

ADEQ

ARKANSAS
Department of Environmental Quality

October 10, 2013

Kenny Treat
Treat Family Trust
C/O Kerry D. Chism, Esq.
701 S. Church St.
Mountain Home, AR 72653

RE: Proposed Consent Administrative Order; Waste Tire Processing Facility; Permit Number 0022-SWTP; AFIN 03—00208; Treat Family Trust Property.

Dear Mr. Treat:

Enclosed is a proposed Consent Administrative Order concerning the above-mentioned facility and surrounding property.

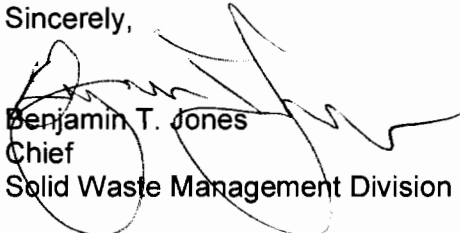
The Department has determined that this Consent Administrative Order is necessary to ensure compliance with the Arkansas Solid Waste Management Act and the Arkansas Pollution Control and Ecology Commission Regulation 14.

Please be advised this Consent Administrative Order contains proposed Findings of Fact and a proposed Order. The Department is willing to discuss this matter in an attempt to ensure compliance with the above-mentioned Act and Regulation.

If you can agree to the terms in this Order, please sign the Order and return the original to me. When the Director of the Department has signed the Order, a copy will be sent to you for your files.

You may wish to consult with an attorney regarding this matter. Your immediate attention to this matter is necessary. If you have any questions, or if you wish to schedule a meeting, please feel free to contact me at jonesb@adeq.state.ar.us or (501) 682-0602.

Sincerely,


Benjamin T. Jones
Chief
Solid Waste Management Division

Enclosure

cc: Karen Bassett, Chief Deputy Director, ADEQ
Lorielle Gutting, Attorney, Legal Division, ADEQ
Bryan Leamons, Engineer Supervisor, Solid Waste Division, ADEQ
Scott McWilliams, Enforcement Coordinator, Solid Waste Division, ADEQ
Gary Meador, District Inspector, Solid Waste Division, ADEQ

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

OZARK MOUNTAIN REGIONAL SOLID WASTE MANAGEMENT DISTRICT
WASTE TIRE PROCESSING FACILITY

AND

KENNY TREAT, AS TRUSTEE OF THE PROPERTY LOCATED AT
831 CR 784 MOUNTAIN HOME, ARKANSAS 72653
AFIN 03-00208
PERMIT NUMBER 0022-SWTP

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CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to the authority of the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*, and the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation 14 (hereinafter "Reg. 14").

The issues herein having been settled by the agreement of the OZARK MOUNTAIN REGIONAL SOLID WASTE MANAGEMENT DISTRICT (hereinafter "District"), Kenny Treat (hereinafter "Trustee"), and the Director of the Arkansas Department of Environmental Quality (hereinafter "ADEQ"), it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. The District previously operated a waste tire processing facility (ADEQ Permit 0022-SWTP [hereinafter "the Permit"]) located at or near 831 CR 784, Mountain Home, Baxter County, Arkansas 72653.
2. The property on which the facility was operated as well as the property surrounding the former facility site is owned by the Treat Family Trust/Kenton F. and Carolyn L. Co-Trust, with Kenny Treat as the trustee.

3. ADEQ, as administered by its Director, is the state agency charged with ensuring compliance with Ark. Code Ann. § 8-6-201 *et seq.* and the regulations promulgated thereunder, including APC&EC Reg. 14.
4. APC&EC Reg. 14.1501 states: "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."
5. On September 2, 2010, an ADEQ Solid Waste Management Division Inspector noted that the District had ceased all operations at the Waste Tire Processing Facility. The Inspector further noted that the District had contracted with a recycling company from Kansas to load, transport, and recycle the District's newly generated waste tires. The District, however, has failed to remove all waste tires and processed tires from the Waste Tire Processing Facility as well as the property surrounding the former facility. The failure to remove tires from the site for purposes of closure of the site is a violation of APC&EC Reg.14.1501.
6. The former facility as well as the property around it that have baled and loose tires on it constitute a disposal site as defined at Ark. Code Ann. § 8-6-203(1). The former site and the surrounding property are not permitted to accept solid waste for disposal. The disposal of solid waste at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the department is an unlawful act under Ark. Code Ann. § 8-6-205(a)(3).
7. The loose and baled tires on the former facility and surrounding property are disposed of in a manner that has created, or is likely to create, a public nuisance or a public health hazard. Tires collect water and provide breeding grounds for mosquitos as well as provide shelter for other potential vectors. Mosquitos and vectors can and do spread

various diseases. The creation of a public nuisance or public health hazard by the disposal of solid waste constitutes a violation of Ark. Code Ann. 8-6-205(a)(5).

