

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION**

**ARKANSAS DEPARTMENT OF
ENERGY AND ENVIRONMENT, DIVISION
OF ENVIRONMENTAL QUALITY**

PLAINTIFF

VS. NO. CV _____

**JAMMIE WARD, dba WARD TIRE AND AUTO, LLC;
WARD TIRE AND AUTO, LLC;
LINDA MCKENZIE HAMILTON;
CHRISTOPHER PHILLIPS,
TOMMY JAY PHILLIPS,
HEATHER M. PHILLIPS, AND
JAMES MAXEY**

DEFENDANTS

VERIFIED COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF

Comes now the Plaintiff, the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ),¹ by and through its attorneys, Lisa M. Thompson and Daniel W. Pilkington, and for its Verified Complaint and Request for Injunctive Relief filed against Jammie Ward, dba Ward Tire and Auto, Ward Tire and Auto, LLC, Linda McKenzie Hamilton, Christopher Phillips, Tommy Jay Phillips, Heather M. Phillips, and James Maxey (collectively the Defendants), states the following:

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly-created Department of Energy and Environment.

I. INTRODUCTION

1. This matter is a civil action brought under the authority of Rule 57 of the Arkansas Rules of Civil Procedure, Ark. Code Ann. § 16-111-101 *et seq.*, the Used Tire Recycling and Accountability Act (Tire Act), Ark. Code Ann. § 8-9-401 *et seq.*, Ark. Code Ann. § 8-9-105, Ark. Code Ann. § 8-6-201 *et seq.*, the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 36, and APC&EC Regulation 22.

2. This action concerns the remediation of a waste tire site located at 115 Allen Drive and 119 Allen Drive, Vilonia, AR (the Site).

3. This action also concerns violations of the Tire Act, Ark. Code Ann. § 8-9-401 *et seq.*, APC&EC Regulation 36, Ark. Code Ann. § 8-6-201 *et seq.*, and APC&EC Regulation 22.

4. DEQ is requesting declaratory relief regarding ownership of the Site, injunctive relief for remediation, attorneys' fees, costs, expenses associated with enforcement of this matter, and an award of civil penalties.

II. PARTIES

5. DEQ is an agency of the State of Arkansas that is charged with administering and enforcing all laws, rules, and regulations relating to the Tire Act, Ark. Code Ann. § 8-9-401 *et seq.*, APC&EC Regulation 36, Ark. Code Ann. § 8-6-201 *et seq.*, and APC&EC Regulation 22.

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

7. DEQ has authority under Ark. Code Ann. §§ 8-6-204(b) and 8-9-105(a) to institute a civil action under the Tire Act and the Arkansas Solid Waste Management Act in any court of competent jurisdiction seeking for the Circuit Court 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 and regulations, 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. Defendant Jammie Ward, doing business as Ward Tire and Auto, LLC (Ward), is an Arkansas resident who operates a business located in Conway, Arkansas. Mr. Ward is licensed by DEQ as a waste tire transporter in the State of Arkansas.

9. Defendant Ward Tire and Auto, LLC is a Domestic Limited Liability Company that is currently in a revoked status with the Arkansas Secretary of State business entity records. These records indicate that Ward Tire and Auto, LLC has a principal address of 282 Highway 365, Conway, AR 72032, and that Jammie Ward is a member of this LLC.

10. Defendant James Maxey (Maxey) has served as a caretaker and operator of the Site and currently resides in Faulkner County, Arkansas.

11. Defendant Linda McKenzie Hamilton (Hamilton) possibly owns the Site and, according to assessor records, owns real property in Faulkner County, Arkansas.

12. Christopher Phillips is a resident of Faulkner County, and has allegedly operated at the Site.

13. Defendants Tommy Jay Phillips and Heather M. Phillips are possible owners of the Site.

14. The events giving rise to this action occurred at the Site and other specified locations in Faulkner County, Arkansas.

III. JURISDICTION AND VENUE

15. 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.

16. Venue is proper in Faulkner County, Arkansas, pursuant to Ark. Code Ann. §§ 16-60-102 and 16-60-103, in that the events giving rise to this cause of action occurred at the Site, the events concern an injury to such real property, and the action involves the recovery of a penalty imposed by statute.

