

Regional Solid Waste Management District until 2011, at which time the board voted to change its name to "Ozark Mountain Solid Waste District."

8. Defendant owns and operates a Class 1 landfill (hereinafter "Class 1 landfill"), which consists in part of Area 1-2 and Area 1-3, and a Class 4 landfill (hereinafter "Class 4 landfill"), all located in Baxter County, and each of which has been the subject of environmental enforcement actions by ADEQ.

9. To own or operate a landfill in the state, state law and regulations require appropriate permits issued by ADEQ. Defendant's Class 1 landfill is permitted by ADEQ under Permit No. 0249-S1-R2. Defendant's Class 4 landfill is permitted by ADEQ under Permit No. 0249-S4.

10. In the course of the permitting process, ADEQ approved Defendant's detailed terms and conditions for the landfill in accord with state law and APC&EC regulatory requirements to protect the health and safety of residents of the state and the environment. The permit conditions included engineering and construction requirements, operational details, monitoring and reporting requirements, and financial assurance requirements with which Defendant was required to comply, along with applicable statutory and regulatory requirements. Failure of a permittee to engineer, construct, operate, monitor, and maintain a landfill in accordance with the conditions of the permit and pursuant to state law and applicable regulations creates an inherent risk to the environment and the health and safety of surrounding residents.

11. ADEQ conducted various routine and complaint inspections of the Class 1 landfill and Class 4 landfill between 2009 and 2012. As a result of the inspections, ADEQ determined that Defendant committed various violations of its permits, state statutes, and APC&EC regulations.

12. As a result of the cited violations, Defendant entered into three (3) different Consent Administrative Orders ("CAOs") by which ADEQ issued enforceable administrative orders with the expressed consent of Defendant. Defendant entered into two (2) of the CAOs concerning the operation of Defendant's Class 1 landfill, CAO 10-157 and CAO 12-021 attached hereto as Exhibits 1 & 2 respectively, and one (1) CAO concerning operation of its Class 4 landfill, CAO 12-020 attached hereto as Exhibit 3.

13. The above-referenced CAOs detailed agreements between the parties and binding commitments made by Defendant regarding measures to be taken in order to bring Defendant's landfill operations back into compliance with applicable permit, statutory and regulatory requirements. Pursuant to the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-204(b)(1), ADEQ is authorized to institute a civil action in any court of competent jurisdiction to compel compliance with any regulations, orders, or permits.

14. Landfill owners, including Defendant, are required to 'close' a landfill in accordance with regulatory and permit requirements upon final acceptance of waste and must arrange for post-closure care and maintenance to prevent the waste from causing pollution to the environment and to prevent the creation of health risks for residents. Prior to the operation of the landfill, an owner must submit and receive ADEQ approval of a detailed closure plan.

15. ADEQ approved Defendant's closure plans for the following: Area 1-2 of the Class 1 landfill, which was modified February 23, 2012; Area 1-3 of the Class 1 landfill, which was issued August 10, 2006; and the Class 4 landfill, which was issued September 12, 2007.

16. Pursuant to Ark. Code Ann. § 8-6-1603, Defendant was required to provide sufficient funds through an approved financial assurance mechanism to ensure that there would

be enough money available for ADEQ to contract with a third party to provide closure and post-closure care and maintenance in the event that Defendant should fail to do so.

17. In CAO 12-020 and CAO 10-157, ADEQ and Defendant agreed on funding mechanisms for financial assurance. Defendant failed to fully fund those mechanisms as ordered and thus violated both the CAOs and Ark. Code Ann. § 8-6-1603.

18. Defendant was required by regulation to: (1) initiate closure of its Class 1 landfill and its Class 4 landfill within thirty (30) days of receipt of final waste; and (2) complete closure within one hundred eighty (180) days of initiation. APC&EC Reg.22.1301(f), (g). Defendant confirmed to ADEQ that it ceased the receipt of solid waste at the Class 1 landfill and the Class 4 landfill on November 30, 2012, thus triggering the requirement that Defendant initiate closure of both landfills no later than December 30, 2012.

19. Defendant failed to initiate closure by December 30, 2012, for either the Class 1 landfill or the Class 4 landfill, as required. Furthermore, as of the date of the filing of this Complaint, Defendant has not initiated necessary closure activities required to protect the health and safety of the surrounding population and prevent contamination of the environment.

IV. CAUSES OF ACTION AND STATEMENT OF LAW

20. Plaintiff incorporates by reference the allegations set forth in ¶ 1-19.

A. REMEDIAL ACTIONS REQUIRED

1. Defendant Failed to Complete Overfill Removal of Class 1 Landfill (Areas 1-2 and 1-3) and Class 4 Landfill

a. Overfill at Class 1 — Area 1-2

21. Area 1-2 of Defendant's Class 1 landfill contains an overfill of waste in violation of the conditions of its permit. After failing to comply with the conditions of an earlier

plan to remove the overfill waste and implement closure of Area 1-2, Defendant on November 14, 2011, submitted an application to ADEQ for modification of Defendant's permit conditions proposing an alternative compliance schedule to correct the overfill violations and an alternative closure plan.

