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10 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **FOR MARICOPA COUNTY**

12 STATE OF ARIZONA, *ex rel*, HENRY  
13 R. DARWIN, Director, Arizona  
14 Department of Environmental Quality,

15 Plaintiffs,

16 vs.

17 COUNTY OF COCHISE,

18 Defendant.

Civil Action No. \_\_\_\_\_

**VERIFIED COMPLAINT**

(Non-classified Civil)

19 The Plaintiff, **STATE OF ARIZONA** *ex rel*. Henry R. Darwin, Director,  
20 Arizona Department of Environmental Quality (“the State” or “Plaintiff”), alleges the  
21 following:

22 **NATURE OF ACTION**

23 1. The State brings this civil action against Defendant **COUNTY OF**  
24 **COCHISE** (“County” or “Defendant”) for violations of 40 Code of Federal  
25 Regulations (“C.F.R.”) § 258.21(a), the Arizona Revised Statutes (“A.R.S.”) Title 44,  
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1 Chapter 9 (tires), Title 49, Chapters 2 (water quality) and 4 (solid waste and  
2 management of used oil), the Cochise County Municipal Solid Waste Landfill Master  
3 Facility Plan 02659800.02, permit 44517 (“MSWLP”) and the rules adopted  
4 thereunder.

5 **PARTIES**

6 2. The State’s relator, Henry R. Darwin, is the Director of the Arizona  
7 Department of Environmental Quality (“ADEQ”). ADEQ maintains its central office at  
8 1110 West Washington Street, City of Phoenix, County of Maricopa.

9 3. Defendant County is a county and political subdivision of the State of  
10 Arizona and is a “Person” as defined by A.R.S. §§ 44-1301(3), 49-201(27) and 49-  
11 701(23).

12 4. During the times mentioned in this Complaint, the County owned and  
13 operated the Cochise County Western Regional Landfill (“WRL” or “Landfill”) located  
14 at 2595 North Sagebrush Road, Huachuca City, Arizona 85616-8307.

15 **JURISDICTION AND VENUE**

16 5. ADEQ is authorized to bring this action pursuant to A.R.S. §§ 44-1307,  
17 49-262, 49-783, 49-811, and 49-861.

18 6. This Court has jurisdiction over the subject matter of this action pursuant  
19 to A.R.S. §§ 44-1307, 49-262, 49-783, 49-811, and 49-861.

20 7. Defendant admits to the jurisdiction of this Court within the signed the  
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1 Consent Judgment.

2 8. This Court has personal jurisdiction in this matter as, at all times alleged  
3 herein, Defendants conducted business in Arizona, the Landfill is located in Arizona,  
4 and the violations alleged in this Complaint occurred in Arizona.

5 9. Defendant admits in the Consent Judgment that this Court has venue over  
6 the subject matter. Additionally, this Court is the court of proper venue pursuant to  
7 A.R.S. §§ 12-401(17), 49-265 and 49-784.

8 **GENERAL ALLEGATIONS**

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10 10. On April 10, 2008, ADEQ approved the County of Cochise Municipal  
11 Solid Waste Facility Plan (“MSWFP”), approval number 02659800.02, under permit  
12 No. 44517, for operation of the WRL (Attached hereto as Exhibit “A” is a true and  
13 correct copy of the Plan).

14 11. On October 28, 2008, the Solid Waste Inspections and Compliance Unit  
15 (“SWICU”) of ADEQ conducted an inspection of the WRL and discovered the  
16 violations as alleged.