IV. FACTUAL ALLEGATIONS

17. On or about December 2, 2019, DEQ received a complaint from Defendant Maxey regarding tires being dumped at the Site.

18. On or about December 4, 2019, DEQ inspectors conducted a complaint investigation at the Site. Prior to DEQ's arrival at the Site, Defendant Maxey called DEQ indicating that he observed a person driving a silver Dodge Ram with the license plate "008 XVB" and "Ward Tire Service" on the back window, and an attached trailer on this vehicle with the tag "AB298592," who was dumping tires at the Site.

19. Before DEQ entered the Site on December 4, 2019, DEQ inspectors stopped at Mr. Maxey's house to discuss his complaint. Mr. Maxey indicated that the dumping of tires began about a month ago, that the dumping was done by "Chris Phillips and his friends," that the owner of the Site is Linda McKenzie Hamilton, and that Mr. Maxey is the caretaker for the Site. Mr. Maxey also provided DEQ with a notarized authorization form that indicated that he is the caretaker of the Site. Attached and marked for identification purposes as "Exhibit 1" is a true and correct copy of the Notarized Document indicating that Mr. Maxey is the Site caretaker.

20. During the December 4, 2019 inspection of the Site, DEQ inspectors observed approximately 200 waste tires on the front yard of the Site.

21. On December 9, 2019, DEQ inspectors and a Faulkner County Sheriff's Deputy inspected the Ward Tire and Auto, LLC business located at 282 Highway 365, Conway, Arkansas. During this inspection, Defendant Ward arrived to discuss DEQ's previous inspections at the Site. Defendant Ward was driving the silver Dodge Ram with the same license plate described by Mr. Maxey in his previous December 2, 2019 complaint. The Deputy was able to confirm, during this inspection, that the silver Dodge Ram was registered in the name of Jammie Ward.

22. During the December 9, 2019 inspection, Defendant Ward was asked why he was previously observed unloading tires at the Site. Defendant Ward's response to this question was that he was not previously dumping tires at the Site, but cleaning the tires up at the Site for a man named Chris Phillips, the alleged tenant of the Site. Mr. Ward also stated that the tires in the trailer at Ward Tire and Auto were from the Site.

23. Defendant Ward is licensed by DEQ as a waste tire transporter in the State of Arkansas.

24. During the December 9, 2019 inspection at Ward Tire and Auto, LLC's place of business, Defendant Ward did or stated the following:

- a. Stated that he hauls tires to Davis Rubber Company (Davis Rubber), but that he had no knowledge of the process to maintain manifests for the transport of tires;
- b. Stated that no paperwork is involved until he arrives at Davis Rubber to dispose of tires, that "Randy" of Davis Rubber provides the manifest to Mr. Ward for him

to fill out and complete for generators who pay him to transport waste tires, and that he provides the manifests to generators after the tires are disposed;

c. Provided DEQ a manifest from a load of tires that he disposed of on December 4, 2019. This manifest was for tires that were transported from Stephen's Automotive, in Conway, Arkansas, with Defendant Ward signing as the generator and transporter, and a representative of Davis Rubber signing the manifest. Attached and marked for identification purposes as "Exhibit 2" is a true and correct copy of this December 4, 2019 manifest; and,

d. Stated that he does not charge rim removal fees to customers, and that he does not maintain copies of invoices and receipts for his tire service business.

25. Ward Tire and Auto, LLC is registered with the Department of Finance and Administration (DFA) as a collector of rim removal fees.

26. DFA records indicate that Ward Tire and Auto, LLC paid thirty (30) rim removal fees in September, 2019, and had paid no other rim removal fees from September 2019 to January 2020.

27. Defendant Ward provided no documentation to corroborate that the September 2019 rim removal fees paid to DFA were accurately reported.

28. During a December 9, 2019 DEQ inspection of the Site with a Faulkner County Sheriff's Deputy, DEQ inspectors observed approximately 400 waste tires at the Site, observed and photographed a large burn pit that contained solid waste and steel belting from the burning of tires, and determined that the Site was a waste tire site and an unpermitted disposal site. There were a total of four (4) tire piles at the Site and some of these waste tires had visible green paint pen markings. Attached and marked for identification purposes as "Exhibits 3-30" are true and

correct copies of photographs taken of the Site and the Ward Tire and Auto, LLC place of business during the December 9, 2019 inspections.