8. The District and the former trustee of the property worked together on an Alternative Disposal project referred to as the DAMCO project. A large quantity of the tires processed at the site were baled and used in the DAMCO project to create a lake on the property.
9. Due to the lack of resources available to the District to remove and properly manage the tires remaining onsite, ADEQ agreed to an extension of the DAMCO project that will incorporate the remaining tires on the site.
10. The DAMCO project extension required a design plan from a professional engineer to ensure structural integrity and safety of the project.
11. Site Specific Condition Number 1 of the Permit requires the District to establish and maintain Fifty Seven Thousand Dollars (\$57,000) of financial assurance. The District currently has three (3) Certificates of Deposit (Account Numbers 90580459, 90580547, and 90580352) at First Federal Bank totaling Seventy-Five Thousand Dollars (\$75,000).

Therefore the parties do hereby agree that:

ORDER AND AGREEMENT

1. Due to the lack of resources available to the District to remove and properly manage the tires remaining onsite, ADEQ agrees to allow the District access to its financial assurance described in Paragraph 11 in the Findings of Fact section of this Order. ADEQ will take the actions necessary to make these funds available to the District.
2. Within sixty (60) calendar days of the effective date of this Order the District and Trustee shall submit a plan, including a schedule, for the DAMCO project extension designed by a professional engineer licensed in the state of Arkansas.
3. Within sixty (60) calendar days of the effective date of this Order the District and Trustee shall submit a plan, including a schedule, to complete the closure of the waste tire

processing facility to address any items necessary other than removal of the tires to meet the closure requirements in Regulation 14.

4. ADEQ will review the plans submitted as required in Paragraphs 2 and 3 of this section. Any deficiencies found in the plan(s) will be communicated to the District in writing. The District shall respond, within fifteen (15) calendar days, to any noted deficiencies in writing stating how those deficiencies will be addressed. If no deficiencies are initially found or if all deficiencies are addressed, ADEQ will issue an approval of the plans in writing.
5. The District and the Trustee shall implement the plans within ten (10) working days of ADEQ's approval of the plans.
6. The Trustee will grant access onto the property to the District for the purpose of completing the DAMCO extension project as approved by ADEQ in the DAMCO extension project plan.
7. The District and the Trustee shall submit a completion report of the DAMCO extension project certified by a professional engineer within 10 working days of completion of the project.
8. If any event occurs which causes or may cause delay in the achievement and completion by the District of the requirements of the deadlines established in this Order, the District and the Trustee shall notify ADEQ, in writing, within five (5) business days of knowledge of such delay, specifying in detail the anticipated length of the delay, the precise cause of the delay and measures being taken to correct and minimize the delay.
9. ADEQ may grant an extension of any provision of this Order, in its discretion, provided that the delay has been or will be caused by circumstances beyond the control of and without the fault of the District and the Trustee. The burden of proving such cause of delay rests with the District. Failure to notify ADEQ of any delay within the time frames specified in this Order may be grounds for denying an extension.

10. The District and the Trustee shall pay to ADEQ civil penalties as authorized by the Arkansas Solid Waste Management Act for failure to meet any deadlines required by this Order as follows:

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|-----|--|--------------------|
| (a) | First day through the fourteenth day: | \$100.00 per day |
| (b) | Fifteenth day through the thirtieth day: | \$500.00 per day |
| (d) | Each day beyond the thirtieth day: | \$1,000.00 per day |

Any such penalties shall be due and payable upon demand to ADEQ except for good cause shown as specified in paragraphs 8 and 9 of this section. These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ for the failure of the District or the Trustee to comply with this Order.

11. Nothing contained in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not purport in any way to relieve the District or the Trustee of their responsibility for obtaining any necessary permits, nor does it exonerate any past, present, or future conduct which is not expressly addressed.
12. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation 8. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period. Notwithstanding the public requirements, the corrective actions necessary to achieve compliance with terms of the permit shall be taken immediately. Pursuant to APC&EC Reg.8.407(B), this Order shall be effective upon its execution.
13. This Order has been reviewed and approved by the Ozark Mountain Regional Solid Waste Management District Board in a duly convened meeting with a quorum present. It is the intention of the District Board to be bound by the terms appearing in the Order.

14. The District Board has authorized the Board member named below to sign this Order on behalf of the Board. A copy of an approved Resolution or the Minutes of the Board Meeting are attached as Exhibit A.

SO ORDERED THIS _____ day of _____, 2013.

Teresa Marks, Director, ADEQ

APPROVED AS TO FORM AND CONTENT:

**OZARK MOUNTAIN REGIONAL SOLID
WASTE MANAGEMENT DISTRICT**

BY _____
(Signature)

(Printed Name)

(Title)

(Date)

**KENNY TREAT, AS TRUSTEE OF THE
PROPERTY**

(Signature)

(Printed Name)

(Date)