

CAUSE NO. _____

HARRIS COUNTY, TEXAS,
Plaintiff,

IN THE DISTRICT COURT OF

and the

STATE OF TEXAS
Acting by and through the Texas
Commission on Environmental Quality,
a Necessary and Indispensable Party

HARRIS COUNTY, TEXAS

v.

INTERCONTINENTAL TERMINALS
COMPANY LLC,
Defendant.

____ JUDICIAL DISTRICT

**HARRIS COUNTY'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTIONS**

Plaintiff, Harris County, Texas, files this Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions in this environmental enforcement action complaining that Intercontinental Terminals Company LLC (Defendant) caused, suffered, allowed, or permitted unauthorized outdoor burning and air emissions in Harris County in violation of the Texas Clean Air Act, discharged industrial waste into waters in the State of Texas in violation of the Texas Water Code, Texas Solid Waste Disposal Act and Harris County Stormwater Regulations, and violated the Harris County Floodplain Regulations by not having development permits for structures at its facility. Plaintiff seeks injunctive relief, civil penalties, costs, and attorney's fees.

1. DISCOVERY AND RELIEF REQUESTED

1.1. Pursuant to Texas Rule of Civil Procedure 190.1, Harris County will conduct discovery under a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.3.

1.2. This case is not subject to the restrictions of expedited proceedings under Rule 169 because Harris County seeks non-monetary injunctive relief and civil penalties that could exceed \$100,000. Tex. R. Civ. P. 47(c)(4).

2. AUTHORITY TO SUE

2.1. Harris County brings this cause of action by and through its County Attorney as authorized through a formal order of its governing body, the Commissioners Court of Harris County, Texas, issued on March 26, 2019.

2.2. Harris County brings this cause of action on its own behalf and on behalf of the residents of Harris County, Texas under the authority granted in §§ 7.102 and 7.351(a) of the Texas Water Code, in the Regulations of Harris County for Floodplain Management (Floodplain Regulations) Section 7.01, and the Regulations of Harris County, Texas for Stormwater Quality Management (Stormwater Regulations) Part E, Section 4.01.

3. PLAINTIFF

3.1. Plaintiff Harris County, Texas (Harris County) is a political subdivision of the State of Texas.

3.2. The State of Texas (the State), acting by and through the Texas Commission on Environmental Quality (TCEQ or Commission) is a necessary and indispensable party to this lawsuit pursuant to § 7.353 of the Water Code.¹

4. DEFENDANT

4.1. Defendant Intercontinental Terminals Company LLC is a foreign business company, authorized to do business in the State of Texas, and doing business in Harris County. It

¹ See also Tex. Water Code § 7.001(1) (“‘Commission’ means the Texas Natural Resource Conservation Commission.”); Act of April 20, 2001, 77th Leg., R.S., ch. 965, § 18.01(1), 2001 Tex. Gen. Laws 1933, 1985 (changing name from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality).

may be served through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

5. JURISDICTION AND VENUE

5.1. This Court has jurisdiction over the case and venue is proper in Harris County because this is an action to enforce Chapters 361 and 382 of the Texas Health and Safety Code and the Commission rules promulgated thereunder, Chapters 7 and 26 of the Texas Water Code, the Floodplain Regulations, and the Stormwater Regulations, and all of the events or omissions giving rise to the claim occurred in Harris County. See Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and Tex. Water Code § 7.105(e).

6. APPLICABLE LAW

THE TEXAS CLEAN AIR ACT

A. The Texas Health and Safety Code

Purpose

6.1. The Texas Clean Air Act (“the Clean Air Act”) is found in Chapter 382 of the Texas Health and Safety Code. The purpose of the Clean Air Act is to safeguard the State’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the aesthetic enjoyment of air resources by the public and the maintenance of adequate visibility. Tex. Health & Safety Code Ann. § 382.002.

Unauthorized Emissions Prohibited

6.2. Except as authorized by a Commission rule or order, the Clean Air Act prohibits any person from causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity that causes or contributes to air pollution. *Id.* at § 382.085(a). In

addition, a person may not cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of Chapter 382 or of any Commission rule or order. *Id.* at § 382.085(b).

TCEQ Authorized to Adopt Rules

6.3. The Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act. Tex. Health & Safety Code § 382.018. The TCEQ has promulgated rules (Commission Rules) based on that authority, found in Chapters 101-22 of Title 30 of the Texas Administrative Code.

