

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

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

PLAINTIFF

VS. NO. CV _____

**MICHAEL WAYNE WINNINGHAM, individually;
BRRB GROUP OF STORES, INC.; AND
SANDHU, LLC**

DEFENDANTS

**COMPLAINT AND REQUESTS FOR DECLARATORY RELIEF AND FOR
INJUNCTIVE RELIEF**

Comes now the Plaintiff, the Division of Environmental Quality (DEQ), a Division of the Arkansas Department of Energy and Environment¹, by and through its attorneys, Lisa M. Thompson and Daniel W. Pilkington, and for its Complaint filed against Michael Wayne Winningham, BRRB Group of Stores, Inc., and Sandhu, LLC (collectively the “Defendants”), states the following:

I. INTRODUCTION

1. This matter is a civil action brought under the authority of the Used Tire Recycling and Accountability Act (“Tire Act”), Ark. Code Ann. § 8-9-401 *et seq.*, Ark. Code

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.

Ann. § 8-9-105, and the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 36.

2. This matter seeks the remediation of a waste tire site located at 505-511 Mountain Pine Road, Hot Springs, Garland County, Arkansas (“the Site”).

3. This action seeks relief for violations of the Tire Act, Ark. Code Ann. § 8-9-401 *et seq.* and violations of APC&EC Regulation 36.

4. DEQ is requesting declaratory relief, 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.* and APC&EC Regulation 36.

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 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 Michael Wayne Winningham (“Winningham”) is an Arkansas resident who operates a small engine repair service and an illegal waste tire operation at the Site.

9. Defendant Sandhu, LLC (“Sandhu”) is an Arkansas Domestic Limited Liability Company in good standing that possibly owns the Site.

10. Defendant BRRB Group of Stores, Inc. (“BRRB”) is a domestic for profit corporation doing business in Garland County, Arkansas that possibly has an ownership interest in the Site.

11. The events giving rise to this action occurred at 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 Garland 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

14. On or about September 24, 2018, DEQ received a complaint that Winningham was allegedly dumping tires at or near the Site.

15. On October 2, 2018, DEQ inspectors visited the Site and conducted an inspection. During this inspection, two members of the Garland County Department of Environmental Services and Winningham appeared at the Site.

16. During the October 2, 2018 inspection, Winningham admitted to the DEQ inspectors that he was responsible for the tires located at the Site. Winningham further admitted

that he typically picked up tires for free from persons in the area who did not want them, and then he would bring the tires back to the Site to be sold.

17. During the October 2, 2018 inspection, the DEQ inspectors observed approximately 2,700 waste tires at the Site. Attached and marked for identification purposes as “Exhibits 1-6” are true and correct copies of photographs taken of the Site by DEQ inspectors on October 2, 2018.

18. While inspecting the Site on October 2, 2018, DEQ inspectors determined that the Site was a waste tire site as defined in the Arkansas waste tire statutes and regulations. Before the inspection concluded, a member of the Garland County Department of Environmental Services issued a citation to Winningham for operating a waste tire site in violation of Ark. Code Ann. § 8-9-403.

19. On October 16, 2018, DEQ mailed a copy of the October 2, 2018 inspection report and complaint investigation letter to Winningham and demanded that he initiate all necessary actions to correct the violations cited in the report.

20. On February 20, 2019, DEQ inspectors conducted a follow up investigation of the Site. During this inspection, Mr. Jagtar Singh Sandhu (Mr. Sandhu) arrived at the Site, introduced himself, and stated that Sandhu is the owner of the Site.

21. According to Mr. Sandhu, Sandhu LLC leased the Site to Winningham to operate his business. The business was operating under the unregistered name of “Cowboy’s Small Engine Auto & Tire.” Mr. Sandhu further indicated that he had been trying to get Mr. Winningham and his business, including the tires, off of his property for approximately two months.

22. During the February 20, 2019 inspection, Mr. Sandhu gave permission for DEQ inspectors to enter the Site. During this inspection, DEQ inspectors observed approximately 3,500 waste tires at the Site. Attached and marked for identification purposes as “Exhibits 7-21” are true and correct copies of photographs taken by DEQ inspectors of the Site during the February 20, 2019 inspection.