29. On December 9, 2019, DEQ inspectors returned to Ward Tire and Auto, LLC's place of business after visiting the Site. During that inspection, DEQ inspectors observed the tires at this location and noticed that, although no tires in Mr. Ward's trailer had visible green markings, some tires observed behind the Ward Tire and Auto, LLC shop had green paint markings that matched the green paint markings on tires previously observed at the Site. When DEQ inspectors asked Defendant Ward about the origins of the tires with the green paint markings located behind the shop, Defendant Ward indicated that these tires are marked when he receives them, and they come from LKQ Preferred Auto Parts (LKQ), where Ward buys tires to sell at his shop.

30. On December 9, 2019, after leaving the Ward Tire and Auto, LLC place of business, DEQ inspectors visited Stephen's Automotive, located at 276 Highway 64E, Conway, Arkansas. During this visit, DEQ inspectors learned that Stephen's Automotive uses Defendant Ward to transport their waste tires, that they mark waste tires with a yellow paint pen, and that they did not know how manifests are handled.

31. On December 9, 2019, after leaving the Stephen's Automotive place of business, DEQ inspectors visited LKQ at their place of business at 650 Simon Road, Conway, Arkansas. After asking the LKQ plant manager, Mike Harrell, about their business with Defendant Ward, DEQ inspectors learned that:

- a. LKQ retained Mr. Ward to transport their waste tires;
- b. Mr. Ward occasionally buys used tires from LKQ;

c. LKQ uses a green paint marking system on waste tires at their facility that is very similar to the description provided by DEQ inspectors regarding the green paint markings observed on waste tires at the Site and the Ward Tire and Auto, LLC location;

d. Mr. Ward brings LKQ manifests when he picks up their waste tires, signs as the generator and the transporter, but does not fill out where the tires will be disposed of; and,

e. When Mr. Ward fills out a manifest when picking up LKQ's waste tires, he does not return a copy of the manifest signed by a permitted tire collection center to prove legal disposal of the waste tires.

32. LKQ has terminated their employment relationship with Mr. Ward and Ward Tire and Auto, LLC.

33. On December 10, 2019, a DEQ inspector conducted a search of real property records in Faulkner County, and determined that the owner of the Site is Linda McKenzie Hamilton. Attached and marked for identification purposes as "Exhibit 31" is a true and correct copy of the deed describing Linda McKenzie Hamilton as the owner of the Site.

34. As of the present date, DEQ has not received evidence that all waste tires and solid waste at the Site have been removed and properly disposed of at a DEQ-permitted processing or disposal facility, and since Ward Tire and Auto, LLC became a revoked entity, neither it nor Defendant Ward have complied with the requirements of APC&EC Regulation 36, the Tire Act. Ark. Code Ann. § 8-6-201 *et seq.*, and APC&EC Regulation 22.

35. On February 7, 2020, Defendant Hamilton contacted DEQ regarding the current conditions of the Site. Defendant Hamilton disputed ownership of the Site, and indicated that "the Phillips family" owns 119 Allen Drive, Vilonia, Arkansas, where the tires are located. She

further indicated that the mobile home that is considered 119 Allen Drive is occupied by the “Phillips family” and is crossing over into her property boundary.

V. CAUSE OF ACTION

COUNT ONE: REQUEST FOR DECLARATORY RELIEF

36. DEQ incorporates by reference the allegations set forth in paragraphs 1-35.

37. DEQ seeks remediation of the Site, a waste tire site, and states that it is necessary to declare the real property ownership of the Site and tires and solid waste thereon.

38. Pursuant to Arkansas Rule of Civil Procedure 57 and Ark. Code Ann. § 16-111-101 *et seq.*, DEQ seeks a judicial declaration of ownership of the Site to determine the legal obligations of Defendant Hamilton, Defendant Heather M. Phillips, and Defendant Tommy Jay Phillips to remediate the site and seeks an order compelling such Defendants to implement those obligations.