Definitions

6.4. “Air contaminant” means “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than normal.” Tex. Health & Safety Code Ann. § 382.003(2).

6.5. “Air pollution” means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property. Tex. Health & Safety Code Ann. § 382.003(3).

B. The Texas Administrative Code

Visible Emissions

6.6. “No person may cause, suffer, allow, or permit visible emissions from any source” except as authorized by the TCEQ. 30 Tex. Admin. Code § 111.111(a).

Unauthorized Outdoor Burning

6.7. Except as authorized by a Commission rule or order, the Clean Air Act prohibits any person from causing, suffering, allowing, or permitting any outdoor burning within the State of Texas. 30 Tex. Admin. Code § 111.201.

Regulatory Nuisance or Creating Air Pollution

6.8. Section 101.4 of Title 30 of the Texas Administrative Code prohibits any person from discharging from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to, or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property. 30 Tex. Admin. Code § 101.4.

THE TEXAS WATER CODE

A. Definitions

6.9. “To discharge” means “to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.” Tex. Water Code § 26.001(20).

6.10. “Industrial Waste” means “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business. *Id.* at § 26.001(11).

6.11. “Water in the state” means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including

the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside of bordering the state or inside the jurisdiction of the state.” Water Code § 26.001(5).

B. Discharges into Waters in the State Prohibited

6.12. Texas Water Code § 26.121(a)(1) states that “except as authorized by the commission, no person may discharge sewage...or industrial waste into or adjacent to any water in the state.”

TEXAS SOLID WASTE DISPOSAL ACT

A. Purpose

6.13. The purpose of the Texas Solid Waste Disposal Act (SWDA), found in Chapter 361 of the Texas Health & Safety Code, is to provide for the “management of solid waste.” Tex. Health & Safety Code §§ 361.001-002.

6.14. The TCEQ is the administrative agency that is primarily responsible for regulating solid waste in Texas and it has adopted rules that further implement the requirements and restrictions in the SWDA. Tex. Health & Safety Code § 361.011.

B. Definitions

6.15. “Industrial solid waste” means “solid waste resulting from or incidental to any process of industry or manufacturing” 30 Tex. Admin. Code § 335.1(83).

6.16. “Solid waste” means “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations” 30 Tex. Admin. Code § 335.1(146).

C. Prohibitions Against Creating a Nuisance or Endangering Public Health

6.17. “[N]o person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste . . . in such a manner as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste . . . into or adjacent to the waters in the state without obtaining specific authorization . . . (2) the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare.” 30 Tex. Admin. Code § 335.4.

ENFORCEMENT UNDER TEXAS WATER CODE CHAPTER 7

6.18. “A person may not cause, suffer, allow, or permit a violation of a statute within the commission’s jurisdiction or a rule adopted or an order or permit issued under such statute.” Tex. Water Code § 7.101.

6.19. Harris County is authorized to file suit for injunctive relief for violations of Chapters 7 and 26 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code, and Commission rules and orders promulgated under these statutes. *Id.* at §§ 7.105, 7.351.

6.20. Harris County is not required to pay a filing fee or other security for costs and is not required to pay a bond prior to the Court granting an injunction. Tex. Civ. Prac. & Rem. Code § 6.001.

6.21. Harris County is also entitled to recover its attorney’s fees, court costs and investigative costs in relation to this proceeding. Tex. Water Code § 7.108.

HARRIS COUNTY FLOODPLAIN REGULATIONS

A. Purpose

6.22. Harris County adopted the Regulations of Harris County, Texas for Floodplain Management (Floodplain Regulations) to “provide land use controls to qualify the unincorporated areas of Harris County for flood insurance” under the National Flood Insurance Act of 1968 and to protect human life and health.² Floodplain Regulations § 1.03.

B. Definitions

6.23. “Base flood” or “100-year flood” means a flood having a one percent chance of being equaled or exceeded in any one year. *Id.* at § 2.03.

6.24. “Base flood elevation” means the elevation or level above mean sea level that flood waters shall reach during the base flood.” *Id.* at § 2.04.

6.25. “Development” means “any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.” *Id.* at § 2.13.

