

NO. _____

STATE OF TEXAS,
Plaintiff,

v.

BOBBY RAY WALDREP, Individually
and d/b/a WALDREP SALVAGE,
Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW the State of Texas (“State”), by and through the Attorney General, on behalf of the people of Texas and the Texas Commission on Environmental Quality (“TCEQ” or “Commission”), and files this Original Petition and Application for Injunctive Relief, and for cause of action respectfully shows the Court the following:

1. DISCOVERY

1.1 Pursuant to the Texas Rules of Civil Procedure, discovery will be conducted under a Level 2 Discovery Control Plan. TEX. R. CIV. P. 190.3.

2. PARTIES

2.1 Plaintiff State of Texas (the “State”), represented by the Attorney General, on behalf of the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) is authorized to file this suit at the request of the TCEQ pursuant to §§ 7.105, 7.032, and 7.072 of the Tex. Water Code.

2.2 Defendant Bobby Ray Waldrep, is an individual who may be served with process at 33309 Barlow Road, Cameron County, San Benito, Texas 78586 or wherever he may be found.

3. NATURE OF SUIT

3.1 This is a suit to enforce the Texas statutes and rules regulating the storage, processing, and disposal of municipal solid waste. The State seeks injunctive relief and civil penalties against Waldrep, the operator and owner of an unauthorized municipal solid waste site.

4. JURISDICTION AND VENUE

4.1 This Court has jurisdiction over this case, and venue is proper in Travis County because this is an action to enforce Chapter 361 of the Health and Safety Code, Chapter 26 of the Water Code and the TCEQ rules promulgated thereunder. TEX. WATER CODE ANN. § 7.105(a).

5. APPLICABLE LAW

5.1 This is a suit to enforce rules adopted by the Commission pursuant to the Texas Solid Waste Disposal Act (TSWDA), codified at Chapter 361 of the Texas Health & Safety Code. The State seeks to enforce the TCEQ's rules through injunctive relief and civil penalties.

5.2 The TSWDA confers jurisdiction on the Commission to adopt rules regulating the storage, processing and disposal of solid wastes, including scrap and used tires. Tex.

Health & Safety Code § 361.011.

5.3 Pursuant to its authority under the TSWDA, the TCEQ adopted Chapter 330 of the Texas Administrative Code, prohibiting the storage, processing, or disposal of solid wastes without a permit or registration, and Chapter 328 of the Texas Administrative Code, subsection F, setting forth specific requirements for the storage, processing and disposal of scrap or used tires.

5.4 “Solid Waste” means, “garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.” 30 Tex. Admin. Code § 330.3 (145).

5.5 “A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW).” 30 Tex. Admin. Code § 330.15.

5.6 “No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission.” 30 Tex. Admin. Code § 111.201.

5.7 Tex. Water Code §§ 7.032, 7.105, and 7.108 allow the Attorney General, at the request of the TCEQ, to file suit on behalf of the State to enforce Commission rules through injunctive relief, civil penalties, and attorney’s fees.

6. BACKGROUND

6.1 Bobby Ray Waldrep owns and operates a scrap tire generator facility. The facility is located at 33309 Barlow Road, Cameron County, San Benito, Texas 78586-6739.

6.2 On August 1, 2011, the TCEQ received an emergency call regarding an ongoing tire fire incident. TCEQ investigators observed an ongoing fire with thick black smoke. Investigators gathered information on property ownership, amount of tires on-site, dimensions of property, and other items located on the property, such as drums and automobiles.

6.3 On August 3, 2011, TCEQ investigators returned to the facility to evaluate current conditions. The investigators observed a school bus, large volume of steel belts remaining from burned tires (tire bones), burned vehicles, drums/containers of various sizes, trailers, metal pieces, heavy equipment vehicles, and a pit with a large volume of tire bones.

6.4 On August 4, 2011, TCEQ investigators observed that the facility had approximately 22,000 tires on the property prior to the fire incident, a vast majority of those tires had burned in the fire.