COUNT TWO: SUBJECT TO THE COURT’S FINDINGS ON COUNT ONE, DEFENDANTS MAXEY, CHRISTOPHER PHILLIPS, HEATHER M. PHILLIPS, TOMMY JAY PHILLIPS, HAMILTON, WARD, AND WARD TIRE AND AUTO, LLC VIOLATED THE TIRE ACT AND APC&EC REGULATION 36

39. DEQ incorporates by reference the allegations set forth in paragraphs 1 through 38.

40. Ark. Code Ann. § 8-9-402 (25)(A) defines a waste tire site as “a location where unpermitted used tires are accumulated, whether loosely stored, compacted and baled, or a combination of both loosely stored and compacted and baled.”

41. Ark. Code Ann. § 8-9-403(a) states that an owner or operator of any waste tire site shall provide DEQ with a written plan specifying a method and time schedule, subject to

DEQ's approval, for the removal, disposal, or recycling of the tires and that the owner or operator shall implement the approved plan according to the approved schedule.

42. APC&EC Regulation 36 was promulgated under the authority of Ark. Code Ann. § 8-9-401 *et seq.*

43. Chapter 13 of APC&EC Regulation 36 and Ark. Code Ann. § 8-9-401 *et seq.* provide the requirements for closure of a waste tire site.

44. According to Ark. Code Ann. § 8-9-105(a), "any person who violates any provision of § 8-9-301 *et seq.* or § 8-9-401 *et seq.*, or of any rule, regulation, or order issued pursuant to this chapter, shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Solid Waste Management Act, § 8-6-204."

45. APC&EC Reg. 36.1301 states the following:

- (A) A person shall not maintain a waste tire site.
- (B) It is illegal for any person to dispose of tires, used tires, or portions of tires in the state unless the tires, used tires, or portions of tires are disposed of for processing or collected for processing at a permitted tire processing facility, a tire collection center, or a permitted solid waste disposal facility.
- (C) A person shall not transport, transfer, store, collect, recycle, or otherwise manage used tires, processed tires, or residuals in any manner that:
 - (1) Creates a nuisance;
 - (2) Breeds or harbors mosquitos, snakes, insects, rodents, or other disease-causing vectors;
 - (3) Causes a discharge of any constituent derived from used tires into the air or waters of the State unless permitted otherwise by [A]DEQ; or
 - (4) Creates other hazards to the public health, safety, or the environment as determined by [A]DEQ.

46. APC&EC Reg. 36.1302 states the following:

- (A) This section applies to any one (1) or more of the following:
 - (1) An owner or operator of a waste tire site;
 - (2) Any facility permitted under this regulation that no

longer accepts, collects, or processes tires; or

(3) Any individual responsible for creating unpermitted waste tire piles.

(B)(1) Within thirty (30) calendar days of receiving written notice by [A]DEQ or a local government that the waste tire site must be closed, the owner or operator shall provide [A]DEQ and the applicable regional solid waste management district with:

(a) Information concerning the waste tire site's location and size and the approximate quantity of tires that are accumulated at the waste tire site; and

(b) A written plan specifying a method and time schedule for the removal, disposal, or recycling of tires, subject to approval by [A]DEQ.

(2) The owner or operator shall implement the written plan approved by [A]DEQ according to the schedule.

(C) To close a waste tire site, the owner or operator shall:

(1) Stop public access to the site, including without limitation physically restricting entry to the site;

(2) Post a notice that indicates the site is closed and provides the nearest location where unwanted used tires can be deposited;

(3) Notify [A]DEQ and local governments that have jurisdiction of the onset of closure;

(4) Remove all waste tires, recyclable tires, used tires culled for resale, processed tires, and residuals and deliver to one (1) or more of the following as applicable:

(a) A used-tire program;

(b) A permitted tire processing facility;

(c) A permitted solid waste management facility;

(d) A location approved by DEQ for beneficial use of tires;

(5) Repair the waste tire site to effectively promote surface water flow and remove any soil contamination; and

(6) Notify [A]DEQ in writing within five (5) calendar days of completing closure.

47. Ark. Code Ann. § 8-9-402 (29) defines "Owner" as a person who holds legal title to property where a tire collection center, tire processing facility, tire generator facility, waste tire monofill, waste tire site, or other waste tire facility exists.

48. Ark. Code Ann. § 8-9-402 (28)(B) defines an operator to include a person who performs a function at a waste tire site.

