

IN THE CIRCUIT COURT OF CLARK COUNTY, ARKANSAS
___ DIVISION

ELEMENTAL ENVIRONMENTAL SOLUTIONS, LLC

PLAINTIFF

v.

CASE NO. 10CV-23- 196

**CLEAN HARBORS ENVIRONMENTAL SERVICES, INC., and
HPC INDUSTRIAL SERVICES, LLC**

DEFENDANTS

COMPLAINT

Elemental Environmental Solutions, LLC, by and through its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., for its Complaint against Clean Harbors Environmental Services, Inc. and HPC Industrial Services, LLC, states:

I. Parties

1. Elemental Environmental Solutions, LLC (“Plaintiff”) is incorporated in Delaware and authorized to do business in Arkansas, with its principal place of business in Arkansas.

2. Clean Harbors Environmental Services, Inc. is incorporated in Massachusetts, and authorized to do business in Arkansas by the Arkansas Secretary of State. Its registered agent to receive service of process is C T CORPORATION SYSTEM, 124 West Capitol Avenue, Suite 1900 Little Rock, AR 72201.

3. HPC Industrial Services, LLC is incorporated in Massachusetts, and authorized to do business in Arkansas by the Arkansas Secretary of State. Its registered agent to receive service

of process is C T CORPORATION SYSTEM, 124 West Capitol Avenue, Suite 1900 Little Rock, AR 72201.

4. Clean Harbors Environmental Services, Inc. and HPC Industrial Services, LLC are collectively referred to herein as “Clean Harbors.”

II. Jurisdiction and Venue

5. Jurisdiction exists in this Court pursuant to Ark. Code Ann. § 16-13-201.

6. Venue is proper in this Court pursuant to Ark. Code Ann. §§ 16-60-101(a)(1), and 16-60-101(3)(B).

III. Factual Allegations

7. Plaintiff owns and operates a chemical storage facility in Clark County, Arkansas (the “Facility”).

8. The Facility is on Plaintiff’s private property.

9. On October 3, 2023, Gabe Herrington, an employee of Mid-Ark Environmental Services, a contractor for Plaintiff, noticed a drone flying over the Facility.

10. Mr. Herrington notified Plaintiff’s Director of Facility Affairs, Britt C. Scheer, about the drone.

11. Gabe Herrington and Britt Scheer are custodians of the photographs used throughout this Complaint.

12. The photographs used throughout this Complaint fairly and accurately represent what Mr. Herrington and Mr. Scheer witnessed on October 3, 2023.

13. The photographs taken by Mr. Herrington and Mr. Scheer were taken in the ordinary course of business and for the purpose of protecting the sensitive information and facilities located on Plaintiff’s property.

14. Upon investigation, Mr. Herrington and Mr. Scheer noticed a red vehicle parked on a county road near the Facility. Upon closer inspection, Mr. Herrington learned that the red vehicle is owned and operated by Clean Harbors (the “Clean Harbors Company Vehicle”) as revealed by the stickers that exist on the vehicle. Mr. Herrington noted the sticker in the photograph below:



15. The drone that had been flying over the Facility then approached the Clean Harbors Company Vehicle. The drone was operated by the person driving the Clean Harbors Company Vehicle. Mr. Scheer documented the drone flight and the person operating the drone with the following picture:



16. The drone operator identified himself as Steve Garcia (the "Drone Operator").
17. The Drone Operator stated that he was employed by Clean Harbors.
18. The Drone Operator further stated that Clean Harbors employee Wade Wickland instructed him to conduct the aircraft surveillance of Plaintiff's property.
19. The Drone Operator then entered the Clean Harbors Company Vehicle and left the scene.
20. Mr. Britt Scheer documented the Drone Operator sitting in the Clean Harbors Company Vehicle as pictured in the photograph below:



21. Plaintiff did not provide Clean Harbors or the Drone Operator prior consent to operate an unmanned aircraft system over or near the Facility.

22. The drone flown over the Facility was an unmanned, powered aircraft that did not carry a human operator, was autonomous or remotely piloted or operated by the Drone Operator, and was expendable or recoverable.

IV. Cause of Action

Count I – Civil Action Against Operator of an Unmanned Aircraft System

23. Plaintiff restates, re-alleges, and incorporates by reference the allegations contained above as if set forth word for word.

24. Under Arkansas law, “[a] person commits the offense of unlawful use of an unmanned aircraft system if he or she knowingly uses an unmanned aircraft system to conduct surveillance of, gather evidence or collect information about, or photographically or electronically record critical infrastructure without the prior written consent of the owner of the critical infrastructure.” Ark. Code Ann. § 5-60-103(b).

25. A critical infrastructure includes a chemical storage facility. Ark. Code Ann. § 5-60-103(a)(1)(D).

26. A violator of Ark. Code Ann. § 5-60-103 has civil liability to the owner of the critical infrastructure for (1) any actual damages, or ten thousand dollars, whichever is greater; (2) three times actual damages or ten thousand dollars, whichever is greater, where the violation resulted in profit; and (3) the costs of the action, including reasonable attorney's fees. Ark. Code Ann. § 16-118-111.

27. The Facility is a critical infrastructure within the meaning of Ark. Code Ann. § 5-60-103(a)(1).

28. The drone flown over the Facility by the Drone Operator was an Unmanned aircraft system within the meaning of Ark. Code Ann. § 5-60-103(a)(2).

29. Clean Harbors is vicariously liable for the actions of the Drone Operator.

30. Clean Harbors knowingly flew an unmanned aircraft over the Facility.

31. In flying an unmanned aircraft over the Facility, Clean Harbors obtained information about Plaintiff's chemical storage facility.

32. The purpose of Clean Harbors' use of the unmanned aircraft was to collect information and pictures of the critical infrastructure built by Plaintiff.

33. Plaintiff did not consent to the surveillance of the Facility by Clean Harbors.

34. To Plaintiff's knowledge, resulting from the conduct alleged in this Complaint, there have not been any "actual damages" as that term is used in Ark. Code Ann. § 16-118-111.

35. To Plaintiff's knowledge, the conduct alleged in this Complaint has not "resulted in profit" to Clean Harbors as that term is used in Ark. Code Ann. § 16-118-111.

36. Thus, Clean Harbors is liable to Plaintiff under Ark. Code Ann. § 16-118-111 for \$10,000.00 and the costs of an action brought under this section, together with reasonable attorney's fees.

37. The amount of the reasonable attorney's fee will need to take into account several factors, including the amount involved in the case and the results obtained. *See Spann v. Lovett & Co.*, 2012 Ark. App. 107, 24, 389 S.W.3d 77, 94–95 (2012). In light of the \$10,000.00 statutory damages alleged herein and the fact that even a complete victory under this Complaint will result in a \$10,000.00 award, Plaintiff stipulates that the reasonable attorney's fee will not exceed \$20,000.00.

38. Plaintiff stipulates that the costs of bringing this action will not exceed \$5,000.00.

39. The total amount in controversy in this action does not exceed \$75,000.00.

40. Plaintiff demands a trial by jury.

41. Plaintiff prays for a finding that Clean Harbors violated Ark. Code Ann. § 5-60-103(a)(2) and Ark. Code Ann. § 16-118-111.

WHEREFORE, Elemental Environmental Solutions, LLC prays that the Court enter judgment against Clean Harbors Environmental Services, Inc. and HPC Industrial Services, LLC, in an amount not exceeding \$75,000.00, for a judicial finding as requested above, and for all other necessary and proper relief to which it may be entitled.

Respectfully submitted,

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