

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DODGE COUNTY

STATE OF WISCONSIN
17 West Main Street
PO Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No. 2006-CX-_____

Complex Forfeiture: 30109

WATERTOWN TIRE
RECYCLERS LLC
W7932 Provimi Road
Watertown, WI 53094,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General Peggy A. Lautenschlager and Assistant Attorney General JoAnne F. Kloppenburg, brings this complaint at the request of the Wisconsin Department of Natural Resources against Watertown Tire Recyclers LLC and alleges as follows:

1. Plaintiff is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. It has enacted, in Wis. Stat. chs. 289 and 292, statutes governing solid waste management and discharges of

hazardous substances so as to prevent and minimize pollution in the state and to protect human health and the environment. Its Department of Natural Resources administers regulations, issues licenses and plan approvals, and takes emergency remedial action as authorized by those statutes.

2. Defendant Watertown Tire Recyclers LLC is a Wisconsin limited liability company that, from its registration in 2000 until the non-renewal of its license in September 2005, owned and operated a solid waste storage and processing facility, referred to as the WTR facility in this complaint, on the WTR property. Defendant Watertown Tire Recyclers LLC's principal office address is W7932 Provimi Road, Watertown, Wisconsin 53094, and its registered agent and manager is Thomas Springer at the same address.

3. In 1997 and 2000, when defendant's tire storage and processing operation expanded or changed in violation of its plan of operation approval, defendant obtained after-the-fact modifications to the plan of operation approval to authorize the expansion or change.

4. Since at least late 2004, defendant operated the WTR waste tire storage and processing facility in violation of the most current plan of operation approval issued for the WTR facility, resulting in the amassing of up to 6,500 tons of tires and tire chips at the WTR property and inadequate fire lanes among the piles of tires and tire chips.

5. In July 2005, a fire that started in one of the tire chips piles spread throughout the WTR storage and processing facility at the WTR property, and required immediate and extensive response and remedial work by the Department of Natural

Resources and over 100 local government agencies during the 6 days of the fire and afterward.

6. At the time of the fire, defendant was accepting approximately 1.7 million tires annually, at approximately \$2 per tire.

7. The WTR processing facility does not now exist, defendant does not now have a license for a waste tire storage and processing facility, tests of groundwater and surface water and *in situ* soils potentially affected by the fire have established no residual contamination, and the WTR property has been completely and properly cleaned up except for certain stockpiles of soil and 2 trailers of previously stored tires.

APPLICABLE STATUTES AND RULES

8. Wisconsin Stat. § 289.01(33) defines solid waste as "any garbage, refuse, sludge . . . and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations."

9. Wisconsin Stat. § 289.01(35) defines solid waste facility as "a facility for solid waste treatment, solid waste storage or solid waste disposal."

10. Wisconsin Stat. § 289.01(38) defines solid waste storage as "the holding of solid waste for a temporary period, at the end of which period the solid waste is to be treated or disposed."

11. Under Wis. Stat. § 289.31, no person may operate a solid waste facility without an operating license from the Department of Natural Resources.

12. The requirements for solid waste storage are set forth in Wis. Admin. Code ch. NR 502. Wis. Admin. Code § NR 502.02(1).

13. Under Wis. Admin. Code §§ NR 502.05(1)(a)2. and 502.05(8), no person may operate a solid waste storage facility without approval of a plan of operation and an operating license from the Department of Natural Resources.

14. Wisconsin Stat. § 292.01(5) defines hazardous substance as any substance or waste that "may pose a substantial present or potential hazard to human health or the environment," and Wis. Stat. § 292.01(3) defines discharge to include, but not be limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."

15. Under Wis. Stat. § 292.11(3), "[a] person who possesses or controls a hazardous substance [that] is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state."

16. Under Wis. Stat. § 292.11(7)(a), the Department of Natural Resources may undertake emergency action in response to the discharge of a hazardous substance that is inadequately being addressed, including identifying, locating, monitoring, containing, removing, disposing of or otherwise responding to the discharge of the hazardous substance.