49. As described in paragraphs 1 through 35 and subject to the Court's findings on Count One of this Complaint, the Defendants, Ward, Ward Tire and Auto, LLC, Maxey, Christopher Phillips, Heather M. Phillips, Tommy Jay Phillips, and Hamilton have:

- a. Maintained the Site as a waste tire site in violation of Ark. Code Ann. § 8-9-403(c)(1) and APC&EC Reg. 36.1301(A);
- b. Permitted the open burning of tires at the Site, which is a violation of Ark. Code Ann. § 8-9-403(b);
- c. Maintained the Site in a way that creates a nuisance, breeds vectors, and creates other hazards to public health, safety, or the environment in violation of APC&EC Reg. 36.1301(C); and
- d. Owned or operated the Site, causing them to be subject to all of the remediation requirements of Chapter 13 of APC&EC Reg. 36 and Ark. Code Ann. § 8-9-403(a).

50. Defendants should be assessed civil penalties of up to ten thousand dollars (\$10,000) per day per violation, and DEQ moves the Court to render a judgment for civil penalties against these Defendants for the violations stated above.

51. Plaintiff further moves the Court to compel the Defendants to comply with the remediation and closure requirements of Chapter 13 of APC&EC Reg. 36 and Ark. Code Ann. §

8-9-403(a), and to compel the Defendants to immediately cease unpermitted disposal of tires at the Site.

COUNT THREE: DEFENDANTS WARD TIRE AND AUTO, LLC AND WARD HAVE VIOLATED LICENSED TRANSPORTER PROVISIONS OF TIRE ACT AND APC&EC REGULATION 36

52. DEQ incorporates by reference the allegations set forth in paragraphs 1 through 51.

53. APC&EC Regulation 36 and the Tire Act contain the following relevant provisions:

A. Reg. 36.704 Tire Retailers

Each tire retailer shall:

(2) Collect the (rim removal) fees from the purchaser even if the purchaser elects to keep the used tire removed from the rim;

(3) Pay on a monthly basis the rim removal fees that are collected each month to the Department of Finance and Administration;

B. Reg. 36.705 Tire Transporters

(A) For all tire transporters licensed on or after January 1, 2018, a tire transporter shall meet the following requirements to perform or be compensated for any duties under this regulation:

(5) Ensure that each authorized driver has completed training for the use of the manifest system and certify that each tire removed from the rim and replaced with a new or used tire was assessed a rim removal fee;

C. Ark. Code Ann. § 8-9-411 Tire Transporters-Licenses

(a) For all tire transporters licensed on or after January 1, 2018, a tire transporter shall meet the following requirements to perform or be compensated for any duties under this subchapter related to the administration and operation of a used tire program:

(6) Establish that each authorized driver has completed training for the electronic uniform used tire manifest system;

D. Reg. 36.712 Recordkeeping

(A) Except as otherwise provided in this chapter, a tire generator licensed or registered under this chapter shall maintain all documents related to its used tire duties for three (3) years;

(B) The documents maintained by the tire generator shall accurately reflect the used tire duties performed and collection and payment of all applicable rim removal fees;

(C) The documents shall be available for inspection by [A]DEQ personnel, the Arkansas Department of Finance and Administration personnel, or both during normal business hours.

E. Reg.36.802 Rim Removal Fees Imposed

(C) A rim removal fee shall be charged by the tire retailer to the person who purchases:

(1) A replacement tire for a rim that necessitates the removal of a different tire from the same rim; or

(2) the service of removal of a tire from a rim and replacement with a tire that was not purchased from the tire retailer if the person requesting the rim removal cannot show proof of payment of the rim removal fee under this section for the replacement tire.

F. Ark. Code Ann. § 8-9-404 Rim removal fees-Import fees

(2) The rim removal fee shall be charged by the tire retailer to a person who:

(A) Purchases a replacement tire for a rim that necessitates the removal of a different tire from the same rim; or

(B) Purchases the service of removal of a tire from a rim and replacement with a tire that was not purchased from the tire retailer if the person requesting the rim removal cannot show proof of payment of the rim removal fee under this section for the replacement tire.