23. On March 11, 2019, DEQ mailed a copy of the February 20, 2019 inspection report and complaint investigation letter to both Winningham and Sandhu, demanding that they initiate all necessary actions to correct the violations cited in the report.

24. On April 9, 2019, DEQ received a correspondence from Mr. Roy Biplob regarding the Site. Mr. Biplob indicated in his letter that he owned the Site; that he previously leased the Site to Winningham; that he served Mr. Winningham with a Ten Day Notice to Vacate on December 7, 2018; and that Winningham was served with a Citation for Failure to Pay Rent – Refusal to Vacate. Attached and marked for identification purposes as “Exhibit 22” is a copy of the correspondence from Mr. Biplob to DEQ.

25. As of the present date, Mr. Winningham is subject to criminal prosecution before the District Court of Garland County, in case numbers HTS-19-3705, HTS-19-2295, and HTS-19-19-1989, to remove and properly dispose of the tires at the Site.

26. As of the present date, DEQ has not received evidence that all tires at the Site have been removed and properly disposed of at a DEQ-permitted processing or disposal facility.

27. A review of the Garland County property records establishes that, on or about December 20, 2006, Sandhu purchased the Site, and on September 12, 2016, Sandhu executed a Contract for the Sale of Real Property with BRRB concerning ownership of the Site. Attached and marked for identification purposes as “Exhibit 23” and “Exhibit 24” are true and correct

copies of the deed transferring ownership of the Site from Four States Investments, LLC to Sandhu and the aforementioned Contract for the Sale of Real Property.

28. 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.

V. CAUSE OF ACTION

COUNT ONE: REQUEST FOR DECLARATORY RELIEF

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

30. DEQ seeks remediation of the Site and states that it is necessary to declare the previous and current ownership of this waste tire site. DEQ seeks a determination of ownership of the Site to conclusively establish the legal remediation obligations of the parties.

31. DEQ moves the Court to enter a Declaratory Judgment regarding ownership of the Site pursuant to Rule 57 of the Arkansas Rules of Civil Procedure and Ark. Code Ann. § 16-111-101 *et seq.*, and moves the Court to subsequently grant DEQ’s relief in count two of the Complaint against the owners of the Site as determined by the Court.

COUNT TWO: DEFENDANTS VIOLATED THE TIRE ACT AND APC&EC REGULATION 36 BY MAINTAINING A WASTE TIRE SITE

32. DEQ incorporates by reference the allegations set forth in paragraphs 1 through 31.

33. 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.”

34. 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.

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

36. 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.

37. 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."

38. 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.

39. 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.

40. As described in paragraphs 14 through 28, the Defendants 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. Disposed of waste tires at the Site, an unpermitted site, in violation of Ark. Code Ann. § 8-9-403(c)(2) and APC&EC Reg. 36.1301(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.

41. 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 the Defendants.

42. 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, and to compel the Defendants to immediately cease unpermitted disposal of tires at the Site.

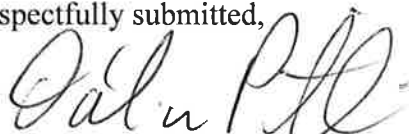
PRAYER FOR RELIEF

WHEREFORE, DEQ respectfully requests this Honorable Court to:

- A. Declare ownership of the waste tire site, described as the Site in this Complaint;

- B. Provide injunctive relief by ordering the Defendants to immediately cease all tire disposal at the Site and ordering the Defendants to immediately commence remediation and closure of the Site pursuant to APC&EC Regulation 36 and Ark. Code Ann. § 8-9-401 *et seq.*;
- C. Impose the maximum civil penalties allowable under the law against the Defendants for each violation of the Tire Act and any and all APC&EC Regulations issued pursuant to said statutes;
- D. Award costs and attorneys' fees to DEQ; and,
- E. For all other relief to which it may be entitled.

Respectfully submitted,

By: 

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