17 12. During the October 28, 2008, inspection which led to the Notice of  
18 Violation issued in 2009, SWICU observed the following violations:

19 a. A moderate amount of windblown litter at the northern end of the  
20 Landfill and a large amount of solid waste, including at least five waste tires on the  
21 slope leading to the ponding area;  
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1           b.       Inadequate daily cover had been applied to the Landfill. Solid  
2 waste was visible through the cover on the side slopes and the lift in front and next to  
3 the working face of the Landfill;

4           c.       At lease twelve waste tires were visible on the side slopes of the  
5 Landfill and on the lift in front next to the working face;

6           d.       A large amount of soil erosion of Landfill cover and exposed solid  
7 waste through the side slopes of the closed cells and ponding was observed next to the  
8 working face of the active cell;

9           e.       The Landfill created two approximately 8' x 10' unlined surface  
10 impoundments, which contained a mixture of used oil and liquid paint. At the time of  
11 inspection, there was at least eight (8) inches of liquid in the impoundments. The Solid  
12 Waste Director was unaware of when or why the impoundments were created. The  
13 Landfill did not possess an Aquifer Protection Permit ("APP") for disposal of used oil  
14 and paint to the ground;

15           f.       There was oil mixed with paint in four (4) unlabeled 55-gallon  
16 drums that were placed in an impoundment of bare soil. Mixtures of used oil and  
17 characteristic hazardous waste are regulated as hazardous waste and the Landfill failed  
18 to conduct a waste determination on the used oil and paint mixture prior to disposing of  
19 the mixture as required by statute. Land disposal means placement of solid waste in or  
20 on the land. At the time of the inspection, the Landfill had not obtained an APP to  
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1 operate a solid waste land disposal facility on this property;

2 g. Used oil had stained the soil near the valve of the secondary  
3 containment units for used oil and paint; and,

4 h. There were four (4) 55-gallon drums of used oil and a 150-gallon  
5 tote of used oil that were not properly labeled with the words “used oil.”

6 13. ADEQ issued a Notice of Violation (“NOV 2009”) for the violations on  
7 or about April 8, 2009 (Attached hereto as Exhibit “B” is a true and correct copy of the  
8 NOV 2009).

9 14. On June 27, 2012 SWICU conducted a second inspection of the Landfill  
10 and did not issue a Notice of Violation.

11 15. On July 10, 2013, SWICU conducted a third inspection of the Landfill.

12 16. During the July 2013 inspection, SWICU observed the following  
13 violations:  
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15 a. Heavy on-site windblown litter and a large area of exposed solid  
16 waste on the west slope leading up to the working face. Ravens were scavenging at the  
17 base and above the working face of the landfill;

18 b. Heavy on-site windblown litter throughout the facility;

19 c. An additional area of heavy, on-site windblown litter and a large  
20 area of exposed solid waste on the west slope leading up to the working face; and

21 d. SWICU representatives measured the used/waste tire pile on the  
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1 west side of the Waste Tire Collection Site (“WTCS”) and determined the pile was  
2 110’x100’x9’.

3 17. On or about August 8, 2013, ADEQ issued two Notices of Violation  
4 (“NOV Aug. 2013(a)” and “NOV Aug. 2013(b)”) regarding the findings of Inspection  
5 July 2013 (Attached hereto as Exhibit “C” is a true and correct copy of the NOV Aug.  
6 2013(a) and as Exhibit “D”, is a true and correct copy of NOV Aug. 2013(b)).

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8 **COUNT ONE**

9 **Failure To Control Wind Dispersion of Landfill Materials**  
10 **(40 C.F.R. § 258.21(a), A.R.S. § 49-761(B) and (C) and**  
11 **Municipal Solid Waste Facility Plan Section 3.3(b) and (c))**  
12 **(October 2008 inspection)**

13 18. The State incorporates by reference and realleges the foregoing  
14 paragraphs 1 through 17 as though fully set forth herein.

15 19. 40 C.F.R. § 258.21(a) provides, “Except as provided in paragraph (b) of  
16 this section, the owners or operators of all MSWLF [Municipal Solid Waste Landfill]  
17 units must cover disposed solid waste with six inches of earthen material at the end of  
18 each operating day, or at more frequent intervals if necessary, to control disease  
19 vectors, fires, odors, blowing litter, and scavenging.”

20 20. A.R.S. § 49-761(B) adopts 40 C.F.R. § 258.21(a) by reference.