22. Defendant and ADEQ then entered into CAO 12-021 whereby Defendant agreed to remove the overfill waste and achieve compliance with the conditions of the permit modification within thirty (30) days of ADEQ's approval of the permit modification. In addition, Defendant agreed to provide closure of Area 1-2 of the Class 1 landfill. Further, Defendant agreed to complete the overfill removal and closure of Area 1-2 within one hundred eighty (180) days from when the work commenced.

23. Defendant failed to begin the overfill removal of Area 1-2 of the Class 1 landfill as required by CAO 12-021. As a result, Defendant failed to complete the overfill removal of Area 1-2 of the Class 1 landfill within one hundred eighty (180) calendar days as required by CAO 12-021.

24. By failing to remove the overfill waste from Area 1-2 as required under its permit modification, Defendant violated its permit issued by ADEQ and therefore Defendant has violated the Arkansas Solid Waste Management Act. Ark. Code Ann. § 8-6-205(a)(1).

25. ADEQ is entitled to enforce CAO 12-021 to require Defendant to immediately begin the work necessary to achieve compliance with Defendant's modified permit conditions and plans, and APC&EC Regulation 22 and to complete the overfill removal and closure of Area 1-2 within one hundred eighty (180) calendar days.

b. Overfill at Class 1 — Area 1-3

26. On March 31, 2010, Defendant submitted to ADEQ the 2009 Annual Engineering Inspection Report required by its Class 1 permit.

27. That report noted an overfill condition at the Class 1 landfill in Area 1-3, in violation of the current permitting capacity as set forth in the Permit 0249-S1-R2 and the landfill's permitted final contours.

28. Although Defendant's permit conditions include a closure plan for Area 1-3, Defendant has not submitted a suitable Overfill Management Plan, approval and implementation of which is necessary before closure of Area 1-3 pursuant to the closure plan.

29. By placing overfill of waste in Area 1-3 beyond the permitted contours of the grading plan, Defendant has violated its permit and, therefore, Defendant has violated the Arkansas Solid Waste Management Act. Ark. Code Ann. § 8-6-205(a)(1).

30. Furthermore, Defendant has violated APC&EC Reg.22.309(c), which requires Defendant to remove the excess fill within thirty (30) days of discovery of the overfill, and therefore has violated Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-205(a)(1).

c. Overfill at Class 4 landfill

31. Defendant's Class 4 landfill contains an overfill of waste in violation of the conditions of its permit, which was reflected in the required Annual Engineering Inspection Reports for both 2009 and 2010.

32. On January 17, 2012, Defendant and ADEQ entered into CAO 12-020 whereby Defendant agreed that it would submit to ADEQ, within ninety (90) days, a proposed permit modification to address the overfill conditions of the Class 4 landfill and that, upon approval of

the permit modification by ADEQ, Defendant would begin, again within ninety (90) days, the work required to achieve compliance.

33. Defendant violated CAO 12-020 when it failed to submit an approvable permit modification, and as a result ADEQ cannot issue a modified permit, thereby leaving the Class 4 landfill in overfill.

34. ADEQ is entitled to enforce CAO 12-020 and require that Defendant submit an appropriate and complete permit modification so that Defendant's plan to address the overfill waste of its Class 4 landfill and achieve compliance can be approved and implemented.

2. Defendant Failed to Submit updated Annual Engineering Inspection Report

35. Defendant is required by APC&EC Reg.22.423 to submit an Annual Engineering Inspection Report (hereinafter "AEIR") to ADEQ for its Class 1 landfill by March 31 of each year.

36. In part, Defendant's updated AEIR would provide detailed information regarding any lack of compliance with state statutory requirements, permit conditions, APC&EC Regulation 22, and the three CAOs for both the Class 1 landfill and the Class 4 landfill.

37. The AEIR also is used to provide cost estimates required for adequate financial assurance of closure and post-closure care, updated for inflation and updated with the amount of funds that would be required to address all remediation necessary for Defendant to initiate closure.

38. APC&EC Reg.22.423(b) requires the AEIR to address the 12-month period from January through December and to be submitted by March 31 of the following year.

39. Defendant failed to submit a complete AEIR that addresses the regulatory and permit requirements for both its Class 1 landfill and its Class 4 landfill for the year 2011 that was due March 31, 2012. Among other issues, Defendant failed to adjust and update the estimated costs and provide evidence of satisfactory financial assurance.

40. Defendant's failure to submit a complete AEIR for 2011 is a violation of APC&EC Reg.22.423(b), and therefore Defendant has violated the Arkansas Solid Waste Management Act. Ark. Code Ann. § 8-6-205(a)(1).

3. Defendant Failed to Submit Surveys of Area 1-3

41. CAO 10-157 requires Defendant to have a Professional Land Surveyor conduct a full survey, by aerial method, of Area 1-3 on or before every January 1 and again, by ground method, on or before every July 1 of every year of operation, beginning January 1, 2011. Exhibit 1, pp. 4-5, ¶ 1.