PENALTY PROVISIONS

17. Wisconsin Stat. § 289.96(3)(a) provides that any person who violates ch. 289 or any rule promulgated under that chapter, or any permit or plan approval issued under that chapter, shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

18. Wisconsin Stat. § 292.11(7)(a) requires that any person who possessed or controlled a hazardous substance that was discharged or who caused the discharge of a hazardous substance, must reimburse the Department of Natural Resources for the actual and necessary expenses incurred in identifying, locating, monitoring, containing, removing, disposing of or otherwise responding to the discharge of the hazardous substance.

19. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. chs. 289 and 292 and authorizes the circuit court for any county where the violation occurred to enforce the chapters by injunctive and other relief.

20. Wisconsin Stat. § 289.96(3)(b) provides that the court may, in addition to imposing penalties, order a defendant to pay to the Department of Justice the reasonable and necessary expenses of the investigation and prosecution of the defendant's violation of the chapter, including attorney fees.

DEFENDANT'S WASTE TIRE STORAGE AND PROCESSING FACILITY PLAN
APPROVALS

21. Defendant Watertown Recyclers, by its then owner Thomas Springer, was issued a plan of operation approval for a containerized waste tire storage and processing facility on April 20, 1992. A copy of this 1992 Plan Approval is attached as Exhibit A.

22. The 1992 Plan Approval required a \$5000 letter of credit to provide proof of financial responsibility for the temporary storage of 50 tons of waste tires, or 5000 passenger car tire equivalents, at the WTR facility, and prohibited the WTR facility from storing more than 50 tons of waste tires or shredded equivalents (5,000 passenger car tire equivalents) at any time.

23. Defendant Watertown Recyclers, by its then owner Thomas Springer, was issued a plan of operation modification approval for a containerized waste tire storage and processing facility on March 12, 1997. A copy of this 1997 Plan Approval is attached as Exhibit B.

24. The 1997 Plan Approval increased the required letter of credit to \$12,500, and prohibited the WTR facility from storing more than 167 tons of whole or shredded waste tires at any time.

25. Defendant Watertown Tire Recyclers LLC, by its manager Thomas Springer, was issued a plan of operation modification approval for a containerized waste tire storage and processing facility on December 27, 2000. A copy of this 2000 Plan Approval is attached as Exhibit C.

26. The 2000 Plan Approval increased the financial responsibility for the WTR facility to \$150,000, and prohibited the WTR facility from storing more than 2,000 tons of whole and processed tires, or 200,000 passenger tire equivalents, at any time.

27. The 2000 Plan Approval also required that the storage of whole and processed tires be limited to the processing building and the area to the east of the building.

28. All 3 plan approvals required that on-site fire control be maintained.

29. All 3 plan approvals required the annual submission of a report presenting a summary of the volumes of incoming waste tires, the number of tires processed, the volumes of outgoing shredded material, and the details of each market receiving the shredded material during the previous year.

30. All 3 plan approvals required that the Department of Natural Resources be notified within 2 working days of any problems with equipment at the WTR facility, and that the Department of Natural Resources be notified in writing of any changes in construction or operation at the WTR facility, including changes in the number of tires, movement of stockpiles, and changes in equipment.

DEPARTMENT OF NATURAL RESOURCES' INSPECTIONS AND ENFORCEMENT

31. Department of Natural Resources Waste Management Specialist Barb Palecek inspected the WTR facility and met with Thomas Springer on December 15, 2004.

32. During the December 2004 meeting, Palecek discussed with Springer concerns noted during the inspection, including excessive tire count, inadequate fire lanes, and the accumulation of shredded tire piles west of the processing building.

33. On December 15, 2004, there were at least 6550 tons, and as many as 7550 tons, of tires and tire chips at the WTR facility on the WTR property. Photographs taken on December 15, 2004, of the piles of tires and tire chips on the WTR property are attached as Exhibit D.

34. During the December 2004 meeting, Springer stated that he knew he was over the approved tire count, and he attributed the accumulation to the delayed delivery of a new processing machine.

35. During the December 2004 meeting and inspection, Palecek and Springer discussed the local fire department's notification to Springer that larger fire lanes were needed, and Palecek identified larger fire lanes as a Department concern.

36. During the December 2004 meeting and inspection, Palecek and Springer discussed the variance that Springer had requested from Dodge County to store tires and tire chips along the west side of the processing building.

