiff moves the Court to order the Defendants to immediately close the Site and begin remediation pursuant to Chapter 15 of APC&EC Reg. 14, Ark. Code Ann. § 8-9-403(a), and Chapter 13 of APC&EC Reg. 36.

**COUNT THREE: DEFENDANTS VIOLATED THE ILLEGAL DUMP ERADICATION  
AND CORRECTIVE ACTION PROGRAM ACT**

40. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 39.

41. The "Illegal Dump Eradication and Corrective Action Program Act," codified at Ark. Code Ann. § 8-6-501 *et seq.*, states that a person who has knowledge of illegal dumping of solid waste on any public or private property in this state can file a verified Complaint in a court of competent jurisdiction against the alleged liable party.

42. Ark. Code Ann. § 8-6-503(5) defines "illegal dumping of solid waste" as:

[t]he illegal placing, depositing, dumping, or causing to be placed, deposited, or dumped by any person any solid waste that is prohibited by this chapter:

(A) In or upon any public or private highway or road, including any portion of the right-of-way thereof;...

(C) In or upon any public park or other public property, other than the property designated or set aside for such purposes by the governing board or body having charge thereof; or

(D) Upon any property for which a permit has not been issued by the department.

43. ADEQ has issued no permits for any activities at the Site.

44. Ark. Code Ann. § 8-6-505(b) mandates that the Court enter a temporary order directing the accused person to remove from the public or private property the illegally dumped solid

waste, to properly dispose of the solid waste within ten (10) days from the date of the order, and to provide to the Court disposal receipts from the facility where the solid waste was disposed.

45. As set forth in the paragraphs above, Defendants are liable for illegal dumping of tires, which are solid waste, at the Site.

46. Plaintiff states that the relief requested concerns remediation of ongoing environmental violations and harms to the public that are immediately irreparable. The Site continues to be an attractive nuisance, a potential fire hazard as evidenced by the most recent Site investigation of May 2, 2018, and that current conditions at the Site are a current breeding habitat for mosquitoes and other disease-transmitting vectors.

47. Plaintiff previously notified the Defendants to remove the tires at the Site, but no evidence of remediation has been seen to date.

48. The facts provided in the previous paragraphs of this verified Complaint, the facts presented in the attached affidavits marked for identification purposes as Exhibits E and F, and the recent issuance of the Minute Order demonstrate a likelihood of success on the merits on Plaintiff's claims.

49. Plaintiff moves the Court to enter a temporary order, pursuant to Ark. Code Ann. § 8-6-505, directing:

- a. The sheriff of Woodruff County and/or Pulaski County to serve the temporary order on the Defendants;
- b. The Defendants, upon being served, to remove the tires from the Site and to dispose of the tires in compliance with APC&EC Reg. 14, APC&EC Reg. 36, and Ark. Code Ann. § 8-9-403(a);

- c. The Defendants to return to the Court disposal receipts from the facilities where the tires were property disposed; and,
- d. The Defendants to cease all illegal dumping of tires at the Site.

50. Upon Defendants' noncompliance with any temporary Order issued by the Court, the Plaintiff moves the Court to issue a permanent order pursuant to Ark. Code Ann. § 8-6-505(d)(2)(A), and for an order allowing the Plaintiff, or the owner of the Site, access to the Site to remove and dispose of all tires pursuant to Ark. Code Ann. § 8-6-505(d)(2)(B) and to request a judgment of cost for removal and disposal against the Defendants.

51. Plaintiff moves for civil penalties and a judgment for cost against the Defendants for violations of Ark. Code Ann. § 8-6-501 *et seq.* and pursuant to Ark. Code Ann. §§ 8-6-506, 8-6-204, and 8-9-105.

#### **PRAYER FOR RELIEF**

WHEREFORE, ADEQ respectfully requests this Honorable Court order the following:

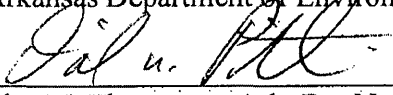
- A. That the Defendant Zameer pay the civil penalty assessed in the recommended decision, as adopted by the APC&EC minute order, in the amount of \$20,950.00;
- B. Provide Injunctive Relief by Ordering Defendants to immediately cease all unpermitted tire disposal at the Site and to immediately begin closure and remediation of the Site pursuant to APC&EC Regulation 14, APC&EC Regulation 36, and Ark. Code Ann. § 8-9-403(a);
- C. Issue a Temporary Order compelling the Defendants to remove and dispose of all tires at the Site in conformity with Ark. Code Ann. § 8-6-505(b)(3), APC&EC Regulation 14, APC&EC Regulation 36, and Ark. Code Ann. § 8-9-403(a);

- D. Upon Defendants' noncompliance with the Temporary Order issued by the Court, issue a permanent order and, upon Defendants' further noncompliance, allowing the Plaintiff, or the owner of the Site property, access to the Site to remove and dispose of all tires pursuant to Ark. Code Ann. § 8-6-505(d)(2)(A) and to request a judgment of cost for removal and disposal pursuant to Ark. Code Ann. § 8-6-505(d)(2)(B);
- E. Award civil penalties and an award of costs to the Department pursuant to Ark. Code Ann. §§ 8-6-506, 8-6-204, and 8-9-105.
- F. Award costs and attorneys' fees to ADEQ; and,
- G. For all other relief to which it may be entitled.

Respectfully submitted,

Arkansas Department of Environmental Quality

By:

  
\_\_\_\_\_  
Lisa M. Thompson, Ark. Bar No. 2007061  
Daniel W. Pilkington, Ark. Bar No. 2007195  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, Arkansas 72118  
(501) 682-0030

**VERIFICATION**

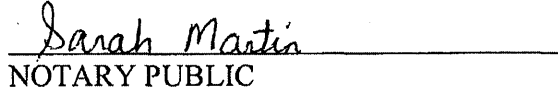
STATE OF ARKANSAS    )  
  )  
COUNTY OF PULASKI    )

Comes now Tammie J. Hynum, Senior Manager of the Tire Accountability Program for the Arkansas Department of Environmental Quality, who states upon oath that she has read the statements contained in the foregoing Verified Complaint and acknowledges that they are true and correct to the best of her knowledge and belief.

  
TAMMIE J. HYNUM

Subscribed and sworn to before me this 26<sup>th</sup> day of June, 2018.

SARAH MARTIN  
FAULKNER COUNTY  
NOTARY PUBLIC - ARKANSAS  
My Commission Expires September 07, 2024  
Commission No. 12400461

  
NOTARY PUBLIC

My Commission Expires:

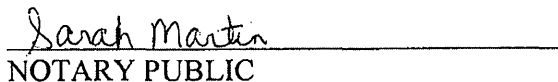
**VERIFICATION**

STATE OF ARKANSAS    )  
  )  
COUNTY OF PULASKI    )

Comes now Scott McWilliams, Program Manager of the Tire Accountability Program for the Arkansas Department of Environmental Quality, who states upon oath that he has read the statements contained in the foregoing Verified Complaint and acknowledges that they are true and correct to the best of his knowledge and belief.

  
SCOTT McWILLIAMS

Subscribed and sworn to before me this 26<sup>th</sup> day of June, 2018.

  
NOTARY PUBLIC

My Commission Expires:

SARAH MARTIN  
FAULKNER COUNTY  
NOTARY PUBLIC - ARKANSAS  
My Commission Expires September 07, 2024  
Commission No. 12400461