42. Defendant is required to recalculate the remaining site life of Area 1-3 utilizing the most recent survey results. Further, Defendant is required to submit to ADEQ a stamped and signed original survey and new site life calculation on or before January 20 and again on or before every July 20 of every year of operation, beginning January 1, 2011. Exhibit 1, p. 5, ¶ 1.

43. Defendant failed to conduct and submit the aerial survey due January 1, 2012 by the due date.

44. Therefore, Defendant failed to conduct and submit a signed original survey and new site life calculation due January 20, 2012; July 20, 2012; and January 20, 2013 by each due date.

45. Defendant's failure to submit the surveys and site life calculations violated the terms of CAO 10-157 and, in doing so, violated the Arkansas Solid Waste Management Act, specifically Ark. Code Ann. §§ 8-6-205(a) and 8-6-214(a).

4. Defendant Failed to Conduct Groundwater Monitoring

46. Defendant is required by its permit to quarterly sample groundwater according to specific monitoring conditions and to submit a groundwater monitoring report, including statistical analysis of the groundwater sampling results to ADEQ. The quarterly groundwater monitoring and statistical analysis of the Class 1 landfill is intended to, in part, identify any wells or sampling points affected by leakage from the landfill unit (including landfill gas).

47. Defendant failed to conduct groundwater sampling for the groundwater monitoring required of its Class 1 landfill for the fourth quarter of 2012.

48. Previous groundwater monitoring results have detected five (5) monitoring constituents at statistically significant levels above the groundwater protection standards.

49. The extent of groundwater contamination and any corrective action that may be required, including evaluating potential risks to human health and the environment, cannot be fully determined until Defendant complies with all groundwater monitoring and analysis provisions contained within its Class 1 Permit and APC&EC Regulation 22.

50. Defendant's failure to conduct groundwater monitoring of its Class 1 landfill for the fourth quarter of 2012 is a violation of Permit 0249-S1-R2 and, therefore, is a violation of the Arkansas Solid Waste Management Act. Ark. Code Ann. § 8-6-205(a)(1).

5. Defendant Failed to Complete Corrective Action for Groundwater Contamination

51. As required, Defendant installed a groundwater monitoring system for the detection of groundwater contamination of the uppermost aquifer around the facility. Although the full extent of groundwater contamination is unknown due to Defendant's failure to submit quarterly groundwater monitoring reports as detailed above, Defendant has detected in previous quarterly monitoring reports five (5) monitoring constituents at statistically significant levels above the groundwater protection standards established by APC&EC Reg.22.1205(g): Vinyl Chloride, 1,1-Dichloroethane, Arsenic, Cobalt, and Lead (referred to hereinafter collectively as "constituents").

52. As evidenced by the discovery of the constituents in the groundwater, Defendant has violated the Arkansas Water and Air Pollution Control Act by causing pollution to waters of the state. Ark. Code Ann. § 8-4-217(a)(1).

53. A statistical exceedance is determined when monitoring events of concentrations are found as statistically exceeding the groundwater protection standards.

54. These statistical exceedances have been found within six (6) wells as listed below:

Monitoring Well	Parameter	Date Facility Reported Statistical Exceedances
CAO-1	1,1-Dichloroethane Vinyl Chloride Arsenic Cobalt	03/09/2012 08/08/2007 08/08/2007 03/09/2012
MW-1	1,1-Dichloroethane Cobalt	03/09/2012 03/09/2012
MW-2	1,1-Dichloroethane	05/02/2012
NAB-1	Arsenic	09/20/2007
NAB-2	Arsenic	06/25/2009
NAB-7	Arsenic Lead	03/09/2012 10/22/2012

55. Defendant was required within ninety (90) days of finding any of the constituents that statistically exceeded groundwater protection standards to initiate an assessment of corrective measures. APC&EC Reg.22.1206 and Reg.22.1207.

56. To date, Defendant has not submitted an assessment of corrective measures that addresses all of the regulatory requirements of APC&EC Reg.22.1206 and 22.1207; has therefore failed to hold a public meeting to discuss any corrective measures assessment and has failed to select, initiate or complete a remedy to correct the groundwater contamination. As such, Defendant has violated APC&EC Reg.22.1206, 22.1207, and Ark. Code Ann. § 8-6-205(a)(1).

6. Defendant Failed to Conduct Gas Monitoring

57. Defendant failed to conduct gas monitoring of its Class 1 landfill for the fourth quarter of 2012.

58. Defendant is required by regulation and its permit to control explosive gases and to implement a Landfill Gas Monitoring Plan.

59. Defendant failed to submit results of its quarterly landfill gas monitoring due January 14, 2013, which is a violation of Defendant's permit and APC&EC Reg.22.415.

60. The extent of landfill gas levels, including methane gas levels and potential risks to human health and the environment, cannot be fully determined until Defendant complies with all landfill gas monitoring and analysis provisions contained within its Class 1 Permit and APC&EC Regulation 22.