6.26. “Development Permit” or “Permit” means “a permit required by these [Floodplain] Regulations.” There are two classes of Permits: (1) Class I Permits are required for any development located “on a property where the elevation of the ground is above the base flood elevation.” (2) Class II Permits are issued for any development that is “located on a property where the ground elevation is below the base flood elevation or subject to flooding.” *Id.* at § 2.37.

² The Floodplain Regulations were adopted pursuant to the Loc. Gov’t Code § 240.901; Tex. Transp. Code §§ 251.001-251.059 and 254.001-254.019; and the Flood Control and Insurance Act, Subchapter I of Chapter 16 of the Tex. Water Code.

C. Unpermitted Development is Prohibited

6.27. “All development within the unincorporated areas of Harris County without first securing a permit is prohibited.” *Id.* at § 4.01.

D. Enforcement

6.28. Harris County may file suit, seeking an injunction to “restrain the person from continuing the violation or threat of violation, including an order directing the person to remove illegal improvements and restore preexisting conditions.” Tex. Water Code § 16.323(a)(1); *see generally*, Floodplain Regulations § 7.01.

6.29. Harris County may file a civil suit for the assessment of a civil penalty of not more than \$100 for each act of violation and each day of violation. Tex. Water Code §§ 16.322 and 16.323(a)(2).

HARRIS COUNTY STORMWATER REGULATIONS

A. Authority and Purpose

6.30. Harris County adopted the Regulations of Harris County, Texas for Stormwater Quality Management (Stormwater Regulations) under the authority derived from Texas Local Government Code, Chapter 573.

6.31. The purpose of the Stormwater Regulations is “to provide land use controls necessary to comply with Harris County’s TPDES³ stormwater permit, to protect human life and health and to avoid increasing pollutant levels associated with stormwater.” Stormwater Regulations, Part A, Section 1.03.

³ “‘TPDES’ means the Texas Pollutant Discharge Elimination System that was assumed by the state from the EPA pursuant to Section 1342(b) of Title 33 of the United States Code.” Stormwater Regulations, Part A, Section 2.50.

B. Definitions

6.32. “Municipal Separate Storm Sewer System” or “MS4” means “the system of man-made conveyances owned or operated by a municipality, Harris County, or Harris County Flood Control District, designed or used for collecting or conveying stormwater that discharges into Waters of the United States which is not used for collecting or conveying sewage.” Stormwater Regulations, Part A, Section 2.22.

C. Non-Stormwater Discharges Prohibited

6.33. “No person shall discharge or cause to be discharged into the MS4 anything that is not composed entirely of stormwater.” Stormwater Regulations, Part E, Section 1.02.

D. Enforcement

6.34. “The County Attorney may take whatever action is necessary” to remedy a violation of any section of the Stormwater Regulations dealing with Stormwater Discharges associated with Industrial Activity and/or with non-stormwater Discharges, “including but not limited to filing suit for civil penalties up to \$1,000 a day for each violation, and to enjoin the violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.” Stormwater Regulations, Part E, Section 4.01.

HAZARDOUS MATERIALS RESPONSE COST RECOVERY

6.35. Harris County is permitted to “provide limited control and containment measures that are necessary to protect human health and the environment” in instances where hazardous materials are leaked, spilled, released or abandoned on any property. Tex. Loc. Gov’t Code §§ 353.002 & 353.003.

6.36. In instances where the County responds to a leak, spill, release or abandonment of hazardous materials, or provides hazardous materials service, the County may charge a reasonable

fee to offset its costs. Tex. Loc. Gov't Code § 353.004. Those costs are chargeable to a concerned party, Tex. Loc. Gov't Code § 353.004(a), and a concerned party is “a person involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or [one] who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.” Tex. Loc. Gov't Code § 353.001(1).

7. VIOLATIONS

7.1. Intercontinental Terminals Company is a foreign limited liability company authorized to do business in the State of Texas. It operates a massive petroleum handling and storage facility at 1943 Independence Parkway, La Porte, Texas on the Houston Ship Channel (“ITC Facility”).

7.2. The Harris County Engineering Department, Permits Division, is in the process of conducting a records review to determine if the ITC Facility has all the permits required under the Harris County Floodplain Regulations. On information and belief, the Facility may not have all required Floodplain Regulations permits.

7.3. On March 17, 2019, emergency response personnel and investigators with the Harris County Pollution Control Services Department (HCPCSD), the Harris County Office of Emergency Management, and the Harris County Fire Marshal's Office were called to the ITC Facility to investigate a report of an illegal burning when two tanks located at the ITC Facility caught fire. Throughout March 17, 2019, five more tanks caught fire for a total of seven tanks actively burning and releasing air contaminants.