G. Reg.36.805 Duties

Each tire retailer shall:

(2) Collect the fees from the purchaser even if the purchaser elects to keep the used tire removed from the rim;

(3) Pay on a monthly basis the rim removal fees that are collected each month to the DFA;

(4) Comply with all requirements related to collecting and reporting rim removal fees.

H. Reg. 36.806 Fee Remittance Procedure

(A)(1) The rim removal fees shall be collected from the purchaser by the tire retailer and remitted to the Director of the Arkansas Department of Finance and Administration.

(B)(1) Each tire retailer shall file a return with the Director of the Arkansas Department of Finance and Administration on or before the twentieth of each month.

I. Ark. Code Ann. § 8-9-404 Rim removal fees-Import fees

(5)(A) The rim removal fees shall be collected from the purchaser by the tire retailer and remitted to the Director of the Arkansas Department of Finance and Administration.

(6)(B)(i) Each retailer shall file a return with the Director on or before the twentieth of each month.

J. Reg. 36. 1301 Prohibited Activities

(B) It is illegal for any person to dispose of tires or portions of tires in the state unless the tires or portions of tires are disposed of for processing or collected for processing at a permitted tire processing facility, a tire collection center, or a permitted solid waste disposal facility.

K. Ark. Code Ann. § 8-9-403 Operation of waste tire sites-Requirements and prohibited activities

(c)(2) It is illegal for any person to dispose of tires or portions of tires in the state unless the tires or portions of tires are disposed of for processing or collected for processing at a permitted tire processing facility, a tire collection center, or a permitted solid waste disposal facility.

54. As described in paragraphs 1 through 35, Defendants Ward and Ward Tire and Auto, LLC:

a. Failed and continues to fail to collect rim removal fees and pay, on a monthly basis, the rim removal fees that are to be collected each month to send to the Department of Finance and Administration. This is a violation of APC&EC Regulation 36.704(2)-(3);

b. Failed to correctly fill out Tire Accountability Program manifests for their customers, failed to account for all rim removal fees for his customer's waste tires, and failed to demonstrate proper use of the manifest system. This is a violation of APC&EC Regulation 36.705(5) and Ark. Code Ann. § 8-9-411(6);

c. Failed to retain documents related to their used tire duties, which is a violation of APC&EC 36.712;

- d. Failed to charge rim removal fees to customers, which is a violation of APC&EC Regulation 36.802(C)(1)-(2) and Ark. Code Ann. § 8-9-404(2)(A)-(B);
- e. Failed to collect rim removal fees, pay them to the Arkansas Department of Finance and Administration on a monthly basis, and comply with all requirements related to collecting and reporting rim removal fees, which is a violation of APC&EC Regulation 36.805, APC&EC Regulation 806(A)(1), and Ark. Code Ann. § 8-9-404(5)(A);
- f. Failed to file a return with the Director of the Arkansas Department of Finance and Administration, which is a violation of APC&EC Regulation 36.806(B)(1) and Ark. Code Ann. § 8-9-404(6)(B)(i);
- g. Disposed of waste tires at an unpermitted disposal facility, which is a violation of APC&EC Regulation 36.1301(B) and Ark. Code Ann. § 8-9-403(c)(3).

55. Defendants Ward and Ward Tire and Auto, LLC should be assessed civil penalties of up to ten thousand dollars (\$10,000) per day per violation, and DEQ moves the Court to render a judgment for civil penalties against these Defendants for the violations stated above.

56. Plaintiff further moves the Court to compel these Defendants to comply with the remediation and closure requirements of Chapter 13 of APC&EC Reg. 36, and to compel the Defendants to immediately cease unpermitted disposal of tires at the Site.

**COUNT FOUR: DEFENDANTS CHRISTOPHER PHILLIPS, WARD, AND WARD
TIRE AND AUTO, LLC HAVE VIOLATED ARK. CODE ANN. § 8-6-205 AND ARK.
CODE ANN. § 8-6-206(B)(1)(A)-(B) OF THE ARKANSAS SOLID WASTE
MANAGEMENT ACT AND APC&EC REGULATION 22**

57. DEQ incorporates by reference the allegations set forth in paragraphs 1 through
56.

58. Ark. Code Ann. § 8-6-205(a) reads as follows:

It shall be illegal for any person:

(1) To violate any provision of this subchapter or any rule or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Division of Environmental Quality;