37. On February 22, 2005, the Department of Natural Resources issued defendant a Notice of Violation relating to the concerns identified during the December 2004 inspection: excessive tire count, accumulation of tire chips west of the processing building, and inadequate fire lanes.

38. Department staff met with Thomas Springer at an enforcement conference on March 8, 2005. At the conference, Springer committed to submitting monthly reports

showing progress in reducing the amount of tires and chips on the WTR property and describing the month's management of tire and tire chip piles, and to submitting a plan modification request or completely revised plan after the County acted on the request for a variance for additional storage to the west of the processing building.

39. The Dodge County Board of Adjustment denied the variance to allow the temporary storage of unfinished tire material along the west side of the tire processing facility on April 8, 2005. In its decision the County Board of Adjustment also directed Springer and Watertown Tire Recyclers LLC to remove the tire chip pile that had accumulated to the west of the tire processing facility, which it found was over 20 feet high and 100 feet long, so as to return to compliance with the 1999 approved site plan, by July 1, 2005.

40. Department specialist Palecek inspected the WTR property on May 16, 2005, and Springer told her that he was under County orders to remove the tire chip pile by July 1.

41. On May 16, 2005, the tire chip pile was approximately one-third gone, and the status of the tire piles to the east of the processing building was largely unchanged from December 2004.

42. Thomas Springer met with Department staff on May 26, 2005, and proposed a plan to solve the problems on the WTR property, involving primarily modifying existing machines and purchasing one new machine, as well as reducing incoming tire flow until the existing piles were removed. Springer agreed to submit a plan approval modification to reflect his proposal.

43. Springer filed an appeal in circuit court of the County's denial of defendant's variance request before the May 26, 2005 meeting, and did not inform the Department during that meeting of the appeal.

44. When the Department learned of the appeal, and the apparent stay of the County's order to remove the tire chip pile, Department Specialist Palecek inspected the WTR property on June 24, 2005.

45. On June 24, 2005, the tire chip pile was no smaller than it had been on May 16, 2005, and the raw tire inventory to the east remained largely unchanged.

46. The Department sent Springer and Watertown Tire Recyclers LLC a letter dated July 12, 2005, giving defendant 10 days to submit a timetable for removing the excess material stored at the WTR property and otherwise coming into compliance with the 2000 Plan Approval. A copy of the July 12, 2005, letter is attached as Exhibit E.

47. Photographs of the piles of tires and tire chips were taken on July 13, 2005, and are attached as Exhibit F.

48. Photographs that were taken in March and July 2005, showing the open lanes that existed among the tire piles, are attached as Exhibit G.

49. Department Specialist Palecek was at the WTR facility for a compliance meeting on July 19, 2005. While she was there, a fire started in a tire chip pile on the east side of the WTR property, and the fire spread throughout the WTR facility from July 19 to July 24, 2005.

50. Photographs of the July 2005 fire and of the plume from the July 2005 fire are attached as Exhibit H.

51. The fire destroyed defendant's tire processing facility, defendant now does not process tires or handle tire chips, and defendant only collects and transports whole tires at the WTR facility.

VIOLATIONS

A. EXCEEDING ALLOWED VOLUME OF TIRES

52. Since December 27, 2000, defendant's tire storage facility plan of operation approval has limited the WTR facility to maintaining no more than 2,000 tons, or 200,000 automobile tire equivalents, of whole or processed waste tires on the WTR property.

53. From at least December 15, 2004, until July 19, 2005, defendant has maintained more than 2,000 tons, or 200,000 automobile tire equivalents, of whole or processed waste tires on the WTR property, in violation of its plan of operation approval.

B. FAILURE TO MAINTAIN ADEQUATE FIRE LANES

54. Since April 20, 1992, defendant's tire storage facility plan of operation approval has required defendant to maintain fire control provisions on the WTR property.

55. From at least December 15, 2004, until July 19, 2005, defendant failed to maintain adequate fire lanes, both among the tires stored on the WTR property and between the tires and the processing building, in violation of its plan of operation approval.

C. STORAGE WEST OF PROCESSING FACILITY

56. Since December 27, 2000, defendant's tire storage facility plan of operation approval has limited the storage of whole and processed tires to the processing building and the area to the east of the building on the WTR property.