7.4. On March 18 and 19, 2019, additional tanks caught fire and approximately eleven tanks were actively burning and releasing air contaminants.

7.5. In the evening of March 20, 2019, a tank re-ignited and was subsequently extinguished.

7.6. On March 21, 2019, reports of benzene leaks caused by the fire-damaged tanks and evaporating firefighting foam required a shelter-in-place for residents in Deer Park and La Porte and local ISDs shut down.

7.7. Benzene leaks continued on March 22, 2019, requiring a shelter-in-place for local industrial neighbors and resulting in further school closures. In the afternoon on March 22, 2019, two tanks ignited and emitted black smoke into the air.

7.8. From at least March 17 to present, Defendant sprayed firefighting foam onto the tanks. On information and belief, this foam and facility-industrial wastewater discharged into or adjacent to water in the state and the MS4 from at least March 17 through March 25, 2019, and is anticipated to continue until the site is secure. The foam and facility-industrial wastewater have continually discharged through at least one Facility outfall.

7.9. On November 26, 2013, the Defendant was issued Texas Pollutant Discharge Elimination System Permit (TPDES) Permit No. WQ0001984000 under which it is authorized to discharge hydrostatic test water, non-contact stormwater, steam condensate, firefighting system test water, and potable utility line flushing water. The permit prohibits the discharge of floating solids or visible foam in other than trace amounts. TPDES Permit No. WQ0001984000, Effluent Limitation No. 3, Page 2a.

7.10. In the afternoon of March 22, 2019, a containment dike surrounding the tanks breached, resulting in the discharge of firefighting foam and other industrial waste into a nearby ditch and eventually into Tucker Bayou. The contents of the ditch then ignited and burned for approximately an hour, sending a plume of black smoke into the air.

7.11. ITC reported to the TCEQ that it emitted air pollutants, including carbon monoxide, NOx, Sulfur Dioxide and gasoline on March 17 and 18, 2019. None of these emissions were authorized by any permit.

8. DEFENDANT'S VIOLATIONS OF THE TEXAS CLEAN AIR ACT, TEXAS WATER CODE, AND TEXAS SOLID WASTE DISPOSAL ACT

The following violations of the Texas Clean Air Act, Texas Water Code, and Texas Solid Waste Disposal Act occurred in Harris County, Texas:

8.1. Defendant violated Tex. Water Code § 7.101 and 30 Texas Administrative Code § 111.201 by causing, suffering, or allowing unpermitted outdoor burning at the ITC Facility on March 22, 2019. The Texas Clean Air Act prohibits any person from causing, suffering, allowing, or permitting any outdoor burning in the State of Texas without authorization. On March 22, 2019, at least two tanks reignited and waste that had discharged from the site into a roadside ditch ignited, which was not authorized by the TCEQ.

8.2. Defendant violated Tex. Water Code § 7.101 and 30 Texas Administrative Code § 111.111(a) by causing, suffering, or allowing visible emissions from the ITC Facility on March 22, 2019. The Texas Clean Air Act prohibits any person from causing, suffering, allowing, or permitting visible emissions without authorization. On March 22, 2019, at least two tanks reignited and waste that had discharged from the site into a roadside ditch ignited resulting in a large black plume that loomed over Harris County.

8.3. Defendant violated Tex. Water Code § 7.101 and Texas Health and Safety Code § 382.085(a) and (b) by emitting air contaminants into the atmosphere without authorization on March 22, 23, 24, and 25, 2019. On March 22, 2019, at least two tanks reignited and waste that had discharged from the site into a roadside ditch ignited resulting in unauthorized emissions into the atmosphere. Additionally, on information and belief, firefighting foam and wastewater at the

ITC Facility and off-site have continuously emitted air contaminants without authorization. Firefighting measures, including foam application and tank liquid removal, are on going and are anticipated to occur into the near future. On information and belief, until all the firefighting foam and wastewater are removed and properly disposed, unauthorized air contaminants will continually emit. Each air contaminant, each emission point and each day are separate violations.