(2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the division;

(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the division. However, no provision of this subchapter shall be construed so as to prevent an individual from disposing of solid wastes resulting from his or her own household activities on his or her own land if the disposal does not create a public or private nuisance or a hazard to health and does not violate a city ordinance or other law and does not involve the open dumping of garbage;

(4) To dump, deposit, throw, or in any manner leave or abandon any solid wastes, including, but not limited to, garbage, tin cans, bottles, rubbish, refuse, or trash upon property owned by another person without the written permission of the owner or occupant of the property or upon any public highway, street, road, public park or recreation area, or any other public property except as designated for disposal of waste; or

(5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules or orders of the division or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

59. Ark. Code Ann. § 8-6-206(b)(1)-(3) reads as follows:

(b)(1) A person may file a verified complaint in a circuit court of competent jurisdiction as described in subdivision (b)(2) of this section against a defendant if facts establish that the defendant engaged in an act or omission that results in any one (1) or more of the following in this state:

(A) The illegal dumping of solid waste;

(B) The creation or participation in the creation or furtherance of an illegal dump site;

(C) The disposal of solid waste that results from the property owner's own household activities on his or her land if the disposal:

(i) Creates a public or private nuisance or a hazard to health; or

(ii) Involves the open dumping of garbage; and

(D) Any other environmental violation concerning the illegal dumping of solid waste in violation of this chapter or the Used Tire Recycling and Accountability Act, § 8-9-401 *et seq.*

(2) The verified complaint shall be filed in the circuit court of the county where the:

(A) Activity described in the verified complaint occurs;

(B) Situation described in the verified complaint exists; or

(C) Defendant resides.

(3)(A) If the plaintiff is seeking a preliminary injunction or temporary restraining order without notice to the defendant, the requirements of Rule 65(b)(1) and (c) of the Arkansas Rules of Civil Procedure shall be met and the procedures in this subdivision (b)(3) apply.

(B) The circuit court shall enter a temporary order that directs the defendant to perform the following within ten (10) days from the date the temporary order is served on the defendant:

(i) Remove the solid waste from the public or private property or otherwise remediate the environmental violation;

(ii) Dispose of any solid waste or other material at:

(a) A permitted solid waste transfer station, landfill, composting facility, or incinerator; or

(b) A recycling center; and

(iii) File with the circuit court a disposal receipt from the permitted solid waste transfer station, landfill, composting facility, or incinerator where the solid waste was disposed.

60. APC&EC Regulation 22.1502 prohibits persons to operate solid waste disposal sites without a permit from DEQ and prohibits disposal of solid waste at unpermitted disposal sites.

61. As described in paragraphs 1 through 35, Defendants Christopher Phillips, Ward, and Ward Tire and Auto, LLC:

a. Violated a provision of Ark. Code Ann. § 8-6-201 *et seq.* and APC&EC Regulation 22, which is a violation of Ark. Code Ann. § 8-6-205(a)(1);

b. Used or operated a solid waste disposal site without a permit issued from DEQ for such disposal, which is a violation of Ark. Code Ann. § 8-6-205(a)(2) and APC&EC Regulation 22.1502;

c. Disposed of solid waste at a disposal site other than a disposal site permitted by DEQ, which is a violation of Ark. Code Ann. § 8-6-205(a)(3) and Regulation 22.1502;

d. Dumped solid waste upon property owned by another person without the written permission of the owner or occupant of the property, which is a violation of Ark. Code Ann. § 8-6-205(a)(4);

e. Disposed of solid waste contrary to the rules or regulations of DEQ, or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause water or air pollution, which is a violation of Ark. Code Ann. § 8-6-205(a)(5);

f. Illegally dumped solid waste and waste tires at the Site, which is a violation of Ark. Code Ann. § 8-6-206(b)(1)(A); and

g. Created or participated in the creation or furtherance of an illegal dump site, which is a violation of Ark. Code Ann. § 8-6-206(b)(1)(B).

62. Defendants Christopher Phillips, Ward, and Ward Tire and Auto, LLC, should be assessed civil penalties of up to ten thousand dollars (\$10,000) per day per violation, and DEQ moves the Court to render a judgment for civil penalties against the Defendants for the violations stated above.