6.5 During the inspections, TCEQ investigators observed the facility made no apparent efforts to respond to the incident in order to minimize impacts to public health and the environment.

7. VIOLATIONS

7.1 Defendant has failed to prevent the unauthorized disposal of municipal solid

waste in violation of 30 Tex. Admin. Code 330.15. Defendant has been in continuing violation of 30 Tex. Admin. Code 330.15 since August 4, 2011, until the present.

7.2 Defendant has caused, suffered, allowed, or permitted outdoor burning within the State of Texas, without authorization from the commission in violation of 30 Tex. Admin. Code 111.201. Defendant has been in continuing violation of 30 Tex. Admin. Code 111.201 since August 4, 2011, until the present.

7.3 Defendant has failed to take reasonable actions to minimize the impact to the public health and the environment in violation of 30 Tex. Admin. Code 327.5(a). Defendant has been in continuing violation of 30 Tex. Admin. Code 327.5(a) since August 4, 2011, until the present.

7.4 Defendant failed to maintain a copy of all waste manifests received from a scrap tire facility or scrap tire transporter for used or scrap tires or tire piles delivered to or removed from the site pursuant to Commission Order 2003-0198-MSW-E in violation of 30 Tex. Admin. Code 328.62 (c). Defendant has been in continuing violation of 30 Tex. Admin. Code 328.62 (c) since August 4, 2011, until the present.

7.5 Defendant failed to remove all used or scrap tire or tire pieces from the facility and dispose of the tires at a permitted municipal solid waste landfill that is authorized to receive the tires pursuant to Commission Order 2003-0198-MSW-E in violation of 30 Tex. Admin. Code 330.15. Defendant has been in continuing violation of 30 Tex. Admin. Code 330.15 since August 4, 2011, until the present.

8. INJUNCTIVE RELIEF

8.1 The Attorney General, at the request of the TCEQ, may bring an action for injunctive relief if it appears that a violation or threat of violation of a rule or an order issued under the Commission's statutory jurisdiction has occurred or is about to occur. Tex. Water Code § 7.032.

8.2 The State requests a temporary injunction ordering the Defendant and his agents, employees, and all persons in active concert or participation with the Defendant to:

1. Immediately cease to collect, handle, store, process, or dispose of additional solid waste of any kind.
2. Immediately begin to remove Solid Waste from the Site to a TCEQ active permitted municipal solid waste facility.
3. Within 90 days of the signing of the temporary injunction remove all municipal solid waste from the Site to an authorized disposal site and provide documentation of the dates waste was removed from the Site as well as copies of receipts from the permitted landfill that received the waste.
4. Within 90 days of the signing of the temporary injunction order submit a progress report and receipts indicating the date of removal, the amount of waste removed and the name and permit number of the landfill receiving the waste or the amount of waste removed and the name and authorization number of the facility receiving the waste.

8.3 Upon final trial in this case, the State requests that the Court issue a permanent injunction against Defendant which the facts may warrant.

9. CIVIL PENALTIES

9.1 A person may be assessed a civil penalty of not less than \$50.00 or more than

\$25,000.00 for each day of each violation of a statute, rule, order or permit relating to the Solid Waste Disposal Act. Tex. Water Code § 7.102. Each day of a continuing violation is a separate violation. *Id.*

9.2 The State seeks civil penalties within the statutory range against Defendant for each day and each act of violation.

10. ATTORNEY'S FEES AND COSTS

10.1 This is an action brought by the State to recover civil penalties and injunctive relief. The Attorney General is entitled to recover and collect reasonable attorney's fees, investigative costs, and court costs on behalf of the State of Texas. Tex. Water Code § 7.108. In the event of an appeal to the Court of Appeals or to the Supreme Court, the Attorney General would be entitled to recover and collect additional reasonable attorney's fees and court costs on behalf of the State.