21 21. Section 3.3(b) of the MSWFP mandates the County to “[c]ontrol wind  
22 dispersion and other surface dispersions of the landfill materials so that they do not  
-- create a public nuisance or pose an imminent and substantial endangerment to public

1 health or the environment. Visible materials that have dispersed beyond the boundaries  
2 of the current work face shall be collected on a regular basis.”

3 22. Section 3.3(c) of the MSWFP mandates the County to “[c]over disposed  
4 solid waste with six (6) inches of earthen material or approved alternative cover at the  
5 end of each operating day or as necessary to control vectors, fires, odors, blowing litter,  
6 and scavenging.”

7 23. At the time of the October 28, 2008 inspection, the County violated 40  
8 C.F.R. § 258.21(a), A.R.S. § 49-761(B), and the MSWLP, Section 3.3(b) and (c) by:

9 a. failing to control wind dispersion and other dispersions of Landfill  
10 materials and solid waste so that they do not create a public nuisance or pose imminent  
11 and substantial endangerment to public health or the environment; and  
12

13 b. failing to cover disposed solid waste with six inches of earthen  
14 material or approved alternative daily cover at the end of each operating day, or more  
15 often as necessary.

16 **COUNT TWO**

17 **Improper Control of Surface Water Drainage to**  
18 **Prevent Stormwater From Running on the Land**  
19 **(40 C.F.R. § 258.26, A.R.S. § 49-761 (B),**  
20 **Municipal Solid Waste Facility Plan, Section 3.5(a))**  
21 **(October 2008 inspection)**

22 24. The State incorporates by reference and realleges the foregoing  
-- paragraphs 1 through 23 as though fully set forth herein.

1           25.    40 C.F.R. § 258.26 mandates that;

2           (a) Owners or operators of all MSWLF units must design, construct, and  
3 maintain:

4                       (1) A run-on control system to prevent flow onto the active portion of the  
5 landfill during the peak discharge from a 25-year storm; and

6                       (2) A run-off control system from the active portion of the landfill to  
7 collect and control at least the water volume resulting from a 24-hour, 25-year  
8 storm.

9           (b) Run-off from the active portion of the landfill unit must be handled in  
10 accordance with § 258.27(a) of this part.

11           26.    A.R.S. §49-761(B) adopts 40 C.F.R. § 258.26 by reference.

12           27.    MSWFP, section 3.5(a) provides;

13                       (a) The proper control of surface water drainage shall be implemented to prevent  
14 stormwater from running onto the site. Any soil erosion on landfill cover or ponding of  
15 stormwater in the landfill will be corrected to ensure proper cover of waste and  
16 stormwater management in the landfill are pursuant to 40 C.F.R. § 258.26.

17           28.    At the time of the October 28, 2008, inspection, the County violated 40  
18 C.F.R. § 258.26, A.R.S. § 49-761(B) and MSWFP, section 3.5(a). During the  
19 inspection, the SWICU observed a large amount of soil erosion of the landfill cover and  
20 exposed solid waste through the side slopes of the closed cells and water was ponding  
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1 next to the working face of the active cell.

2 **COUNT THREE**

3 **Operation of a Surface Impoundment Without an Aquifer Protection Permit**  
4 **((A.R.S. §§ 49-241(B)(1) and 762)**  
5 **(October 2008 inspection)**

6 29. The State incorporates by reference and realleges the foregoing  
7 paragraphs 1 through 28 as though fully set forth herein.

8 30. A.R.S. § 49-241 discussed Aquifer Protection Permits (“APPs”) and  
9 requires:

10 (A) Unless otherwise provided by this article, any person who  
11 discharges or who owns or operates a facility that discharges shall obtain an aquifer  
12 protection permit from the director.

