

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**IN THE MATTER OF:
REMEDIAL ACTION TRUST FUND PRIORITY LIST
ADDITION; MID-SOUTH RECLAMATION INDUSTRIES, INC.
SMACKOVER, UNION COUNTY**

DOCKET No. 02-____R

PETITION TO INITIATE RULEMAKING

Petitioner, the Hazardous Waste Division of the Arkansas Department of Environmental Quality, (hereinafter “ADEQ” or “Department”) and for its Petition to Initiate Rulemaking to add the Mid-South Reclamation Industries, Inc. facility located near Smackover, Union County, Arkansas, to the Remediation category of the State Priority List sites set forth in the Arkansas Pollution Control & Ecology Commission’s Regulation No. 23 (Hazardous Waste Management), Section 27(b)(2).

1. Mid-South Reclamation Industries, Inc. (hereinafter “Mid-South”) is an inactive waste tire processing facility located at 2 Kenova Road in Smackover, Union County, Arkansas. Waste tires were brought to the site and stored until they could be de-beaded and shredded. The shredded tires were then sold for fuel, or reduced further and sold as rubber turf. The facility is privately owned by Drew Sheppard and Courtney Sheppard via a parent company, Sheppard Land and Timber Company. Sheppard Land and Timber owns 85% of Mid-South stock.

2. In April 1991, Mid-South experienced a fire in a storage area used for tires and shredded rubber. This fire burned for several weeks before going out. In June 1992, the Pollution Control and Ecology Commission implemented Regulation No. 14 (Waste Tire Management), which required permits for tire storage and processing facilities. ADEQ staff then began work to attempt to bring the facility into compliance with the new waste tire regulations.

3. ADEQ conducted routine compliance inspections at Mid-South beginning in June 1992; and Mid-South received a waste tire processing permit on September 24, 1992. The facility continued to operate in noncompliance with the requirements of APC&EC Regulation No. 22

(Solid Waste Management) throughout the operating history of the facility, from approximately 1992 until the facility ceased active operations in 1998. The company submitted a Corrective Action Plan to ADEQ in October 1997, with a suspense of April 30, 1998 to complete the actions called for in the plan.

4. On April 30, 1998, Mid-South experienced another fire in its permitted unit. This fire spread to the unpermitted area on May 1, 1998. The Smackover and Norphlet fire departments responded to these fires, but Mid-South was unable to pay the costs of extinguishing the fires. ADEQ officials were notified and retained services to monitor and respond to the fire. Several attempts were made using conventional fire-fighting techniques and services; but were unsuccessful in extinguishing the fire. These efforts exhausted the emergency funds authorized by the Director for response actions. Due to the large quantity of tires involved, their capacity to sustain the fire, and their physical location, it was determined that the fire would have to burn itself out over an estimated two to three month time period. The site was visually monitored during this time by the fire departments and ADEQ inspectors.

5. ADEQ took enforcement action against Mid-South by issuing a Notice of Violation (NOV) on May 14, 1998. This NOV found reasonable grounds that Mid-South had violated the provisions of APC&EC Regulation No. 22, and sought civil penalties in the amount of \$150,200. Mid-South began negotiations with ADEQ to resolve this NOV.

6. On July 14, 1998, the U.S. Environmental Protection Agency (U.S. EPA) Region VI was notified by concerned citizens in the Smackover area that the April fire at the Mid-South site was still burning. EPA tasked its Superfund Technical Assistance and Response Team to conduct an emergency response to extinguish the fires. The Mid-South site was added to EPA's CERCLIS list on July 16, 1998 and emergency removal activities were initiated in order to extinguish the smoldering fire. All emergency response activities at the site were completed by July 24, 1998.

7. ADEQ and Mid-South entered into a Consent Administrative Order (CAO), LIS No. 98-066 as a compromise to resolve the issues charged in the May 1998 NOV. Mid-South agreed to cease receipt and storage of tires at their facility, to submit a corrective action plan to ADEQ for

approval within 60 days, and to clean up the site within 120 days of approval of the corrective action plan. Mid-South also agreed to pay a civil penalty of \$25,000, clean up the site within 90 days, and sell the property with the proceeds of the sale to be used to implement a Supplemental Environmental Project designed to advance environmental interests. Failure to comply with the corrective action plan would cause Mid-South to forfeit a letter of credit issued by the First National Bank of El Dorado, Arkansas, in the amount of \$100,000 at which time ADEQ would apply these funds for cost recovery of remediation at the facility. Mid-South signed the corrective action plan on or about October 28, 1998, with an effective date of December 12, 1999.

8. Mid-South defaulted on the conditions of the CAO, and on April 1, 1999, ADEQ filed suit in civil court to compel Mid-South to comply with the conditions of the order and collected the funds from the letter of credit for application against the costs of the site's cleanup. Litigation to enforce the terms of the CAO is still pending as of January 2, 2002.

9. ADEQ conducted a site investigation at the Mid-South facility in April, 2001 to determine continuing risks posed by the conditions on the site. Toxic metals and cyanide compounds were detected in surface soil and sediment samples during the April 2001 investigation. The analytical results reported elevated levels of arsenic, barium, cadmium, chromium, cobalt, copper, iron, lead, manganese, nickel, sodium, thallium, zinc, and cyanide at approximately three times background levels.

10. Little or no clean-up has been accomplished since the 1998 fires were extinguished. Access to the site is currently uncontrolled. Approximately 36,000 cubic yards of shredded tire and rubber material and nearly 8,000 intact tires remaining at the site continue to pose an imminent risk for another tire fire. Such a fire would endanger human health and the environment by releasing hazardous substances from the tire residues to the soil and surface waters as well as emitting air pollutants from the burning tire material.

11. Efforts to compel the responsible parties to address remediation of the Mid-South site have garnered little result. Preliminary costs for cleaning up the site have been estimated at

approximately \$1.03 million, which greatly exceeds the amount of financial assurance posted by Mid-South. The Department is therefore seeking to address and clean up the site under provisions of the Arkansas Remedial Action Trust Fund Act (RATFA).

12. Provisions of the Arkansas Remedial Action Trust Fund Act (Arkansas Code, Annotated, § 8-7-5 and APC&EC Regulation No. 23, § 26(b)) require that before any moneys from the Remedial Action Trust Fund are expended on a hazardous substance site, that site must be listed on the Trust Fund Priority List in Regulation No. 23, § 27. This petition seeks to initiate rulemaking to add the Mid-South facility to the Remedial Action Trust Fund Priority List in order to fund a timely response to the hazard posed by current conditions at this site.

13. Therefore the Department requests that the Arkansas Pollution Control & Ecology Commission initiate the rulemaking process for adopting implementing regulations for the hazardous waste management program. A proposed minute order which initiates the requested amendment in this matter is attached at Exhibit “A.”

WHEREFORE, the Department requests that the Arkansas Pollution Control and Ecology Commission adopt the proposed scheduling minute order here attached, and initiate the rulemaking process to list the facility on the Arkansas Remedial Action Trust Fund Priority list,

State Priority list for remediation under the provisions of and funding via the Arkansas Remedial Action Trust Fund Act.

Respectfully submitted,

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