8.4. Defendant violated Tex. Water Code § 7.101, Tex. Health & Safety Code § 382.085 and 30 Tex. Admin. Code § 101.4 on March 17, March 19, March 22, March 23, and March 24, 2019, by causing, suffering or allowing the discharge of at least one air contaminant without a permit and in such concentration and or such duration as to be injurious to human health, welfare, or property, or as to interfere with the normal use and enjoyment of property. Since the beginning of the incident on March 17, 2019, HCPCSD has been inundated with nuisance complaints from residents including odors, particulate matter, and health impacts. HCPCSD conducted many investigations and is in the process of finalizing the inspection reports. On information and belief, nuisance violations were confirmed on March 17, March 19, March 22, March 23, and March 24, 2019. Additional nuisances may be documented as the incident continues.

8.5. Defendant violated Texas Water Code § 26.121 and TPDES Permit No. WQ0001984000 from at least March 17 to present by discharging firefighting foam and other industrial waste into waters in the state without a permit. Additionally, the Defendant violated TPDES Permit No. WQ0001984000, Effluent Limitation No. 3, Page 2a, by discharging floating solids and visible foam from at least from March 17, 2019 to the present. On information and belief, as of March 25, 2019, the discharges are expected to continue.

8.6. Defendant violated the Water Code § 7.101 and 30 Tex. Admin. Code § 335.4, (1), (2) and (3) from March 17, 2019, to present by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste in such a manner as to cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to waters in the state, creation and maintenance of a nuisance, and the endangerment of the public health and welfare. On March 22, 2019, the ITC Facility containment dike breached allowing the discharge of firefighting foam and industrial wastewater to discharge into a ditch and eventually into Tucker Bayou. The wastewater emitted benzene and created potential hazards to the incident responders. As evidenced by the actual release on March 22, 2019, there has been the potential for discharge since March 17, 2019 and the threat of another release is ongoing.

9. DEFENDANT'S VIOLATIONS OF THE FLOODPLAIN REGULATIONS

9.1. On information and belief, Defendant is in violation of the Floodplain Regulations Section 4.01 by failing to have all development onsite permitted. Harris County Engineering Department, Permits Division, is in the process of conducting a records review to determine if the ITC Facility has all the permits required under the Harris County Floodplain Regulations. On information and belief, the Facility may not have all required Floodplain Regulations permits. The Defendant is liable for a penalty within the statutory range for each day of violation.

10. DEFENDANT'S VIOLATIONS OF THE STORMWATER REGULATIONS

10.1. Defendant violated the Stormwater Regulations from at least March 22, 2019, to present by discharging materials other than stormwater into the MS4. The Defendant is liable for a penalty within the statutory range for each day of violation.

11. INJUNCTIVE RELIEF

11.1. As shown above, Defendant Intercontinental Terminals Company LLC violated provisions of the Texas Clean Air Act, Texas Water Code, and Texas Administrative Code from at least March 17 through March 22, 2019. Defendant is also in violation of the Harris County Floodplain Regulations and Stormwater Regulations.

11.2. Harris County is entitled to immediate injunctive relief from continuing violations or the threat of violations that endanger public health and safety. Pursuant to sections 7.032 and 7.351 of the Texas Water Code, this Court may grant Harris County and the State of Texas, without bond or other undertaking, any temporary restraining order, temporary or permanent, prohibitory or mandatory injunction the facts of this case warrant. The facts of this case warrant injunctive relief prohibiting Defendant, its employees, agents, successors, and or assigns, from future violations of the Texas Clean Air Act, Texas Water Code, and Texas Administrative Code and the regulations promulgated thereunder.

11.3. As used in this Injunction, the following words and terms set forth below have the following meanings:

- a) "Defendant" shall mean Intercontinental Terminals Company LLC.
- b) "Harris County" shall mean Harris County, Texas, a political subdivision of the State of Texas.
- c) "Immediately" shall mean by 5:00 p.m. Central Standard Time on the Effective Date.
- d) "Effective Date" shall mean the Day the Judge signs the Temporary Restraining Order.

- e) "ITC Facility" shall mean the real property located at 1943 Independence Parkway, La Porte, Texas 77571.

11.4. Specifically, Harris County requests a temporary restraining order immediately directing Defendant, its employees, agents, successors, and assigns to be hereby (1) ordered to cease all operations and not reopen the ITC Facility until an independent third-party expert, as appointed by the Court, finds the ITC Facility is safe to reopen and begin operations, (2) enjoined from disposing of any wastes, including hazardous and non-hazardous wastes, fuel, fuel-based products, or any other chemicals or oils by opening the tanks where it is stored and venting substance into the atmosphere, (3) enjoined from disposing of any solid waste, unless it has been properly characterized and is disposed of at a TCEQ permitted facility authorized to accept the waste stream, (4) enjoined from spilling or discharging any waste or liquid from any container onto the ground, or into or adjacent to any waters in the state, (5) enjoined from spilling or discharging any waste or liquid from the facility into the MS4 or any water in the state, (6) enjoined from destroying any records pertaining to the Facility and from removing any business records from the ITC Facility, (7) ordered to immediately submit to Harris County a detailed inventory of all substances, products, and materials located at the ITC Facility, (8) enjoined from removing any inventory from the ITC Facility without records documenting the inventory, the quantity, where it was moved, how it was moved, why it was moved, its location at the ITC Facility, its current location, and who moved it, (9) ordered to share all water, air, and ground samples with Harris County, as well as how those samples were taken and the data analyzed.

11.5. Additionally, Harris County requests that this Court order Defendant to obtain all permits required under the Floodplain Regulations.

11.6. Plaintiff also seeks temporary injunctive relief to ensure there are no future emissions and further violations of the Texas Clean Air Act, Texas Solid Waste Act, Texas Water Code, Flood Plain Regulations, and Stormwater Regulations committed by Defendant.

11.7. Upon final trial, Plaintiff seeks that the above temporary injunctive relief be rendered permanent.

11.8. For any document required or permitted to be submitted to Harris County under the injunctive provisions, Defendant shall submit the document to:

Bethany Dwyer
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
Bethany.Dwyer@cao.hctx.net

11.9. Harris County requests any additional or alternative relief deemed appropriate by this Court.

12. HAZARDOUS MATERIALS RESPONSE COSTS

12.1. Harris County and its residents, businesses and other governmental agencies request that, upon final hearing, this Court award Harris County a reasonable fee to offset all costs it incurred in responding to the incident at the ITC Facility, as authorized by Tex. Loc. Gov't Code § 353.001 *et seq* and any other statutes. The Harris County Fire Marshal's Office, Harris County Pollution Control Services Department, and the Office of Emergency Management were on the scene responding to the fires and incurred costs in their response, as well as individual Harris County residents, businesses and other governmental agencies affected.

13. ATTORNEY'S FEES, COURT COSTS, AND INVESTIGATIVE COSTS

13.1. Harris County requests that, upon final hearing, this Court award Harris County reasonable attorney's fees and costs, to be recovered from Defendant. Tex. Water Code § 7.108; Tex. Gov't Code § 402.006(c); and Tex. Loc. Gov't Code § 113.902.

14. PRAYER

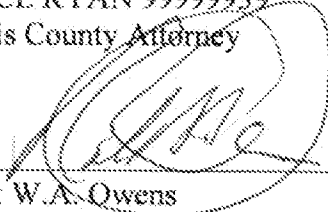
14.1. Plaintiff, Harris County, Texas asks this Court for a judgment against Defendant as follows:

- (a) That Defendant be cited to appear and answer herein;
- (b) That the State of Texas be made a necessary and indispensable party to the suit as required by law;
- (c) That the Court, after notice to the Defendant, conduct a hearing on Harris County's application for a temporary restraining order;
- (d) That the Court issue a show cause order requiring Defendant to appear before the Court to show why it should not be enjoined from further violation of the laws of the State of Texas, as set out above;
- (e) That citation issue in due form of law against Defendant;
- (f) That upon final trial a permanent injunction should issue against Defendants, in favor of Plaintiff, for the injunctive relief as aforesaid;
- (g) That, upon trial, this Court grant civil penalties against Defendant for violations of the Floodplain Regulations and the Stormwater Regulations, within the range allowed by law, as requested above;
- (h) That, upon trial, this Court grant Harris County a reasonable fee for its hazardous materials response expenses;

- (i) That upon final trial in this cause, the Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendant; and
- (j) That the Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN 99999939
Harris County Attorney

By: 
Rock W.A. Owens
State Bar No. 15382100
Managing Attorney
Environmental Practice Group
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5121
Facsimile: (713) 437-4211
Email: Rock.Owens@cao.hctx.net

**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 27, 2019

Certified Document Number: 84501671 Total Pages: 20

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com