13 (B) Unless exempted under section [A.R.S. §] 49-250, or unless the  
14 director determines that the facility will be designed, constructed and operated so that  
15 there will be no migration of pollutants directly to the aquifer or to the vadose zone, the  
16 following are considered to be discharging facilities and shall be operated pursuant to  
17 either an individual permit or a general permit, including agricultural general permits,  
18 under this article:

19 (1) Surface impoundments, including holding, storage settling,  
20 treatment or disposal pits, ponds and lagoons.

21 (2) Solid waste disposal facilities except for mining overburden  
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1 and wall rock that has not been and will not be subject to mine leaching  
2 operations.

3 31. The County is not entitled to the exemption as discussed in A.R.S. § 49-  
4 250 (19) as the MSWFP permit did not provide for or give authorization for two  
5 unlined surface impoundments, each approximately 8' x 10', that each contained  
6 approximately eight (8) inches of a mixture of used oil and liquid paint.

7 32. At time of the October 28, 2008 inspection, the County violated A.R.S. §  
8 49-241(B)(1) by operating two 8' x 10' feet unlined surface impoundments with a  
9 mixture of used oil and liquid paint, without applying for or obtaining an APP.  
10

11 **COUNT FOUR**

12 **Failure To Manage Mixtures of Used Oil and Hazardous Waste**  
13 **(40 C.F.R. §§ 279.10(b), 279.21 & 262.11 and A.R.S. § 49-802(A))**  
**(October 2008 inspection)**

14 33. The State incorporates by reference and realleges the foregoing  
15 paragraphs 1 through 32 as though fully set forth herein.

16 34. Pursuant to A.R.S. § 49-802(A), the State of Arizona has adopted by  
17 reference the Federal Used Oil Program, 40 C.F.R. Part 279, as amended on January 1,  
18 1997.

19 35. Pursuant to 40 C.F.R. § 279.10(b), "(i) Mixtures of used oil and  
20 hazardous waste ...is subject to regulation as hazardous waste under parts 260 through  
21 266, 268, 270, and 124 of this chapter, rather than as used oil under this part."  
22



1 paragraphs 1 through 38 as though fully set forth herein.

2 40. Pursuant to 40 C.F.R. § 279.22(d), “[u]pon detection of a release of used  
3 oil to the environment...and which has occurred after the effective date of the recycled  
4 used oil management program in effect in the State in which the release is located, a  
5 generator must perform the following cleanup steps:

6 (1) Stop the release;

7 (2) Contain the released used oil;

8 (3) Clean up and manage properly the released used oil and other materials; and

9 (4) If necessary, repair or replace any leaking used oil storage containers or tanks  
10 prior to returning them to service.  
11

12 41. At the time of the October 28, 2008 inspection, ADEQ observed used oil  
13 and oil stained soil near the valve of the secondary containment units for used oil and  
14 paint.

15 42. The County violated 40 C.F.R. § 279.22(d) by failing to appropriately  
16 respond to the released used oil at the facility.

17 **COUNT SIX**

18 **Illegal Disposal of Waste Tires In a Landfill**

19 **(A.R.S. § 44-1304(A))**

20 **(October 2008 inspection)**

21 43. The State incorporates by reference and realleges the foregoing  
22 paragraphs 1 through 42 as though fully set forth herein.  
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1 44. A.R.S. § 44-1304 states:

2 (A) The disposal of waste tires in landfills and the incineration of those  
3 tires are prohibited, except as provided in subsection C or D of this section or in  
4 accordance with rules adopted by the director of the department of  
5 environmental quality. An owner or operator of a solid waste disposal site shall  
6 not knowingly accept waste tires for disposal.

7 (B) A person shall not dispose of motor vehicle waste tires unless the  
8 waste tires are disposed of at a waste tire collection site or as provided in  
9 subsection C or D of this section or in accordance with rules adopted by the  
10 director of the department of environmental quality.

11  
12 45. At the time of the October 28, 2008 inspection, the County violated  
13 A.R.S. § 44-1304 as it had deposited at least twelve waste tires on the side slopes of the  
14 landfill and on the lift in the front and next to the working face in violation of A.R.S. §  
15 44-1304(A).