57. From at least December 15, 2004, until July 19, 2005, defendant stored processed tires in the area to the west of the processing building on the WTR property, in violation of its plan of operation approval.

D. FAILURE TO SUBMIT ANNUAL SUMMARY

58. On several occasions, including November 6, 2002, and October 29, 2003, Department staff reminded defendant of its obligation to submit an annual report summarizing the incoming and outgoing volumes for waste tires and the receiving markets for the waste tires.

59. Defendant failed to submit an annual report for 1995, 1996, 1998, 1999, 2001 and 2002, in violation of its plan of operation approval.

E. FAILURE TO NOTIFY THE DEPARTMENT OF PROBLEMS AND CHANGES

60. Defendant did not notify the Department of problems with defendant's tire shredding machine from the start of those problems in April 2004 until the Department's inspection in December 2004, in violation of defendant's plan of operation approval.

61. On at least 3 occasions in 1997, 2000, and 2004, defendant did not notify the Department in writing of changes in the numbers of tires or in the location of tire stockpiles, in violation of defendant's plan of operation approval.

62. Defendant did not notify the Department in writing of the creation of the pile of shredded tires west of the processing building from at least July 2004 until the Department's inspection in December 2004, in violation of defendant's plan of operation approval.

F. OBLIGATION TO REIMBURSE THE DEPARTMENT FOR RESPONSE COSTS AND TO MANAGE SOIL STOCKPILES

63. After the July 19-24, 2005, fire at the WTR property, Department staff took emergency actions to control off-site impacts, collected and had analyzed samples from soil, surface water and water supply wells, and took actions both directly and indirectly to ensure that the WTR property was properly and promptly remediated in order to protect public health and safety and the environment.

64. After the July 19-24, 2005, fire at the WTR property, Department staff through meetings, letters and inspections imposed requirements including schedules on the defendant for investigating and cleaning up contamination at and around the WTR property, and for removing fire debris and unburnt tire chips and whole tires.

65. The Department of Natural Resources incurred actual and necessary expenses exceeding \$75,000 in investigating, sampling, taking emergency actions to control off-site impacts, cleaning up, directing defendant's clean-up actions, and

otherwise responding to the discharges of hazardous substances that resulted from the July 19-24, 2005, fire at the WTR property.

66. From July 24 through November 2005, defendant itself and by its consultant removed all remaining fire debris, tire chip and tire piles except for 2 trailers of tires, and remediated all contaminated soil except for completing the management of the soil stockpiles remaining on the WTR property; the United States Environmental Protection Agency treated the contaminated fire suppression water that had been impounded at and near the WTR facility, and subsequent testing of the water and soil under it and of nearby wells disclosed no contamination from the fire.

67. Defendant is required to prepare and implement a soil management plan, including the recording of a deed restriction and the providing of a proper cover, for the stockpiles of contaminated soil that remain on the WTR property, pursuant to Wis. Stat. § 292.11(3) and Wis. Admin. Code chs. NR 718 and 726.

68. Defendant is required to reimburse the Department of Natural Resources for the actual and necessary expenses it incurred in responding to the July 19-24, 2005, fire at the WTR property, pursuant to Wis. Stat. § 292.11(7)(b).

RELIEF REQUESTED

The plaintiff asks for judgment against the defendant as follows:

1. Assess against the defendant the forfeitures provided for in Wis. Stat. § 289.96(3)(a) for each day of violation, the 25 percent penalty surcharge provided for in Wis. Stat. § 814.75(18), and the 10 percent environmental surcharge provided for in Wis. Stat. § 814.75(12);
2. Assess against the defendant the \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);
3. Assess against the defendant the costs and disbursements of this action, including attorney fees incurred by the Department of Justice under Wis. Stat. § 289.96(3)(b);
4. Assess against the defendant the actual and necessary expenses incurred by the Department of Natural Resources under Wis. Stat. § 292.11(7)(b);
5. Issue appropriate injunctive relief against defendant pursuant to Wis. Stat. § 299.95, including an order requiring defendant to develop and implement a soil management plan for the stockpiles of contaminated soil remaining on the WTR property;
6. Assess against defendant the costs and disbursements of this action; and

7. Grant such other relief as the Court may deem appropriate.

Dated this 7th day of June, 2006.

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