

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

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

**PLAINTIFF**

**v.**

**CASE NO. \_\_\_\_\_**

**ROUTH WRECKER SERVICE, INC.**

**DEFENDANT**

**COMPLAINT**

COMES now the Plaintiff, the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ)<sup>1</sup>, by and through its attorneys, Stacie R. Wassell and Daniel Pilkington, and for its Complaint filed against the Defendant, Routh Wrecker Service, Inc. (Defendant), state as follows:

**INTRODUCTION**

1. DEQ has filed this matter to seek injunctive relief and compel Defendant's compliance with a Consent Administrative Order (CAO), LIS 17-046, entered between the Defendant and DEQ. The CAO previously settled Defendant's violations of environmental laws and regulations regarding Defendant's underground storage tanks located at 6403 Fourche Dam Pike, Little Rock, Pulaski County, Arkansas (the Site).

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<sup>1</sup> 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.

2. DEQ seeks a judgment for the penalties associated with the Defendant's violations, costs, and expenses associated with enforcement of this matter.

3. DEQ also seeks a judgment for additional stipulated penalties that were agreed upon by DEQ and Defendant in the CAO.

### **PARTIES**

4. Defendant is an Arkansas corporation who conducts business in Pulaski County, Arkansas and is the owner of the two underground storage tanks (USTs) located in Pulaski County, Arkansas.

5. DEQ is a state agency charged, under Ark. Code Ann. § 8-7-801 *et seq.*, with the responsibility to administer and enforce all laws and regulations relating to the underground storage tank release detection, prevention, and corrective action program. The principle office of DEQ is located at 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction of this matter as provided by Ark. Code Ann. § 16-13-201.

7. Venue is proper in Pulaski County, Arkansas, pursuant to Ark. Code Ann. §§ 16-60-102(1).

### **FACTUAL ALLEGATIONS**

8. Defendant is the owner of two USTs located at the site.

9. On June 13, 2017, Defendant and DEQ entered into a CAO to voluntarily resolve violations of Ark. Code Ann. § 8-7-801 *et seq.* and Arkansas Pollution Control and Ecology Commission Regulation 12. A true and correct copy of the CAO is attached hereto as Exhibit A.

10. The CAO was issued pursuant to Ark. Code Ann. § 8-7-801 *et seq.*, Ark. Code Ann. § 8-7-508, and Ark. Code Ann. § 8-4-101 *et. seq.*

11. The CAO was effective on July 25, 2017 under the provisions of Ark. Code Ann. § 8-4-103(d).

### **COUNT 1**

#### **Failure to Comply with paragraph 1 of the Order and Agreement section of the CAO**

12. The CAO on page 4, paragraph 1(b) of the Order and Agreement section states:

Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation to DEQ that a certified Class A and Class B operator has been designated at the Site.

13. As of the present date, Defendant has not provided DEQ with documentation indicating that a certified Class A and Class B operator has been designated at the Site.

14. The CAO on page 4, paragraph 1(c), of the Order and Agreement section states:

Within thirty (30) calendar days of the effective date of this CAO, Respondent shall pay the 2016 UST annual registration fee of One Hundred Fifty Dollars (\$150.00), the Ten Dollar (\$10.00) late fee associated with the 2016 UST annual registration, the Ten Dollar (\$10.00) late fee associated with the 2009 UST annual registration, and the Ten Dollar (\$10.00) late fee associated with the 2014 UST annual registration for a total amount of One Hundred Eighty Dollars (\$180.00). Payment of these tank fees and late fees shall specify the associated invoice numbers, TKS-133943, TKS-097359, and TKS-123691, and shall be made payable to Fiscal Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

15. The Department received a check dated November 1, 2017 from Routh Wrecker Service, Inc. in the amount of Two Thousand Seven Hundred Dollars (\$2,700.00) for fees and civil penalty pursuant to the CAO. Because Defendant returned the signed CAO within twenty (20) days of receipt, the total amount owed was One Thousand Six Hundred Ninety Dollars (\$1,690.00)—\$340.00 for past due invoices and \$1,350.00 for the civil penalty assessed in the

CAO. DEQ deposited the original check on March 12, 2018, and issued a refund check dated March 22, 2018 for the amount of One Thousand Ten Dollars (\$1,010.00). On March 26, 2018, DEQ was notified that the check from Routh Wrecker Service, Inc. was returned due to non-sufficient funds. DEQ requested Defendant to return the check from DEQ and remit the amount due for the fees and civil penalty. Defendant did not return the check from DEQ. Defendant cashed the check from DEQ. A copy of the returned check is attached as Exhibit B.