16 **COUNT SEVEN**

17 **Failure To Transport Recyclable Materials To An Off-Site Recycling Facility**  
18 **(Municipal Solid Waste Facility Plan, Section 3.1(b))**  
19 **(October 2008 inspection)**

20 46. The State incorporates by reference and realleges the foregoing  
21 paragraphs 1 through 45 as though fully set forth herein.

22 47. Municipal Solid Waste Facility Plan No. 45517, Section 3.1(b) requires:  
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1 “The following collected recyclable materials must be transported to an off-site  
2 recycling facility and cannot be put into the landfill: 1. tires; 2. batteries; 3. used oil;  
3 and 4. liquid paint.

4 48. At the time of the October 28, 2008 inspection, the County violated  
5 MSWLP, Section 3.1(b) by placing used tires, used oil, and liquid paint into the  
6 Landfill.

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8 **COUNT EIGHT**

9 **(Failure To Properly Label Containers Of Used Oil)**  
10 **(40 C.F.R. § 279.22(c), A.R.S. § 49-802(A))**  
11 **(October 2008 inspection)**

12 49. The State incorporates by reference and realleges the foregoing  
13 paragraphs 1 through 48 as though fully set forth herein.

14 50. 40 C.F.R. § 279.22(c) requires that containers and above ground tanks  
15 used to store used oil at generator facilities must be labeled or marked clearly with the  
16 words “Used Oil.”

17 51. At the time of the October 28, 2008 inspection, ADEQ inspectors  
18 observed that four (4) 55-gallon drums of used oil and a 150-gallon tote of used oil at  
19 the Landfill were not properly labeled with the words “Used Oil.”

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**COUNT NINE**

**Failure To Control Wind Dispersion of Landfill Materials  
(40 C.F.R. § 258.21(a), A.R.S. §49-761(b) and (c) and  
Municipal Solid Waste Facility Plan Section 3.3(b) and (c))  
(July 2013 inspection)**

52. The State incorporates by reference and realleges the foregoing paragraphs 1 through 51 as though fully set forth herein.

53. At the time of the July 10, 2013 inspection, the County violated 49 C.F.R. § 258.21(a), A.R.S. § 49-761(B) and (C), and MSWLP, Section 3.3(b) and (c) by

a. failing to control heavy on-site litter and a large area of exposed solid waste on the west slope leading up to the working face;

b. failing to control wind dispersion and other dispersions of landfill materials and solid waste so that they do not create a public nuisance or pose imminent and substantial endangerment to public health or the environment; and

c. by allowing heavy on-site windblown litter and a large area of exposed solid waste on the west slope leading up to the working face.

**COUNT TEN**

**Illegal Storage of Waste Tires In a Landfill  
(A.R.S. § 44-1304.01 (A)(2))  
(July 2013 inspection)**

54. The State incorporates by reference and realleges the foregoing paragraphs 1 through 53 as though fully set forth herein.

55. A.R.S. § 44-1304.01(A)(2) states:

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A. It is unlawful to store one hundred or more used motor vehicle tires outdoors as follows:

1. In any fashion that exceeds twenty feet in height.

2. In a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile. Access routes between and around tire piles shall be at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials. Access routes shall be spaced so that a maximum grid system unit of fifty (50) feet by one hundred fifty (150) feet is maintained.

56. At the time of the July 2013 inspection, the County had deposited used waste tires in a pile on the west side of the Waste Tire Collection Site and the pile was approximately 110' x 100' x 9'.

**PRAYER FOR RELIEF**

**WHEREFORE**, the State prays for the Court to sign and enter the Consent Judgment.

**RESPECTFULLY SUBMITTED** this \_\_\_ day of November, 2014.

THOMAS C. HORNE  
Attorney General

\_\_\_\_\_  
Rick Zeise  
Assistant Attorney General  
Environmental Enforcement Section