PRAYER FOR RELIEF

Plaintiff, the State of Texas prays for the following:

1. citation be issued for Bobby Waldrep to appear and answer herein;
2. upon hearing, the Court grant a temporary injunction against Bobby Waldrep as requested above;
3. upon trial, the Court grant a permanent injunction and assess civil penalties against Bobby Waldrep as requested above;
4. the State be awarded its reasonable attorney's fees and all costs of

Court;

5. the State be awarded post-judgment interest at the legal rate until fully paid; and
6. the State be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE
Chief, Environmental Protection and
Administrative Law Division



DAVID PREISTER
SBN 16245800
Assistant Attorney General
Environmental Protection and
Administrative Law Division

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2012
(512) 320-0052 (telecopier)

ATTORNEYS FOR PLAINTIFF
STATE OF TEXAS

AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF TRAVIS }

BEFORE ME, the undersigned authority, on this day personally appeared Monica Galvan, a person whose identity is known to me. After I administered an oath to her, upon her oath, she said:

“My name is Monica Galvan. I am over the age of eighteen years, of sound mind, and capable of making this Affidavit. This affidavit is made on my personal knowledge and the statements herein are true and correct.

I am an investigator for the Texas Commission on Environmental Quality (“TCEQ”). I work in the Region 15 Office of the TCEQ. Among my duties is the investigation of improper handling and disposal of wastes.

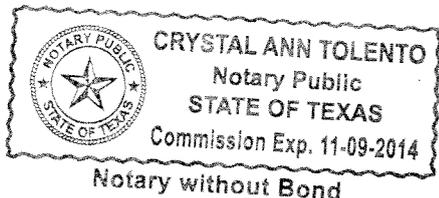
In connection with my duties I have investigated the waste handling and disposal activities of the Bobby Waldrep site in Cameron County, Texas. I have carefully reviewed the factual allegations in parts 6 and 7 of the attached *Original Petition and Application for Injunctive Relief*. Based on my investigations, these factual allegations are true and correct.”

Monica Galvan

MONICA GALVAN

SWORN TO and SUBSCRIBED before me by Monica Galvan on 10 day of November 2011.

(Seal)



Notary Public in and for the State of Texas

My commission expires: 11/09/14

CIVIL CASE INFORMATION SHEET

MAY ENTER CAUSE # / COURT # IF ALREADY ASSIGNED (E.G., FAMILY MOTION, AMENDED PETITION)

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED State of Texas v. Bobby Ray Waldrep

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: <u>Melodie Cartwright</u>	Email: <u>melodie.cartwright@oas.state.tx.us</u>	Plaintiff(s)/Petitioner(s): <u>State of Texas</u>	<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input checked="" type="checkbox"/> Other <u>Legal Asst to Plaintiff Atty</u>
Address: <u>300 W. 15th</u>	Telephone: <u>475-4034</u>	Defendant(s)/Respondent(s): <u>Bobby Ray Waldrep individual & Waldrep Salvage</u>	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
City/State/Zip: <u>Austin TX 78701</u>	Fax: <u>320-0052</u>	(Attach additional page as necessary to list all parties)	
Signature: <u>meawght</u>	State Bar No: _____		

2. Indicate case type, or identify the most important issue in the case (select only 1):

OPTION A: CK CASE TYPE (EXCEPT OTHER) FOR CLERK TO SELECT SUIT TYPE; SEE SEC. 3 NOTE BELOW *Civil*

			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: OPTION B: CK OTHER & ENTER 3-LETTER SUIT TYPE FOR CLERK TO USE WHEN DOCKETING	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input checked="" type="checkbox"/> Other: <u>Enforcement</u>			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		Probate & Mental Health <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:	

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input checked="" type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input checked="" type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input checked="" type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
---	--	--

OPTION C: SECTION 3 PROCEDURES/REMEDIES IN **BOLD** MAY BE USED AS CASE OR SUIT TYPES. YOU MAY SPECIFY THAT ONE OF THESE PROCEDURES/REMEDIES BE USED AS A SUIT TYPE BY CHECKING IT AND LEAVING THE CASE TYPE IN SECTION 2 BLANK. SELECTING A CASE TYPE IN SECTION 2 OVERRIDES ANY SELECTION IN SECTION 3.