16. As of the present date, Defendant has not paid any of the fees described in paragraph 15 above.

17. As of the present date, Defendant has not returned the refund of One Thousand Ten Dollars (\$1,010.00) to DEQ.

18. DEQ moves the Court to order the Defendant to immediately comply with paragraphs 1(b) and 1(c) of the Order and Agreement section of the CAO.

**COUNT 2**  
**Failure to pay civil and stipulated penalties**

19. The CAO on page 4, paragraph 2 of the Order and Agreement section, states:

In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of **TWO THOUSAND SEVEN HUNDRED DOLLARS (\$2,700.00)** or one-half of the penalty, **ONE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$1,350.00)** if this CAO is signed and returned to Josh Hesselbein, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:30 p.m. on May 25, 2017. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to ADEQ and mailed to Fiscal Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317. In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection, as well as all other lawful fees and penalties.

20. As of the present date, the Defendant has not paid the civil penalty described in paragraph 19 above.

21. As of the present date, Defendant has not returned the refund of One Thousand Ten Dollars (\$1,010.00) to DEQ as described in paragraph 17 above.

22. The CAO on page 4, paragraph 3 of the Order and Agreement section, states:

If Respondent fails to meet any requirement of this CAO within the applicable deadline established in the CAO, ADEQ may assess stipulated penalties for delay in the following amounts:

- a. First day through the fourteenth day: \$100 per day
- b. Fifteenth day through the thirtieth day: \$500 per day
- c. Each day beyond the thirtieth day: \$1000 per day

These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ reserves the right to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

23. As described in counts 1 and 2 above, the Defendant has failed to comply with the requirements of the CAO within applicable and agreed deadlines. Defendant has been in default of the CAO since July 25, 2017, and DEQ is entitled to stipulated penalties as allowed in paragraph 3 of the Order and Agreement section of the CAO.

24. DEQ seeks a judgment in favor of DEQ for the amount owed in civil penalties and stipulated penalties described above, plus all cost and expenses associated with collection of these penalties.

**COUNT 3**  
**Unjust Enrichment**

25. Unjust enrichment is

a general principle underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly.

*Sparks Reg'l Med. Ctr. v. Blatt*, 55 Ark. App. 311, 316–17, 935 S.W.2d 304, 307 (1996) (quoting 66 Am.Jur.2d, Restitution and Implied Contracts, § 3 (1973)).

26. The phrase “unjust enrichment” does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so. *Id.* At 317, 935 S.W.2d at 307. To find unjust enrichment, a party must have received something of value to which he was not entitled and which he should restore. *Id.* However, there must be some operative act, intent, or situation to make the enrichment unjust and compensable. *Id.*

27. The facts relevant to unjust enrichment are set forth in paragraphs 14-17 above.

28. As of the present date, Defendant has not returned the refund of One Thousand Ten Dollars (\$1,010.00) to DEQ as described in paragraphs 15-17 above.

29. DEQ moves the Court to order the Defendant to pay to DEQ the amount to which Defendant was unjustly enriched, One Thousand Ten Dollars (\$1,010.00), and to reduce such amount to judgment.

**VIOLATIONS OF LAW**

30. DEQ incorporates the preceding paragraphs by reference.

31. Pursuant to Ark. Code Ann. § 8-7-806(b):

The Department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

- (1) Restrain any violation of or compel compliance with any ... order issued pursuant to this subchapter....
- (3) Recover all costs, expenses, and damages to the department....

32. The CAO is an order that is issued and is enforceable under the provisions of Ark. Code Ann. § 8-7-806(b).

33. Defendant's failure to comply with the terms of the CAO entitles DEQ to file this action to obtain compliance, and Defendant's actions to receive something of value to which it was not entitled and which it should restore entitles DEQ to file this action against Defendant for unjust enrichment.

#### **PRAYER FOR RELIEF**

WHEREFORE, DEQ prays that the Court

1. Order and compel the Defendant to comply with paragraphs 1(b), 1(c), and 2 of the Order and Agreement section of the CAO;
2. Enter a judgment against Defendant for civil penalties in the amount of \$1,350.00 in favor of DEQ;
3. Enter a judgment against Defendant for all additional stipulated penalties as agreed to in the CAO;
4. Order and compel the Defendant to repay the amount to which it was unjustly enriched, and reduce this amount to judgment;
5. Enter an award for costs and attorney fees, including payment to DEQ for the refund; and
6. Provide all further relief to which DEQ may be entitled.

Respectfully submitted,

Arkansas Department of  
Environmental Quality

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