

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

MARK CALCAGNI,
DENNIS BOYER,
and KENNETH LOVETT,
on behalf of themselves and
all others similarly situated,

PLAINTIFFS

vs.

CASE NO. CV _____

ECO-VISTA, LLC,

DEFENDANT

CLASS ACTION COMPLAINT

COME NOW the Plaintiffs, Mark Calcagni, Dennis Boyer, and Kenneth Lovett, by and through their attorney, and for their Complaint against the Defendant, Eco-Vista, LLC for its release of noxious odors onto Plaintiffs' property, state and allege as follows:

PARTIES

1. At all times hereto, Plaintiff Mark Calcagni has resided at 12642 Arbor Acres Rd, Springdale, Arkansas 72762.
2. At all times hereto, Plaintiff Dennis Boyer has resided at 1969 Dowell Rd, Tontitown, Arkansas 72762.
3. At all times hereto, Plaintiff Kenneth Lovett has resided at 18702 Clear Water Rd, Fayetteville, Arkansas 72704.
4. Defendant owns and operates a Landfill located at 2210 Waste Management Dr., Springdale, Arkansas 72762.

5. At all relevant times hereto, Defendant, including its predecessors and agents, either constructed or directed the construction of the Landfill and exercised control over the Landfill, including day-to-day management and operations.

JURISDICTION AND VENUE

6. Plaintiff Mark Calcagni is a resident of Springdale, County of Washington, State of Arkansas.

7. Plaintiff Dennis Boyer is a resident of Tontitown, County of Washington, State of Arkansas.

8. Plaintiff Kenneth Lovett is a resident of Fayetteville, County of Washington, State of Arkansas.

9. Defendant Waste Management of Arkansas, Inc. is a foreign for-profit corporation incorporated in the state of Delaware.

10. Defendant owns and operates the Landfill, Eco-Vista, LLC, which is incorporated under the laws of the State of Arkansas as a domestic limited liability company.

11. Defendant's Landfill is located in Springdale, County of Washington, State of Arkansas.

12. Plaintiffs' claims arise out of Defendant's release of noxious odors in Washington County.

13. The Court has personal jurisdiction over Defendant, who has at least minimum contacts with the State of Arkansas, because it regularly conducts business in Arkansas through ownership and operation of the Landfill.

14. As all parties reside in the forum state, the claims arise out of conduct which took place in the County of Washington, and because the property that is subject of this action is situated

in the County of Washington, the Circuit Court of Washington County is the proper jurisdiction and venue for adjudicating this case.

15. The Plaintiffs' cause of action has occurred and existed within the last three years.

GENERAL ALLEGATIONS

16. Defendant owns and operates a Landfill located at 2210 Waste Management Dr., Springdale, Arkansas 72762 near Tontitown on a 609-acre site where it receives and processes waste from the community (pictured below). Plaintiffs reside within 3 miles of the Landfill's property boundary.



17. On frequent, recurrent, and continuing occasions too numerous to list herein, Plaintiffs' property has been and continues to be physically invaded by noxious odors.

18. The noxious odors which entered Plaintiffs' property originated from Defendant's Landfill, as a result of Defendant's intentional and/or negligent acts and/or omissions.

19. These odors caused by the Landfill have been and continue to be dispersed across all public and private land in the Class Area.

20. Defendant's Landfill, which includes a 147-acre landfill for municipal solid waste, a 60-acre landfill for construction and demolition debris, and a gas-to-energy facility, accepts substantial tons of waste per day.

21. Materials deposited into Defendant's Landfill decompose and generate (among other things) Landfill gas, an odorous and offensive byproduct of decomposition.

22. Defendant's Landfill operations also produce and transfer large quantities of leachate, a highly odiferous liquid comprised of liquid waste from materials received at the Landfill. If not properly treated and contained, this leachate can emit noxious odors beyond the Landfill's property boundary.

23. Air testing led by the Arkansas Division of Environmental Quality (ADEQ) has also shown significant Regional Screening Level (RSL) exceedances from Defendant's Landfill in five chemical compounds that can be potentially harmful to human health. These compounds include acrolein, benzene, carbon tetrachloride, chloroform, and naphthalene.

24. In the ADEQ results, the testing showed a 4,900% exceedance of the Environmental Protection Agency's RSL in the compound acrolein.

25. Acrolein is a toxic compound that can cause nausea, headaches, and unconsciousness in higher concentrations through short-term exposure.

26. Acrolein derives its name from the term “acrid,” owing to its foul odor.
27. Included in the ADEQ results, testing showed a 209% exceedance of the RSL in the compound benzene.
28. Benzene is also a toxic compound which can cause headaches, dizziness, drowsiness, confusion, rapid or irregular heartbeat, and tremors through short-term exposure.
29. Benzene is also known to have a “sweet” or gasoline-like odor.
30. A properly operated, maintained, and managed Landfill will prevent the escape of fugitive noxious air emissions like the compounds listed above.
31. Defendant is required to control its odorous emissions by, among other things, following proper Landfilling practices, utilizing adequate Landfill cover and covering practices; utilizing adequate lining and lining practices; limiting and/or pre-treating biosolid waste; utilization of odor control technologies; and installing, operating, and maintaining systems for the routing, capture, removal, and elimination of leachate and noxious air emissions.
32. Defendant has failed to follow proper Landfilling practices to prevent noxious off-site odor emissions and has failed to sufficiently collect, capture, and destroy such emissions generated at its Landfill and to prevent odors from the Landfill from invading the homes and properties of Plaintiffs and the Class.
33. As a result of Defendant’s noxious emissions, the Landfill has been the subject of numerous media articles, community complaints, and enforcement actions undertaken by state regulatory agencies.
34. Defendant’s Landfill emissions have been the subject of frequent odor complaints from residents in the nearby residential area.

35. Below is a small sampling of the factual allegations made by putative class members to Plaintiffs' counsel, demonstrating that the Landfill is the source and cause of the odor emissions, which have caused damages to neighboring properties.

- a. In February 2025, Plaintiff Mark Calcagni reported a "gas smell" and that "people have gotten sick & some have gone to the hospital" which has made him "worry for children in the area."
- b. On February 11, 2025, Plaintiff Dennis Boyer reported that he is "[unable] to remain or go outside" because of Defendant's noxious odors.
- c. On February 4, 2025, Plaintiff Kenneth Lovett reported that "[v]apors cause immediate [h]eadache when you can smell them, but they are in the area [continuously]."
- d. On February 4, 2025, putative class members Terry and Teresa Williams reported that "at times the smell is so strong it almost knocks you down. We have to back inside to get away from the odors."
- e. On February 11, 2025, putative class member Michele Carpenter reported that the "odors make me dizzy and have given me a headache and nausea. I have vomited on several occasions and so has my small dog."

36. Defendant's Landfill has repeatedly and continually emitted objectionable noxious odors that were detected outside the bounds of its property.

37. The Landfill has emitted noxious odors that have caused negative impacts to its neighbors.

38. Defendant has repeatedly been cited by regulators for failing to operate the Landfill in accordance with its permits.

39. Defendant's harmful, odorous emissions are continuing; Defendant has failed to cease the noxious emissions, despite knowledge, and despite the emissions being abatable with reasonable care and diligence.

40. The noxious odors emitted from the Landfill are offensive, would be offensive to a reasonable person of ordinary health and sensibilities, and have caused property damage, including by interfering with the ability of Plaintiffs and the Class to use and enjoy their homes and property.

41. The invasion of Plaintiffs' property and that of the Class by noxious odors has reduced the value of and interfered with the use and enjoyment of those properties.

CLASS ALLEGATIONS

A. Definition of the Class

42. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to Arkansas Rule of Civil Procedure 23. Plaintiffs seek to represent a Class of persons preliminarily defined as:

All owners-occupants and renters of residential property from 3 years of the filing of this Complaint to the present who are situated within a three (3) mile radius of Defendant's Landfill.

43. The case is properly maintainable as a class action pursuant to and in accordance with Arkansas Rule of Civil Procedure 23 in that:

- a. The Class, which includes thousands of members, is so numerous that joinder of all members is impracticable;
- b. There are substantial questions of law and fact common to the Class including those set forth in greater particularity herein;
- c. Questions of law and fact such as those enumerated below, which are all common questions to the Class, predominate over any questions of law or fact affecting only individual members of the Class;
- d. A class action is superior to any other type of action for the fair and efficient adjudication of the controversy;

- e. The relief sought in this class action will effectively and efficiently provide relief to all members of the Class.
- f. There are no unusual difficulties foreseen in the management of this class action; and,
- g. Plaintiffs, whose claims are typical of those of the Class, through their experienced counsel, will zealously and adequately represent the Class.

B. Numerosity

- 44. The number of residential households within the Class Area is over 2,400.
- 45. The Class consists of thousands of members and therefore is so numerous that joinder is impracticable.

C. Commonality

- 46. Numerous common questions of law and fact predominate over any questions affecting individual Class Members, including, but not limited to the following:
 - a. Whether and how Defendant negligently, recklessly, willfully, wantonly, maliciously, and negligently failed to reasonably construct, maintain, and operate the Landfill to prevent off-site odor emissions;
 - b. Whether and to what extent Defendant owed any duties to Plaintiffs;
 - c. Which duties Defendant owed to Plaintiffs;
 - d. Which steps Defendant has and has not taken in order to control the emission of noxious odors throughout the construction, maintenance, and operation of its Landfill;
 - e. Whether and to what extent the Landfill's noxious odors were dispersed over the Class Area;
 - f. Whether it was reasonably foreseeable that Defendant's failure to properly construct, maintain, and operate the Landfill would result in an invasion of Plaintiffs' property interests;
 - g. Whether the degree of harm suffered by Plaintiffs and the Class constitutes a substantial annoyance or interference; and,
 - h. The proper measure of damages incurred by Plaintiffs and the Class.

D. Typicality

47. Plaintiffs have the same interests in this matter as all the other members of the Class and their claims are typical of all members of the Class. If brought and prosecuted individually, the claims of each Class Member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories and seek the same type of relief.

48. The claims of Plaintiffs and the other Class Members have a common cause, and their damages are of the same type. The claims originate from the same failure of the Defendant to properly construct, repair, maintain and operate the Landfill.

49. Class Members and Plaintiffs have all suffered injury in fact from the invasion of their properties by Defendant's release of noxious odors causing damage to their properties.

E. Adequacy of Representation

50. Plaintiffs' claims are sufficiently aligned with the interests of the absent Class Members to ensure that the Class's claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class.

51. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

52. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation and in particular class actions stemming from invasions of Landfill emissions. Plaintiffs' counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class Members.

F. Class Treatment Is the Superior Method of Adjudication

53. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

54. The prosecution of separate actions by or against individual members of the Class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the Class, which could establish incompatible standards of conduct for the party opposing the Class; and (ii) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

55. Notice can be provided to members of the Class by U.S. Mail and/or publication.

56. Class treatment of Plaintiffs' claims is appropriate and necessary to ensure that common relief is available to the Class and that Class Members can vindicate their rights in a single proceeding.

CAUSES OF ACTION I **TEMPORARY PRIVATE NUISANCE**

57. Plaintiffs restate the allegations in all previous paragraphs of this Complaint and incorporates them as if fully set forth herein.

58. The noxious odors which entered Plaintiffs' property originated from the Landfill constructed, maintained, and/or operated by Defendant.

59. The noxious emissions were created because of intentional and affirmative acts taken by the Defendant on the offending property.

60. The odors invading Plaintiffs' property are indecent and/or offensive to the senses and obstruct the free use of their property so as to interfere with the comfortable enjoyment of life

and/or property, including by preventing Plaintiffs from using and enjoying the outdoor spaces of their properties.

61. Plaintiffs did not consent for noxious odors to enter their land and property.

62. Defendant owed and continues to owe a duty to Plaintiffs and the putative class to take positive action to prevent and/or abate the interference with the invasion of the private interests of the Plaintiffs.

63. By constructing and then failing to reasonably repair, maintain, and/or operate the Landfill, Defendant has negligently created an unreasonable risk of foreseeable harm by causing the invasion of Plaintiffs' properties by noxious odor emissions.

64. As a foreseeable, direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered injuries and damages to their property including through interference with the use and enjoyment of private property and diminution in the rental value of the properties.

65. The nuisance conditions created by Defendant are abatable with reasonable care, effort, and diligence.

66. The nuisance conditions created by Defendant continue, as they arise frequently and intermittently and can be abated with reasonable diligence.

67. The noxious odors invading Plaintiffs' and the Class's properties cause a substantial interference with the use and enjoyment of property including, but not limited to:

- a. Forcing the Plaintiffs and Class Members to remain inside their homes and forgo the use of their yards, porches, and other spaces, and to generally refrain from outdoor activities;
- b. Causing the Plaintiffs and Class Members to keep their doors and windows closed when they would otherwise have them open;

- c. Depriving the Plaintiffs and Class Members of the full rental value of their homes and properties; and
- d. Causing the Plaintiffs and the Class Members embarrassment, inconvenience, and reluctance to invite guests to their homes.

68. By causing noxious odors produced and controlled by Defendant to physically invade Plaintiffs' land and property, Defendant intentionally, recklessly, and/or negligently created a nuisance which substantially and unreasonably interfered with Plaintiffs' comfortable use and enjoyment of their properties and caused the rental values of said properties to diminish.

69. Whatever social utility the Landfill's operations provide is clearly outweighed by the harm suffered by the Plaintiffs and the putative class, who have on frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the value of their properties.

70. Defendant's substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property and diminution of the rental values constitutes a nuisance for which Defendant is liable to Plaintiffs for all damages arising from such nuisance, including compensatory, exemplary, and injunctive relief.

CAUSE OF ACTION II **PUBLIC NUISANCE**

71. Plaintiffs restate the allegations in all previous paragraphs of this Complaint and incorporates them as if fully set forth herein.

72. Plaintiffs and the Class utilize their properties as residences and reside within the Class Area.

73. The noxious odors which entered the Plaintiffs' and Class's properties originated from the Landfill.

74. The unreasonable odors emitted by the Landfill have been and continue to be dispersed across public and private land throughout the Class Area.

75. The Landfill's noxious odors have interfered with the public's right to unpolluted and uncontaminated air.

76. By failing to reasonably design, operate, repair, and maintain the Landfill, Defendant has caused an invasion of the Plaintiffs' and Class's properties by noxious odors on occasions too numerous to individually list herein.

77. The noxious odors are unreasonable, substantial, and obstruct the free use of Plaintiffs' and the Class's properties, interfering with the use and enjoyment of their properties in the same. This interference includes, but is not limited to:

- a. Forcing the Plaintiffs and Class Members to remain inside their homes and forgo the use of their yards, porches, and other spaces, and to generally refrain from outdoor activities;
- b. Causing the Plaintiffs and Class Members to keep their doors and windows closed when they would otherwise have them open;
- c. Depriving the Plaintiffs and Class Members of the full rental value of their homes and properties; and
- d. Causing the Plaintiffs and the Class Members embarrassment, inconvenience, and reluctance to invite guests to their homes.

78. As a foreseeable, direct, and proximate result of Defendant's conduct as described herein, Plaintiffs and the Class have suffered unique and special damages to their properties.

79. The damages suffered by Plaintiffs and the Class are uniquely injurious to them because they suffer harm relating to the use and enjoyment of their lands and properties, and

diminution in the rental values of those properties, which are harms distinct and apart from those suffered by the general public.

80. The general public is also impacted by the Landfill's odors. Many members of the general public are impacted by the odors when they work, study, commute, shop, or engage in recreation in the Class Area, but unlike Plaintiffs and the Class, they suffer no harm to the use and enjoyment of their homes or property or diminished rental values of their properties.

81. The Plaintiffs and Class did not consent to the past and ongoing invasion of the properties by Defendant's noxious odors.

82. By failing to reasonably construct, operate, repair, and/or maintain the Landfill so as to prevent noxious odor emissions, Defendant has acted and continues to act intentionally, knowingly, recklessly, and/or negligently, and with a conscious disregard for public health, safety, peace, comfort, and convenience.

83. Plaintiffs and the Class suffered, and continue to suffer, harms and damages that are different in kind and in addition to those suffered by the public at large.

84. Any social utility that the Landfill provides is patently outweighed by the harm suffered by Plaintiffs and the Class, who have on frequent occasions been unable to reasonably use and enjoy their homes and properties and have been deprived of the full value of their properties.

85. Defendant is liable to Plaintiffs and the Class for all damages arising from the creation and maintenance of the public nuisance conditions resulting from the Landfill, including compensatory, injunctive, and/or exemplary relief.

CAUSE OF ACTION III
NEGLIGENCE

86. Plaintiffs restate the allegations in all previous paragraphs of this Complaint and incorporates them as if fully set forth herein.

87. On occasions too numerous to mention, Defendant negligently and improperly maintained and/or operated its Landfill, allowing excessive fugitive noxious odor emissions to escape.

88. Defendant owed and continues to owe a duty to Plaintiffs and the putative class, as neighboring residents with private property interests, to prevent and abate the interference with, and the invasion of, their private property interests.

89. By failing to properly construct, maintain and/or operate its Landfill, and follow proper Landfilling practices, Defendant failed to exercise its duty of ordinary care and diligence so that noxious odors would not invade and damage Plaintiffs' property.

90. As a direct and proximate result of Defendant's negligence in maintaining and/or operating the Landfill, Plaintiffs' properties were physically invaded by noxious odors on occasions too numerous to list individually.

91. As a further direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered damages to their property as alleged herein. Such damages include, but are not limited to, diminution in the value of Plaintiffs' property and the interference with the right of use and enjoyment of Plaintiffs' property.

92. By failing to construct, maintain and/or operate its Landfill, Defendant has caused the invasion of Plaintiffs' property by noxious odors.

93. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly constructed, maintained and/or operated its Landfill and knew, or should have

known upon reasonable inspection that such actions would cause Plaintiffs' property to be invaded by noxious odors.

94. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' residences have been and continue to be physically invaded by noxious odors.

95. Defendant's conduct in causing noxious odors to invade Plaintiffs' property has caused damages to Plaintiffs' property, as alleged herein, and Plaintiffs seek all damages allowed by law, including, but not limited to, compensatory, exemplary, and injunctive relief.

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgement as follows:

- A. Certification of the proposed Class pursuant to Arkansas Rule of Civil Procedure 23;
- B. Designation of the Plaintiffs as the representatives of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiffs and the Class Members against Defendant;
- D. Compensatory damages to the Plaintiffs and the Class, including pre-judgment and post-judgment interest;
- E. An Order holding that entrance of the aforementioned noxious odors upon Plaintiffs' property constitute a nuisance;
- F. An order holding that Defendant was negligent in causing property damages to Plaintiffs and the Class, causing damages to property;
- G. Injunctive relief not inconsistent with Defendant's federally and state-enforced air permits;

H. Attorney fees and costs; and,

I. All other proper relief as the Court deems just.

PLAINTIFF DEMANDS A JURY TRIAL.

Dated: April 17, 2025

Respectfully submitted,

/s/ Ken Osborne

Electronically Signed

KEN OSBORNE, ABA# 87128

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** Pro Hac Vice Applications to be Submitted*

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