63. Plaintiff further moves the Court to compel Defendants Christopher Phillips, Ward, and Ward Tire and Auto, LLC to come into compliance with the remediation requirements of APC&EC Reg. 22, Ark. Code Ann. § 8-6-201 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, and APC&EC Reg. 36, and to issue a temporary order compelling these Defendants to remove and dispose of the waste tires and solid waste from the Site in conformity with Ark. Code Ann. § 8-6-206(b)(3).

COUNT FIVE: DEFENDANTS CHRISTOPHER PHILLIPS, HEATHER M. PHILLIPS, TOMMY JAY PHILLIPS, HAMILTON, MAXEY, WARD, AND WARD TIRE AND AUTO, LLC HAVE VIOLATED ARK. CODE ANN. § 8-6-206(B)(1)(D) OF THE ARKANSAS SOLID WASTE MANAGEMENT ACT

64. DEQ incorporates by reference the allegations set forth in paragraphs 1 through 56.

65. As described in paragraphs 1 through 35, Defendants Heather M. Phillips, Tommy Jay Phillips, Christopher Phillips, Ward, Ward Tire and Auto, LLC, Hamilton, and Maxey violated the Tire Act, which is a violation of Ark. Code Ann. §§ 8-6-206(b)(1)(D).

66. Defendants Heather M. Phillips, Tommy Jay Phillips, Christopher Phillips, Ward, and Ward Tire and Auto, LLC, Hamilton, and Maxey should be assessed civil penalties of up to ten thousand dollars (\$10,000) per day per violation, and DEQ moves the Court to render a judgment for civil penalties against the Defendants for the violations stated above.

67. Plaintiff further moves the Court to compel Defendants Christopher Phillips, Heather M. Phillips, Tommy Jay Phillips, Hamilton, Maxey, Ward, and Ward Tire and Auto, LLC to come into compliance with the remediation requirements of APC&EC Reg. 22, Ark. Code Ann. § 8-6-201 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, and APC&EC Reg. 36, and to

issue a temporary order compelling these Defendants to remove and dispose of the waste tires and solid waste from the Site in conformity with Ark. Code Ann. § 8-6-206(b)(3).

PRAYER FOR RELIEF

WHEREFORE, DEQ respectfully requests this Honorable Court to:

A. Declare who is the owner of the Site and declare who is subject to the removal and disposal obligations for the waste tires and solid waste at the Site;

B. Provide injunctive relief by ordering the Defendants to immediately cease all waste tire and solid waste disposal at the Site and ordering the Defendants to remediate the Site in conformity with APC&EC Reg. 22, Ark. Code Ann. § 8-6-201 *et seq.*, Ark. Code Ann. § 8-9-401 *et seq.*, and APC&EC Reg. 36;

C. Impose the maximum civil penalties allowable under the law against the Defendants for each violation of the Tire Act, Ark. Code Ann. § 8-6-201 *et seq.*, and any and all APC&EC Regulations issued pursuant to said statutes, and reduce this amount to judgment;

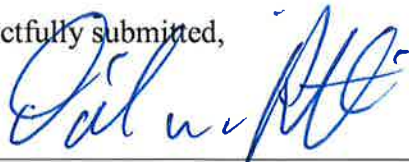
D. Issue a temporary order compelling all Defendants to remove and dispose of the waste tires and solid waste from the Site in conformity with Ark. Code Ann. § 8-6-206(b)(3).

E. Award costs and attorneys' fees to DEQ; and,

F. For all other relief to which it may be entitled.

Respectfully submitted,

By:

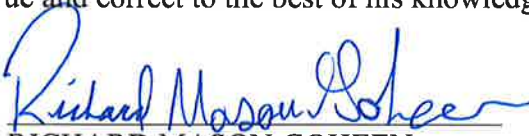


Lisa M. Thompson, Ark. Bar No. 2007061
Daniel W. Pilkington, Ark. Bar No. 2007195
Arkansas Division of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118

VERIFICATION

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

Comes now RICHARD MASON GOHEEN, as an inspector in the Tire Accountability Program of the Arkansas Department of Energy and Environment, Division 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.


RICHARD MASON GOHEEN

Subscribed and sworn to before me this 17th day of March, 2020.



NOTARY PUBLIC

My Commission Expires:

